UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-20693-CR-SEITZ

UNITED STATES OF AMERICA

v.

PETER SOTIS and
EMILIE VOISSEM,

Defendants.

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ORDER DENYING DEFENDANT SOTIS'S MOTION FOR BOND PENDING APPEAL

This matter is before the Court on Defendant Peter Sotis's *pro se* Motion for Bond [DE 218], which seeks Defendant's release on bond pending appeal of his convictions. The Government opposes the Motion [DE 220], and Defendant has replied [DE 223]. Because Defendant's appeal fails to raise a substantial question of law or fact likely to result in reversal or a new trial under 18 U.S.C. § 3143(b)(1)(B), Defendant's Motion is DENIED.

During a convicted defendant's appeal, a court may release him if, among other requirements, it finds that that the appeal "raises a substantial question of law or fact likely to result in...reversal...[or] an order for a new trial," or resolution of the question could result in a prison term comparable to time served plus the time required for the appeal process. 18 U.S.C. § 3143(b)(1)(B); *United States v.*

Giancola, 754 F.2d 898, 901 (11th Cir. 1985).[1] This standard does not ask a court to certify its own error, but to decide whether a decision in defendant's favor on a substantial question would likely require reversal or a new trial. *Giancola*, 754 F.2d at 900. Reversal or a new trial is unwarranted where even a substantial question raised is "harmless,...[has] no prejudicial effect, or [has been] insufficiently preserved." *Id.* (citation omitted). It must be "so integral to the merits of the conviction" that a contrary holding would require reversal or a new trial. *Id.* For a defendant convicted of multiple counts, the standard requires the result as to all counts. *Id.* at 901. Conviction is presumed correct, and the burden is Defendant's to overcome. *Id.*

Defendant Peter Sotis argues that he is not a flight risk and is not a danger to his community or to any individual. The Government does not contest these two requirements of 18 U.S.C. § 3143(b)(1)(A) and, thus, the Court assumes without deciding for purposes of this Motion that they have been satisfied.

On appeal, Defendant argues that (a) his convictions are not supported by the evidence, (b) the Government elicited testimony that invaded the province of the jury, and (c) his sentencing guideline range was miscalculated. With respect to the first point, Sotis argues that the Government failed to present evidence that the rebreathers at issue were closed-circuit and dual-use, required an export license, and that Defendants had no good-faith basis to believe otherwise in what Sotis

[1] This Section also provides the alternative of a new sentence resulting in no imprisonment, but the Defendant does not raise nor, on a liberal reading of Defendant's Motion, does the Court find that provision applicable. *See Jones v. Fla. Parole Comm'n*, 787 F.3d 1105, 1107 (11th Cir. 2015)

presents as a domestic shipment. As for the jury's determination, Sotis complains that the jury was essentially told what to believe as to the willfulness of the violations, instead of being presented evidence for the jury to make its own determination. Sotis also raises the question whether others should have been liable for the export violations. Finally, as to his sentencing guidelines, Sotis contends that his base level should have been set by § 2M5.1 of the U.S. Sentencing Guidelines and not § 2M5.2, resulting in a sentence out-of-line with similar convictions, and which would lead him to qualify for bond pursuant to 18 U.S.C. § 3143(b)(1)(B)(iv).

The Government opposes the Motion. It argues that, not only was the evidence at trial sufficient through witness testimony and admitted evidence, but defense counsel conceded during trial and at sentencing that the rebreathers were closed-circuit, dual-use, and required a license. The Government also points to trial testimony and admitted evidence that show that Sotis knew that the rebreathers were intended for export, which would be illegal, and that he conspired to do so with his co-defendant. Regarding any invasion of jury determination, under the doctrine of invited error, the Government argues that Sotis affirmatively conceded (through counsel) and/or opened the door to the relevant contentions through his own witness questioning. Finally, the Government states that the appropriate Sentencing Guidelines were applied, and that Defendant's sentence is comparable to similar cases.

The Court finds Defendant's claims fail to satisfy *Giancola*'s third requirement, i.e. that he raise a substantial question of law or fact. 754 F.2d at 901. As the Government lays out, the evidence is ample – by Defendant's concessions as well as through trial testimony and admitted documents – that Defendant knew of the rebreathers' dual-use, subjecting the shipment to consideration for an export license, and that he conspired with Defendant Voissem to violate the law, understanding that the sale was intended as an illicit export to Libya. There is no "close" question as to the evidence supporting the convictions. *See Giancola*, 754 F.2d at 901.

Second, no substantial issue of fact arises now for infringement of the jury's province where Defendant made no objection to, nor, indeed, any cross-examination of Michael Tu's testimony as to the need for an export license and related matters. Likewise, with the testimony of Special Agent Wagner, as the Government points out, defense counsel opened the door to the Government's inquiry regarding the nature of the alleged violations and, then, did not object to their characterization by the witness. Moreover, even if there were error, in the context of the weight of evidence against Sotis as to the willfulness of the violations, there is no "close question" regarding the jury's basis for reaching its own conclusions on these matters.

Finally, Sotis's argument as to his guideline range calculation would require the Court to read § 2M5.2 of the U.S. Sentencing Guidelines as being exclusively related to arms and munitions, which that Section's plain language does not

support, or ignore Defendant's concessions and the trial evidence that the rebreathers have a military purpose. As the Eleventh Circuit has noted, a substantial question cannot arise where a question is "so patently without merit that is has not been found necessary for it to have been resolved." *Id.* Therefore, it is

ORDERED THAT

Defendant Peter Sotis's *pro se* Motion for Bond [DE 218] is DENIED.

DONE AND ORDERED in Miami, Florida, this 14th day of December, 2022.

PATRICIA A. SEITZ
UNITED STATES SENIOR DISTRICT JUDGE