

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LACEY PHILLIPS and  
ERIN HALL,

Defendants.

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OPINION AND ORDER

11-cr-12-bbc

Defendant Erin Hall has moved for bail pending appeal; defendant Lacey Phillips has joined in the motion. Both argue that they meet the prerequisites for bail in this circumstance: they are not flight risks, neither one is a danger to the community and their appeals are taken not for the purpose of delay but to raise a substantial question of law likely to result in reversal or an order for a new trial. 18 U.S.C. § 3143(b). (Defendants are not appealing their sentences, only their convictions.) The motion will be denied. Although defendants are not flight risks and they do not present any danger to the community, their appeals do not raise a substantial question of law.

Defendants contend that the appeal of their convictions raises a substantial question

of law that could be answered either way. United States v. Eaken, 995 F.2d 740, 741 (7th Cir. 1993). They maintain that the government failed to show that they violated 18 U.S.C. § 1014, which requires proof that (1) the defendants made false statements to a financial institution; (2) the defendants knew the statements were untrue when they made them; (3) the defendants made the untrue statements with the intent to influence the action of a lending institution; and (4) the accounts of the lending institution were insured by the FDIC.

Defendants' only argument is that the court erred in holding that 18 U.S.C. § 1014 is not a specific intent crime requiring proof of defendants' intent to influence the lender. Defendants believe that they should have been allowed to put in evidence showing that they did not intend to mislead the lender but merely inserted into the forms the information that Brian Bowling, the mortgage broker, told them was either acceptable to the lender or irrelevant to its decision. (Defendant Hall did not fill out any forms, but the jury found that he was aware of what defendant Phillips was doing, acquiesced in her statements and stood to benefit from the mortgage loan.)

I have decided defendants' argument against them consistently throughout this case, e.g., Order Denying Dfts.' M. for Judgment under Rule 29, dkt. #101, and in a related case, United States v. Gray and Johnson, 11-cr-13-bbc. I agree with the government that it does not have to prove that the false statements made by defendants *would have* influenced the

action of the financial institution from which defendants were seeking a mortgage loan or prove that defendants acted with an intent to defraud the bank or harm it by submitting a false loan application. United States v. Lane, 323 F.3d 582 (7th Cir. 2003) (“Section 1014 does not require that a false statement must be material or even mention materiality.”) The third element of a § 1014 crime (that defendants made the untrue statements with the intent to influence the actions of a lending institution) can be met by showing that defendants made the statements with the intent to obtain a mortgage loan from the lending institution. The government made that showing at trial. In short, defendants have not raised a substantial question that is likely to be decided in their favor.

As defendants point out in support of their motion, they will probably have served their entire sentences before their appeal can be heard. That is true for any defendant given a short sentence, but it is not sufficient to merit a stay, in and of itself. The only persons meriting such a stay are those who can meet the requirements of 18 U.S.C. § 3143(b). The statute makes it plain that a sentencing court may grant a motion for bail pending appeal only if the defendants meet all of the statutory requirements. Defendants do not. They meet two of the three but they cannot show that their appeal raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

ORDER

IT IS ORDERED that the motion for bail pending appeal under 18 U.S.C. § 1343(b) filed by defendants Lacey Phillips and Erin Hall is DENIED.

Entered this 28th day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge