

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 13-3194

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LINDA SCHROCK,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES' OPPOSITION TO DEFENDANT LINDA SCHROCK'S
MOTION FOR RELEASE FROM INCARCERATION

The United States respectfully submits this opposition to defendant Linda Schrock's Motion for Release from Incarceration, filed September 5, 2014. Schrock was convicted of two felony offenses: 18 U.S.C. 371 (Count 1, conspiracy) and 18 U.S.C. 249(a)(2) (Count 6, willfully causing bodily injury because of a person's religion). On February 8, 2013, Schrock was sentenced to 24 months' imprisonment. She reported to prison on April 12, 2013, and therefore is due to be released in April 2015. On August 27, 2014, this Court reversed

Schrock's conviction on Count 6. For the reasons set forth below, Schrock's motion should be denied.

BACKGROUND

1. This case arises out of a series of assaults over a two-month period by members of a religious community in Bergholz, Ohio, against practitioners of the Amish religion. On March 28, 2012, the government filed a ten-count Superseding Indictment charging 16 defendants in connection with five religiously-motivated assaults. The indictment alleged that, in the fall of 2011, defendants willfully caused bodily injury to the victims by restraining and assaulting them, including forcibly cutting off their beards and head hair because of their religion, in violation of 18 U.S.C. 249(a)(2), a provision of the Matthew-Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009. The indictment also charged related counts of conspiracy, obstruction of justice, and making false official statements to federal law enforcement officers.

Linda Schrock was charged in two Counts, Count 1 (conspiracy) and Count 6 (Section 249(a)(2)). Count 1 charged all 16 defendants with conspiracy in violation of 18 U.S.C. 371, and alleged three distinct objects of the conspiracy: (1) violation of Section 249(a)(2); (2) obstruction of justice, in violation of 18 U.S.C. 1519; and (3) making false official statements, in violation of 18 U.S.C. 1001. Count 1 alleged numerous overt acts relating to each of the objects of the

conspiracy.¹ (Indictment, R. 87, Page ID# 1186-1196). Count 6 alleged a violation of Section 249(a)(2) in connection with the November 9, 2011, assault on Schrock's in-laws, Melvin and Anna Schrock.

2. Linda Schrock was convicted on both counts. The special verdict form for Count 1 specifically provided that if the jury found that the conspiracy was proven, it should indicate "one or more objects" of the conspiracy, which included: (1) willfully causing bodily injury to the victims because of religion; (2) knowingly and intentionally obstructing justice; and (3) making false official statements. The jury found that there were *two* objects of the conspiracy – violating Section 249(a)(2) *and* obstructing justice in violation of Section 1519. The jury also specifically found that Linda Schrock knowingly and voluntarily joined the conspiracy. (Verdict Form, R. 230, Page ID# 2036-2037, 2049).

3. On August 27, 2014, this Court reversed Schrock's conviction on Count 6, concluding that the jury instruction on the meaning of "because of" in Section 249(a)(2) was incorrect, and that the error was not harmless. The Court did not specifically address her conviction (or any of the other defendants' convictions) on Count 1, or the convictions of some of the other defendants for obstruction of

¹ The obstruction of justice count related to the disposal of a camera used to take pictures of the victims after their beards and hair were cut. As part of Linda and Emmanuel Schrock's assault of his parents, their son took "trophy" photographs of Melvin Schrock with this camera. See Brief for the United States as Appellee, Nos. 13-3177 *et al.* (filed February 28, 2014), at 45-46, 52-54.

justice and making false statements, other than to state that “[n]one of the defendants challenges their convictions for concealing evidence or lying to the FBI.” Slip op. 6.

4. On August 29, 2014, Schrock filed in the district court a Motion for Release from Incarceration, noting that her conviction for violating Section 249(a)(2) had been reversed. (R. 558, Page ID# 7939). The United States responded that although her conviction on Count 6 had been reversed, she remained convicted on Count 1 for conspiracy to obstruct justice. (R. 559, Page ID# 7941). Schrock responded by suggesting that this Court’s decision had the effect of also reversing her conviction on Count 1. (R. 560, Page ID# 7944-7945).

On September 3, 2014, the district court denied Schrock’s motion, finding that it was premature. (R. 561, Page ID# 7947-7948). In support of its ruling, the court noted that “[t]he mandate has not been issued, as the time for the United States to seek rehearing or *certiorari* has not run.” (R. 561, Page ID# 7948). The court noted that, “[w]hen and if the issue becomes ripe for consideration, the Court will address the United States’ argument that Linda Schrock’s conspiracy conviction (Count 1) remains intact.” (R. 561, Page ID# 7948).

The court went on to note in dicta, however, “that the United States is correct that the jury expressly convicted Linda Schrock (and all the other defendants) of conspiracy to commit hate crimes and to obstruct justice.” (R. 561,

Page ID# 7948). The court further stated that “[w]hile the conspiracy conviction of Linda Schrock would by implication be reversed had the only object of that conspiracy been to commit hate crimes, the Sixth Circuit’s decision does not talk about the continued validity of the conspiracy conviction given that the conspiracy conviction also encompassed obstruction of justice.” (R. 561, Page ID# 7948). The court indicated that it would seek further briefing on that issue “if and when it becomes ripe.” (R. 561, Page ID# 7948).

5. Schrock now asks this Court to release her from prison. Her only arguments relate to her personal circumstances, including that prior to reporting she posted bond and followed all pre-sentence conditions; does not pose a danger to others or risk of flight; has no history of alcohol or drug use; and seeks release to care for her ten children.

DISCUSSION

Schrock’s motion for release should be denied. First, as the district court correctly held, ruling on the motion would be premature because the time for the United States to seek rehearing or rehearing en banc has not expired. Moreover, under this Court’s Rules, the effect of granting rehearing en banc would be to vacate the panel opinion, stay the mandate, and restore the case on the docket as a pending appeal. Second, as the district court correctly observed (albeit in dicta), this Court’s decision reversing the Section 249(a)(2) count does not affect her

conviction on Count 1, conspiracy to obstruct justice, which Schrock did not challenge on appeal. Therefore, Schrock remains lawfully imprisoned, and none of the factors she sets forth in her motion describing her personal circumstances warrants her release from custody.

1. First, a ruling on the motion for release from custody would be premature. A petition for rehearing or rehearing en banc by the United States is currently due October 10, 2014. Pursuant to Sixth Circuit Rule 35(b), the effect of granting rehearing en banc is to “vacate[] the previous opinion and judgment of the court, stay the mandate, and restore[] the case on the docket as a pending appeal.” Therefore, should the Court grant rehearing en banc, Schrock would remain convicted on Count 6 for violating Section 249(a)(2) until the Court resolves the government’s petition.² It follows that, in these circumstances, Schrock’s appeal remains pending. We note further that this Court has previously denied Schrock’s motion for release pending appeal. See Order, *United States v. Schrock*, No. 13-3194 (filed May 9, 2013).

2. In any event, because this Court’s decision reversing Schrock’s Section 249(a)(1) conviction does not affect her conspiracy conviction on Count 1, Schrock remains lawfully imprisoned on that Count. As we explain in our

² Should the government determine not to seek rehearing or rehearing en banc, we will promptly notify the Court.

response to defendant Anna Miller's Motion for Clarification or Panel Rehearing Pursuant to Fed. R. App. P. 40,³ which we have filed with this Court along with this opposition, because the jury specifically found two independent bases for the conspiracy convictions, defendants' Count 1 conspiracy convictions stand notwithstanding the Court's reversal of her Section 249(a)(2) conviction. See United States' Response to Defendant Anna Miller's Motion for Clarification or Panel Rehearing Pursuant to Fed. R. App. P. 40, *United States v. Anna Miller*, No. 13-3183 (filed September 22, 2014). We incorporate by reference that discussion herein, which applies equally to Schrock. Given that Schrock remains convicted of conspiracy to obstruct to justice and, as noted above, this Court has previously denied her motion for release pending appeal, Schrock's reiteration of her prior arguments directed at her personal circumstances is inapposite.

³ That motion was filed in one of the other cases consolidated with Schrock's appeal, *United States v. Anna Miller*, No. 13-3183 (filed September 10, 2014).

CONCLUSION

For the foregoing reasons, this Court should deny Linda Schrock's Motion
For Release From Incarceration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2014, I electronically filed the foregoing UNITED STATES' OPPOSITION TO DEFENDANT LINDA SCHROCK'S MOTION FOR RELEASE FROM INCARCERATION with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the Appellate CM/ECF system.

I further certify that all parties are CM/ECF registered, and will be served electronically.

s/ Thomas E. Chandler
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