

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Re: Case No. 18-6023, *USA v. Mark Hazelwood*
Originating Case No. : 3:16-cr-00020-1

Dear Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Robin L. Johnson
Case Manager
Direct Dial No. 513-564-7039

cc: Mr. John L. Medearis

Enclosure

No. 18-6023

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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| UNITED STATES OF AMERICA, |) |
| |) |
| Plaintiff-Appellee, |) |
| |) |
| v. |) |
| |) |
| MARK HAZELWOOD, |) |
| |) |
| Defendant-Appellant. |) |

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| <p>FILED Nov 13, 2018 DEBORAH S. HUNT, Clerk</p> |
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ORDER

Before: SILER, ROGERS, and COOK, Circuit Judges.

Mark Hazelwood appeals his conviction and sentence on charges of conspiracy to commit mail and wire fraud, wire fraud, and witness tampering. He moves for release on bond pending the outcome of his appeal. The district court denied a similar motion. The government responds in opposition. Hazelwood replies in support of his motion. He also claims in his reply that the government’s response was untimely, and he asks that it be disregarded.

Hazelwood’s motion is governed by the bail statute, which requires him to demonstrate by clear and convincing evidence that his release would not pose a risk of flight or danger to another person or the community and that his appeal is not for delay and raises a substantial question of law or fact likely to result in reversal, a new trial, “a sentence that does not include a term of imprisonment,” or “a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.” 18 U.S.C. § 3143(b)(1). This statute “creates a presumption against release pending appeal.” *United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002). The district court found, and the government does not dispute, that Hazelwood demonstrated by clear and

No. 18-6023

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convincing evidence that his release would not pose a risk of flight or danger to another person or the community. Therefore, we consider only whether his appeal raises a substantial issue.

Hazelwood was the president of Pilot Travel Centers LLC. He and three of its employees were tried on charges that they participated in a scheme to defraud Pilot's customers. At trial, the jury heard audio recordings of Hazelwood making extremely offensive racist and misogynist remarks. The recordings were offered by the government to prove that he participated in conduct that, if disclosed, would have jeopardized Pilot's success and reputation. Hazelwood argues that this evidence was inadmissible. Having considered whether there is a reasonable possibility that this evidence might have contributed to his conviction, we conclude that his appeal raises a substantial question for purposes of release under the bail statute. *See United States v. Pollard*, 778 F.2d 1177, 1182 (6th Cir. 1985); *United States v. Powell*, 761 F.2d 1227, 1233-34 (8th Cir. 1985) (en banc).

The defendant's motion for release on bail pending appeal is **GRANTED** subject to such reasonable terms and conditions as the district court may fix in its discretion. The district court is requested to set these terms and conditions forthwith. The time for filing the government's response is extended, *nunc pro tunc*, to October 19, 2018, and the defendant's request to disregard the response is **DENIED**. *See* Fed. R. App. P. 26(b).

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk