

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<b>UNITED STATES OF AMERICA</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>HOLLIS GREENLAW (01)</b>	§	<b>Case No. 4:21-cr-289-O</b>
<b>BENJAMIN WISSINK (02)</b>	§	
<b>CARA OBERT (03)</b>	§	
<b>JEFFREY BRANDON JESTER (04)</b>	§	
a/k/a Brandon Jester	§	

**ORDER**

Before the Court are Defendants’ Motions for Continued Release Pending Appeal (ECF Nos. 461, 464, 466), filed May 20, 2022; Government’s Omnibus Response in Opposition (ECF No. 518), filed June 3; and Defendants’ Replies (ECF Nos. 527–29), filed June 9 and 10. For the reasons stated below, the Court finds these motions should be, and are, **DENIED**.

**I. LEGAL STANDARD**

Under 18 U.S.C. § 3143(b), a court “shall order” release on bond of a criminal defendant pending appeal if (i) the defendant is “not likely to flee or pose a danger to the safety of any other person,” and (ii) the defendant’s appeal is “not for the purpose of delay” but rather “raises a substantial question of law or fact” that, if resolved in his or her favor, will “likely” result in reversal, a new trial, or a sentence shorter than the expected duration of the appeal. The Fifth Circuit has interpreted this provision to encompass “four factors”:

- (1) that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released;
- (2) that the appeal is not for purpose of delay;
- (3) that the appeal raises a substantial question of law or fact; and

(4) that if that substantial question is determined favorably to defendant on appeal, that decision is likely to result in reversal or an order for a new trial of all counts on which imprisonment has been imposed.

*United States v. Valera-Elizondo*, 761 F.2d 1020, 1025 (5th Cir. 1985). Further, a criminal defendant has “no constitutional right to bail after his conviction and sentencing.” *United States v. Williams*, 822 F.2d 512, 517 (5th Cir. 1987); accord *United States v. Olis*, 450 F.3d 583, 585 (5th Cir. 2006).

## II. ANALYSIS

### a. Defendants are not a flight risk, nor do they pose a danger to others.

Defendants have substantially complied with all the terms of their release throughout litigation and pending sentencing. The Magistrate Judge determined that the Defendants did not pose a flight risk, or a danger to others in post pre-trial and post-conviction hearings. There is no reason for the Court to doubt these findings, nor has there been a change in circumstance that would lead the Court to believe Defendants have become a flight risk or danger. Rather, as pointed out in Defendants Obert and Wissink’s reply, Defendants “were found not to be a flight risk even when facing potential life sentences. They appeared for sentencing and learned ‘with certainty’ of their 60-month sentences.” Defs. Obert and Wissink’s Reply 5, ECF No. 527. Thus, if they were not a flight risk facing the uncertainty of potential life sentences, they are likely even less of a risk given the Court’s significant downward departure. Thus, the first prong is satisfied.

### b. There is no reason the believe the Defendants are appealing for purposes of delay.

Generally, courts find the appeal is for purpose of delay if Defendants have “taken unreasonable litigation positions during this litigation solely for the purpose of delay.” *United States v. Beverly*, No. 7:10-cr-008-001 (WLS), 2012 WL 12895565, at \*2 (M.D. Ga. Aug. 16,

2012). Neither side has given the Court any reason to believe the Defendants appeal is for purposes of delay. Thus, the Court finds the second prong is satisfied.

**c. Defendants have failed to show there is a substantial issue for appeal that will likely resolve in reversal, a new trial, or a materially shorter sentence.**

A “substantial question” is one that “calls into question the validity of the judgment.” *Valera-Elizondo*, 761 F.2d at 1022. A “‘substantial question’ means that the issue presented must raise a substantial doubt (not merely a fair doubt) as to the outcome of its resolution.” *Id.* at 1024. If a defendant makes that showing, then he must also show that the alleged error “will so taint the conviction that it is more probable than not that reversals will be required.” *Id.* This does not “mean that a court may grant bail only if it finds that its own rulings are likely to be reversed on appeal.” *Id.* at 1021. Rather, the appeal must present “a ‘close’ question or one that very well could be decided the other way.” *Id.* at 1024.

Defendants present several theories of substantial questions that will result in a reversal or new trial. But ultimately, these arguments fall short of the requirements for a substantial question. The Court addresses each below.

**i. Defendants fail to show that the Courts jury instructions present a substantial question that is likely to result in reversal or a new trial.**

Defendants argue there is a substantial question regarding the jury instructions given by the Court and that if they are successful on appeal on this issue, they will be entitled to a new trial. Defs. Obert and Wissink Mot. 13, ECF No. 461. The Court has previously considered, and rejected each of these arguments, adopting the Fifth Circuits pattern jury charge for the relevant issues.

District Courts are given “substantial latitude in tailoring [jury] instructions as long as they fairly and adequately cover the issues presented in the case.” *United States v. Hunt*, 794 F.2d 1095,

1097 (5th Cir. 1986) (quotation marks omitted). Further, “[i]t is well-settled that a district court does not err by giving a charge that tracks this Circuit’s pattern jury instructions and that is a correct statement of the law.” *United States v. Whitfield*, 590 F.3d 325, 354 (5th Cir. 2009) (internal citation omitted). Thus, the Defendants have not shown there is a substantial question of law or fact on this issue that would be likely to result in a reversal or a new trial.

**ii. Defendants have failed to show denial of their Supplemental Rule 33 Motion raises a substantial question that will result in a new trial or reversal.**

Next, Defendants argue they “will raised [sic] the issue of the significant Brady violations that have previously been briefed in Defendants’ Supplemental Rule 33 motion.” Def. Jester’s Mot. 22, ECF No. 466 (citing ECF No. 420). They argue these violations will likely entitle them to a new trial. The Court previously rejected these arguments (ECF No. 441) and finds Defendants fail to raise a substantial question of law or fact that would lead to a reversal or new trial.

**iii. Defendants fail to show there is a substantial question as to whether there was sufficient evidence for the jury to convict them that will result in the overturning of the jury’s verdict.**

Finally, Defendants assert that the evidence was insufficient to support their convictions, thus raising a substantial question that will likely result in a result in overturning the jury’s verdict. Courts are “highly deferential to the verdict.” *United States v. Moreno-Gonzalez*, 662 F.3d 369, 372 (5th Cir. 2011). “[A] defendant seeking reversal on the basis of insufficient evidence swims upstream.” *United States v. Gonzalez*, 907 F.3d 869, 873 (5th Cir. 2018). “The jury’s verdict will be affirmed unless no rational jury, viewing the evidence in the light most favorable to the prosecution, could have found the essential elements of the offense to be satisfied beyond a

reasonable doubt.” *United States v. Roetcisoender*, 792 F.3d 547, 550 (5th Cir. 2015). Finally, “it is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt,” and “any conflict in the evidence must be resolved in favor of the jury’s verdict.” *United States v. Moreno-Gonzalez*, 662 F.3d 369, 372 (5th Cir. 2011). Defendants fail to raise a substantial question of law or fact. There is no reason for this Court to believe the jury’s verdict satisfies the stringent requirements for a new trial on these grounds.

### III. CONCLUSION

Defendants have failed to present any substantial question of law or fact that will result in a reversal or new trial. Thus, the Defendants’ Motions are **DENIED**.

**SO ORDERED** on this **22nd day of June, 2022**.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE