

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-00026-04-CR-W-FJG
	)	
CHRISTOPHER L. ELDER,	)	
	)	
Defendant.	)	

**GOVERNMENT'S RESPONSE TO DEFENDANT ELDER'S MOTION  
FOR RELEASE ON BAIL PENDING APPEAL**

The United States of America provides the following response in opposition to Defendant Christopher L. Elder's motion (Doc. No. 430) for release on bail pending appeal:

**I. SUGGESTIONS IN SUPPORT**

On June 30, 2010, a federal jury convicted defendant Christopher Elder ("Elder") of conspiracy to distribute and dispense controlled substances and eight counts of aiding and abetting unlawful distribution and dispensing of controlled substances. Elder was permitted to remain on bond pending sentencing.

Following the trial, Elder filed a motion for judgment of acquittal, or, in the alternative, motion for new trial. (Doc. No. 369.) The Government filed its response. (Doc. No. 382.) Then, Elder filed a reply. (Doc. No. 385.) This Court, having reviewed those pleadings and the record, denied the motion for the reasons given in the Government's response. (Doc. No. 385.) Now, in his motion for release pending appeal, Elder states that he has an array of issues from which he will seek an appeal<sup>1</sup>, the "strongest" of which is the issue regarding sufficiency of the evidence.

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<sup>1</sup> In addition to his post-trial motion, Elder cites numerous pretrial motions.

(Doc. No. That issue was addressed by the Government in its response to Elder's motion for new trial. (Doc. No. 382.)

The Government, in its sentencing memorandum to this Court, requested that Elder be taken into custody immediately following the imposition of a term of imprisonment.

Elder bears the burden of establishing that he is entitled to release pending appeal. *See United States v. Powell*, 761 F.2d 1227, 1232 (8<sup>th</sup> Cir. 1985). The Eighth Circuit Court of Appeals has interpreted § 3143(b)(1)(B) to mean the following:

We hold that a defendant who wishes to be released on bail after the imposition of a sentence including a term of imprisonment must first show that the question presented by the appeal is substantial, in the sense that it is a close question or one that could go either way. It is not sufficient to show simply that reasonable judges could differ (presumably every judge who writes a dissenting opinion is still 'reasonable') or that the issue is fairly debatable or not frivolous. On the other hand, the defendant does not have to show that it is likely or probable that he or she will prevail on the issue on appeal. If this part of the test is satisfied, the defendant must then show that the substantial question he or she seeks to present is so integral to the merits of the conviction that it is more probable than not that reversal or a new trial will occur if the question is decided in the defendant's favor. In deciding whether this part of the burden has been satisfied, the court or judge to whom application for bail is made must assume that the substantial question presented will go the other way on appeal and then assess the impact of such assumed error on the conviction. This standard will, we think, carry out the manifest purpose of Congress to reduce substantially the numbers of convicted persons released on bail pending appeal, without eliminating such release entirely or limiting it to a negligible number of appellants.

*Id.* at 1233-34.

In the present case, Elder was convicted of several counts, including Counts Seven through Ten, which concerned deceased individuals. The government's evidence at trial established that the prescriptions written by Elder in this case and filled by the Medicine Shoppe Pharmacy in Belton, Missouri, had no relationship whatsoever to the care or treatment of any

patient. The over 500 prescriptions written by Elder while at South Texas Wellness Center (STWC) were written for people who were not patients at STWC and had never been examined by Elder. As noted, several of them had died well before the date of the prescription. Trial witness Dolores Cooks testified that even though Elder had written a prescription in her name, she had never been a patient of SWTC and had no idea who Elder was. Of course, no files existed for any of these patients at STWC, because they were never treated there.

Moreover, on his first days on the job in February 2005 at the Westfield Clinic, Elder photocopied the original prescriptions he wrote for patients and provided the photocopies to Solomon to FAX to the Medicine Shoppe. The actual patients filled the original prescriptions at the pharmacy in Houston adjoining the Westfield Clinic. Again, the jury could make no conclusion other than that there was no legitimate medical reason to provide the photocopies to the Medicine Shoppe.

The cases cited by the government in its response to Elder's motion for a new trial make clear that the jury could legitimately conclude from this evidence alone that "the national standard of care" was not met when there was either no actual doctor-patient relationship, or the prescriptions were surreptitious duplicates made solely for the purpose of double filling a prescription to generate drugs for diversion, although, as detailed in the new trial motion response, Dr. Morgan provided additional testimony that was directly relevant on this question . Elder has failed to show that he has raised a "substantial question," that is, "a close question or one that could go either way." *See id*; § 3143(b)(1)(B). Indeed, the standard of care argument is patently frivolous on its face; there can be no standard of care issue where, as here, a doctor writes out prescriptions based on a list of stolen identities. As a result, the Government

respectfully requests that the Court follow the command of 18 U.S.C. § 3143(b)(1) and order the defendant into custody immediately following imposition of sentence.

## **II. CONCLUSION**

For these reasons, Defendant Christopher Elder's Motion for Release on Bail Pending Appeal should be denied.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was delivered on April 29, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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