

It is important to note preliminarily that the instant motion does not request that this Court revisit its prior rulings nor suggest that the Court need find that it should have “ruled the other way.” *See, e.g., United States v. Thompson*, 787 F.2d 1084, 1085 (7th Cir. 1986). Likewise, the instant request does not ask that this Court “predict the outcome of the appeal.” *See, e.g., United States v. Hatterman*, 853 F.2d 555, 557 n.6 (7th Cir. 1988). Rather, the Court can (and shall) grant release pending appeal if it finds that this case raises “a substantial question of law” that, if resolved in the defendant’s favor, will “likely result in reversal [or] an order for a new trial.” 18 U.S.C. § 3143(b)(1); *United States v. Bilanzich*, 771 F.2d 292, 298-99 (7th Cir. 1985).

Sec. 3143(b)(1) provides that a person who has appealed a judgment of conviction that includes a term of imprisonment “shall” be released while his appeal is pending if the district court finds:

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released . . . and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in - - (i) reversal, [or] (ii) an order for a new trial . . .

The issues in the instant case warrant release pending appeal.

I. THE SHORT SENTENCE IN THIS CASE COMPELS THIS COURT TO GRANT DEFENDANT RELEASE PENDING APPEAL.

This Court sentenced Mr. Beavers to a term of imprisonment of 6 months. Mr. Beavers, who is 78-years-old, is scheduled to report to the Bureau of Prisons to

begin serving his sentence on December 2, 2013. The length of the appellate process is likely to endure throughout the incarceration of Beavers, and beyond the completion of his sentence. Under the circumstances of this case, it would be unduly punitive to execute the sentence before the resolution of the appeal.

Indeed, the Seventh Circuit has noted specifically that “we would encourage defendants facing relatively short sentences to seek release pending appeal or move for an expedited appeal because it is often difficult to file an appeal, docket it, set a briefing schedule, hear oral argument, and draft an opinion before a very short sentence has been served.” *United States v. Jackson*, 32 F.3d 1101, 1004 (7th Cir. 1994).

Also, in *United States v. Lagiglio*, 384 F.3d 925 (7th Cir. 2004), the Seventh Circuit ruled that the defendant was entitled to release where the sentence likely to be imposed on resentencing would be shorter than the time she would have served by the time her appeal was decided.

The law of the Seventh Circuit compels this Court to grant Mr. Beavers release pending appeal.

Further, because (as detailed *infra*), Beavers is not a flight risk nor a danger, the Court can be assured he will remain compliant with any conditions set by the Court pending resolution of his appeal. In the event that the Circuit Court affirms his convictions, Beavers will avail himself to serve his sentence at such time as ordered by the Court.

William Beavers should be granted release (with any bond and/or reporting conditions deemed appropriate by the Court) pending appeal.

II. WILLIAM BEAVERS' PERSONAL CHARACTERISTICS COMPEL THIS COURT TO GRANT BOND PENDING APPEAL. HE IS A 78-YEAR-OLD MAN, HE IS NOT A FLIGHT RISK, AND HE POSES NO DANGER.

There can be no question that William Beavers is not a flight risk and he poses absolutely no danger to anyone. *See* 18 U.S.C. § 3143(b)(1)(A). Beavers, a 78-year-old man, has no prior convictions and the convictions in this case do not involve any violence or threats.

William Beavers has lived an upstanding life of public service, including as a Chicago Police Officer, an Alderman and Cook County Commissioner. Mr. Beavers graduated from the Police Academy in 1962 and has spent the last fifty (50)-plus years in public service, including the last three decades in government, after he ran for Alderman in 1983. Beavers is a public figure and he has incredibly tight knit and substantial connections to the area. Beavers poses no risk of flight if released on bond pending the resolution of his appeal. During the proceedings before this Court, Mr. Beavers was on bond. He appeared at every court date when his presence was required and has never been in violation of any Court order or term of release.

III. THE APPEAL IN THIS CASE IS “NOT FOR THE PURPOSE OF DELAY AND RAISES A SUBSTANTIAL QUESTION OF LAW OR FACT LIKELY TO RESULT IN [] REVERSAL [OR] AN ORDER FOR NEW TRIAL.”

As discussed *supra*, in the instant motion, this Court is not being asked to revisit its ruling to find it should have “ruled the other way,” nor is the Court being asked to “predict the outcome of the appeal.” *See, e.g., United States v. Thompson*, 787 F.2d 1084, 1085 (7th Cir. 1986), *United States v. Hatterman*, 853 F.2d 555, 557 n.6 (7th Cir. 1988).

The question raised by the instant motion is whether the Court finds that this case raises “a substantial question of law” that, if resolved in the defendant’s favor, will “likely result in reversal [or] an order for a new trial.” 18 U.S.C. § 3143(b)(1); *United States v. Bilanzich*, 771 F.2d 292, 298-99 (7th Cir. 1985). In the instant case, the issues raised are substantial questions of law that, indeed, would result in reversal or a new trial if Defendant prevails on appeal.

For the purposes of this request, a “substantial” question is one that is considered “close” or “one that very well could be decided the other way.” *Bilanzich*, 771 F.2d at 298 (quoting *United States v. Molt*, 758 F.2d 1198, 1200 (7th Cir. 1985) (quoting *United States v. Giancola*, 754 F.2d 898, 901 (11th Cir.1985))).

In addition, a question that is “likely to result in reversal” is one that is “so integral to the merits that it is more probable than not that reversal or a new trial will occur if the question is decided in the defendant’s favor.” *Bilanzich*, 771 F.2d at 299 (emphasis added) (quoting *United States v. Powell*, 761 F.2d 1227, 1234 (8th Cir. 1985)). As such, this Court must assess two prongs of the statute: the

‘substantial question’ prong insofar as it “defines the *level of merit* required in the question presented,” and the “likelihood of reversal” prong which “defines the *type of question* that must be presented.” *Bilanzich*, 771 F.2d at 299 (emphasis in original).

Neither of these analyses implores this Court to revisit or revise its prior rulings. Both of these analyses compel this Court to grant release pending appeal.

A. THE APPEAL IS NOT FOR THE PURPOSES OF DELAY

There were considerable issues litigated throughout the these proceedings and the defense at all times maintained Beavers’ innocence. There are legitimate and meritorious questions that form the basis of the appeal.

B. A SUBSTANTIAL QUESTION IS PRESENTED THAT IS LIKELY TO RESULT IN REVERSAL

There is a high level of merit with regard to Beavers’ appellate claims that pose “close” questions that “that very well could be decided the other way.”

Bilanzich, 771 F.2d at 298.

Beavers’ post-trial motion (Dkt. 81) details the factual underpinnings of the arguments on this issue. In sum, the issues include, *inter alia*, evidentiary and admissibility rulings by the Court related to evidence and expert testimony as well as closing arguments by both sides; unconstitutional jury selection; and improper jury instructions. These issues raise questions of fundamental constitutional rights.

Yet, this Court need not even find that the Circuit Court *will* find in favor of Beavers. To grant release pending appeal, this Court need only find that there is a

high level of merit with regard to Beavers' appellate claims that pose "close" questions that "that very well could be decided the other way." *Bilanzich*, 771 F.2d at 298. It is incontrovertible that this is true in the instant case.

The type of questions presented by the appeal are "so integral to the merits that it is more probable than not that reversal or a new trial will occur if the question[s are] decided in the defendant's favor" and thus it is "likely to result in reversal." *Bilanzich*, 771 F.2d at 299.

IV. CONCLUSION

For the foregoing reasons, William Beavers respectfully requests that this Honorable Court grant this Motion and permit Beavers to remain released on bond pending the resolution of his appeal.

Respectfully submitted,

By: /s/ Sheldon Sorosky
One of the attorneys for William Beavers

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 2013, I electronically filed Defendant William Beavers' Motion and Memorandum of Law for Release Pending Appeal with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Sheldon Sorosky