IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	Criminal Action No. 01-63-GMS
	)	
LAWRENCE W. WRIGHT,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

Following a seven-day trial, Lawrence Wright was found guilty of nineteen counts. These included one count of conspiracy, three counts of interstate transportation of fraudulently-obtained property, four counts of money laundering, and two counts of making false statements to the Federal Bureau of Investigation.[1] On March 7, 2003, Wright was sentenced to a term of imprisonment of 51 months for each count, to be served concurrently, followed by three years of supervised release. Presently before the court is Wright's Motion for Release Pending Appeal pursuant to 18 U.S.C. § 3143(b). For the reasons that follow, the court will deny the motion.

II. DISCUSSION

A. Requirements of § 3143(b)

The Bail Reform Act of 1984, codified in part at 18 U.S.C. § 3143, was enacted "to reverse the presumption in favor of bail that had been established under the prior statute" while not entirely denying bail to persons appealing their convictions. *United States v. Miller*, 753 F.2d 19, 22-23 (3d

[1] The defendant also was found guilty of four counts of bribery, but was later acquitted of these convictions.

Cir. 1985). Pursuant to §3143(b), the defendant seeking release has the burden of showing: (1) by clear and convincing evidence that the defendant, if released, is not likely to flee or pose a danger to the safety of any other person or the community; (2) that the appeal is not for the purpose of delay; (3) that the appeal raises a substantial question of law or fact; and (4) that if the substantial question is determined favorably to the defendant on appeal, the decision is likely to result in a reversal or an order for a new trial on all counts for which imprisonment was imposed. 18 U.S.C. § 3143(b); *see also Miller*, 753 F.2d at 24 (discussing these criteria); *United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985), *cert. den.,* 474 U.S. 1008 (1985) (same).

In *United States v. Miller*, the Third Circuit defined a "substantial" question as one "which is either novel, which has not been decided by controlling precedent, or which is fairly doubtful." *Miller*, 753 F.2d at 23. Additionally, the issue on appeal must be "debatable among jurists" or "adequate to deserve encouragement to proceed further." *United States v. Smith*, 793 F.2d 85, 90 (3d Cir. 1986).

In his motion, Wright raises four questions: (1) the state of mind requirement for an indictment and conviction of interstate transportation of stolen property; (2) whether the court committed reversible error by excluding evidence of Representative Plant's character for honesty and integrity; (3) whether the court committed reversible error by excluding evidence of Representative Plant's supposed habit of carrying around large sums of cash and frequently making loans to friends; and (4) whether the court committed reversible error by excluding the testimony of Kathleen Jennings, a criminal defense attorney consulted by Representative Plant after the investigation began, as to what Plant told her regarding his habit of carrying money and making

loans. The court finds that none of these issues poses a substantial question of law or fact that is likely to result in a reversal or an order for a new trial on all counts.

The court will first address the defendant's evidence-related objections. Notably, these objections were raised and rejected in post-trial motions. *See United States v. Wright*, 206 F.Supp. 2d 609 (D. Del. 2002) (denying the defendant's motion for a new trial).

B. Exclusion of Evidence Regarding Representative Plant's Character

Regarding the exclusion of evidence of Representative Plant's character, the defendant does not name any particular witness who would have offered such testimony. Nor does the defendant's motion cite to a portion of the record at which an offer of proof of such testimony was made. In the absence of such information or argument, it is difficult for the court to find the existence of a "substantial question" which is novel, undecided by controlling precedent, fairly doubtful, or debatable among jurists.

In addition, the defendant fails to show that any exclusion of evidence of Plant's character, even if such exclusion were improper, caused harm. Barring such demonstrable harm, the defendant's appeal would fail. FED. R. EVID. 103(a); *United States v. Dispoz-O-Plastics*, 172 F.3d 275, 286 (3d Cir. 1999) (discussing test for determining harmless error). The defendant has not asserted, much less proven to any degree, any such demonstrable harm. Lack of harm is particularly apparent in this case because other evidence was admitted and presented at Wright's trial regarding the good character of Representative Plant. It is extremely doubtful that any further character evidence of this sort would have resulted in a different outcome. In other words, Wright has not met the requirements of § 3143(b) because he has not shown that reversal or the granting of a new trial is "likely" on this ground. *See Miller*, 753 F.2d at 23 ("A court may find that reversal or a new trial

is 'likely' only if it concludes that the question is so integral to the merits of the conviction on which defendant is to be imprisoned that a contrary appellate holding is likely to require reversal of the conviction or a new trial.").

Moreover, Wright has not argued or shown that reasonable jurists would debate whether such testimony should have been admitted. As the court previously noted:

> "Evidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except [for various situations involving the character of the accused, the alleged victim, or a witness]." FED. R. EVID. 404(a). As Representative Plant was not the accused, an alleged victim, or a witness, evidence of his character, offered to show that he acted in conformity therewith, is not admissible evidence.

The court finds nothing in this ruling to suggest a substantial, undecided, novel, or debatable question of law that would provide a basis for the defendant's release pending appeal of the issue.

C. Exclusion of Evidence Regarding Representative Plant's Alleged Habit

The defendant's objection regarding the exclusion of testimony about Plant's alleged habit of carrying large sums of money and making frequent loans to friends is largely moot because Hazel Plant did testify that it was Representative Plant's habit to carry large sums of cash. In any case, such testimony does not constitute the sort of "habit" evidence admissible under Rule 46. Habit evidence must be 'specific and particular.' *United States v. Wright*, 206 F.Supp. 2d at 614 (discussing and rejecting identical objection regarding alleged habit evidence) (quoting WEINSTEIN'S FEDERAL EVIDENCE, 2d. Ed., Vol. 2 § 406.02[3]). The defendant states merely that the testimony would have reflected Plant's alleged disposition to "frequently" make cash loans to friends. Frequent behavior of a particular sort does not rise to the sort of reflexive, automatic, or habitual behavior normally introduced as habit evidence. *See United States v. Wright*, 206 F.Supp. 2d at 615. Thus, it does not appear that the trial court erred in its determination that there was an insufficient

showing of a habit. Furthermore, the court is again convinced that any error regarding the admissibility of this evidence was harmless. The defendant certainly has not shown that, were the appellate court to find error regarding the admissibility ruling, all of Wright's convictions would be reversed, or that a new trial would be ordered as to each count.

D. Exclusion of Hearsay Testimony of Ms. Jennings

The defendant's final evidence-related challenge regards the testimony of Kathleen Jennings, a criminal defense attorney consulted by Representative Plant after the investigation began. The defendant argues that Jennings would have testified as to what Plant told her regarding his habit to carry large sums of money and to make cash loans to friends, and that the money he received from Wright constituted repayment of a loan. At trial, the defendant offered this evidence pursuant to Rule 807. This rule requires, among other things, that the offered testimony have "equivalent circumstantial guarantees of trustworthiness" as other testimony admitted pursuant to the hearsay exceptions listed in Rules 803 and 804. FED. R. EVID. 807. Indeed, "exceptional guarantees of trustworthiness" and "high degrees of probativeness and necessity" must be present for evidence to be properly admitted pursuant to Rule 807. *United States v. Bailey*, 581 F.2d 341, 347 (3d Cir. 1978).

After consideration of these standards, the trial court excluded the proposed evidence. This decision is subject to the abuse of discretion standard. The defendant has not shown that the court's determination constituted an abuse of discretion, or that reasonable jurists would debate its validity. Indeed, the testimony of attorney Jennings, which would have been a summary of an unsworn exculpatory narrative told to the witness by another person, about events occurring months and years before, used to prove the truth of the matters asserted in the narrative, seems to have been very

appropriately excluded. *United States v. Wright*, 206 F.Supp. 2d at 616-17 (discussing same). Under the circumstances, there existed insufficient guarantees of trustworthiness. The court's ruling on this issue is not appropriate grounds to justify Wright's release pending appeal.

E. State of Mind Requirement of 18 U.S.C. § 2314

Finally, the court turns to the defendant's argument regarding the state of mind requirement for the indictment and conviction of interstate transportation of fraudulently-obtained property. Wright asserts that the government was required to charge and convict the defendant of "willfully" causing the interstate transportation of stolen property, but failed to do so. Specifically, Wright contends that a *mens rea* of "willfulness" requires knowledge or a reasonable foreseeability that the property would travel in interstate commerce, and that the government neither charged nor convicted the defendant according to such a state of mind requirement.

The courts of appeals that have considered arguments analogous to Wright's regarding the state of mind requirement of 18 U.S.C. § 2314 have rejected the defendants' arguments and upheld the convictions. *See*, *e.g.*, *United States v. Scarborough*, 813 F.2d 1244, 1245-46 (D.C. Cir. 1987); *United States v. Lennon*, 751 F.2d 737, 741 (5th Cir. 1985); *United States v. White*, 451 F.2d 559, 559-60 (6th Cir. 1971); *United States v. Lack*, 129 F.3d 403, 409-10 (7th Cir. 1997); *United States v. Ludwig*, 523 F.2d 705, 706-08 (8th Cir. 1975); *United States v. Powers*, 437 F.2d 1160, 1161(9th Cir. 1971); *United States v. Newson*, 531 F.2d 979, 980-81 (10th Cir. 1976). For example, in the Seventh Circuit case of *United States v. Lack*, the court held that § 2314 does not require "that the defendant have knowledge of the interstate transportation or that such transportation be reasonably foreseeable to him." *United States v. Lack*, 129 F.3d at 410. The Fifth, Sixth, Eight, Ninth, Tenth, and the District of Columbia Circuits have come to the same conclusion. Although the *mens rea*

requirement of § 2314 may be debated in academia, *see*, *e.g.*, COMMENT: PUNISHING THE CAUSER AS THE PRINCIPAL: MENS REA AND THE INTERSTATE TRANSPORTATION ELEMENT OF THE NATIONAL STOLEN PROPERTY ACT, 38 SAN DIEGO L. REV. 629 (2001), the court cannot conclude that, given the relevant caselaw, the subject presents a substantial question of law or fact that is likely to result in a reversal or an order for a new trial of all counts for which imprisonment was imposed.

III. CONCLUSION

The defendant has not met the criteria for release pending appeal pursuant to § 3143(b). Specifically, Wright has failed to present a substantial question of law or fact likely to result in a reversal or order of a new trial on all the counts for which imprisonment was imposed. As such, release pending appeal pursuant to § 3143(b) is inappropriate.

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The defendant's Motion for Release Pending Appeal (D.I. 101) is DENIED.

Dated: March18, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE