UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES of AMERICA,

-against-

19 Cr. 497
Bail Hearing

JACOB ROSNER,

Defendant.

----------x

United States Courthouse
White Plains, New York

March 24, 2020

THE HONORABLE PAUL E. DAVISON,
United States Magistrate Judge

GEOFFREY S. BERMAN
United States Attorney for
the Southern District of New York
BY: JAMES LIGTENBERG (by phone)
Assistant United States Attorney

CARTER LEDYARD & MILBURN LLP
Attorneys for Jacob Rosner
BY: ALAN S. LEWIS (by phone)

Also present:
VINCENT ADAMS, Pretrial Services

THE CLERK: In the matter of the United States of America versus Jacob Rosner. Will counsel on the telephone appearing for the government please state your appearance for the record.

MR. LIGTENBERG: Good morning, your Honor. Jim Ligtenberg for the government.

THE COURT: Good morning, Mr. Ligtenberg.

THE CLERK: And will counsel on the telephone for the defendant please state your appearance.

MR. LEWIS: Good morning, your Honor. This is Alan Lewis for Mr. Rosner.

THE COURT: Good morning, Mr. Lewis. All right. Mr. Rosner is under indictment in a case assigned to Judge Román. Mr. Rosner appeared before me back in late 2018 for a presentment and was detained on consent without prejudice. I understand that there was a subsequent detention hearing conducted in March 2019 and at that time Judge Smith detained this defendant based on risk of flight and danger to the community. Now scroll ahead to March 2019, and Mr. Lewis wrote to Judge Romàn indicating that there was an agreed bail package upon which this defendant could be released based on changed circumstances. Judge Romàn, in essence, referred that application to me and so here we are.

Mr. Rosner is here in the courtroom and counsel for both the government and Mr. Rosner are participating

telephonically as I understand it to eliminate the need for unnecessary travel from New York City in light of the current health emergency. Have I got all that correct so far?

MR. LEWIS: Yes, your Honor.

THE COURT: All right. And Ms. Lee, can you confirm that we are making a record here.

THE CLERK: We are, Judge.

THE COURT: Good. All right. I am told that there is an agreed set of conditions on which this defendant can be released. Is that still true?

MR. LIGTENBERG: Yes, your Honor.

MR. LEWIS: Yes, your Honor.

THE COURT: And I am further told, and again this comes from Mr. Lewis' letter dated March 19, 2020 which appears on the docket, that this change of position is a result of changed circumstances, including the availability of family members in the community who have renewed their relationship with this defendant as well as in recognition of the extended confinement that Mr. Rosner has undergone; is that correct?

MR. LIGTENBERG: Yes, Judge.

MR. LEWIS: It is, your Honor.

THE COURT: All right. Mr. Ligtenberg, this is addressed to you. Are you agreeing to the conditions set forth in Mr. Lewis' March 19 letter?

MR. LIGTENBERG: Yes, your Honor.

THE COURT: Is there anything you want to add or modify about that?

MR. LIGTENBERG: No, your Honor.

THE COURT: And Mr. Ligtenberg, the Court is conscious that this is a defendant who was apprehended in a foreign country and extradited or brought back to the United States through what I can only describe as herculean efforts by some of your colleagues and during a period when there was around-the-clock efforts to round up these defendants and rescue the victims. Can you confirm to me that your office, including up the chain of command, are fully in support of your position here?

MR. LIGTENBERG: Yes, your Honor.

THE COURT: Very well.

Mr. Lewis, do you want to be heard about this at all?

MR. LEWIS: Only one more aspect of the bail condition, and I think that this is as much for the benefit of my client as it is for the others who are attending.

After Mr. Rosner's release, we will propose phone numbers that he will be permitted to call. We're not going to resolve those phone numbers today, but Mr. Rosner should know that I will be having discussions with the government to ask them to approve allowing him to speak with his mother. Again, we understand the Court is not going to rule on that one way or the other today, nor are we going to agree upon it today, but

he should know that after today I will be discussing that subject with the government.

THE COURT: I have a couple of questions about the proposal. I am not sure I understand the proposed condition, access to one telephone that will be approved by Pretrial Services. What is contemplated there?

MR. LIGTENBERG: I think this was done with a different defendant in this case. Basically he had sent a list of numbers to the government and to Pretrial, we would agree on the list and that would be the list of people that he's allowed to call, and my understanding is that Pretrial would monitor that those are the numbers he is, in fact, calling.

THE COURT: So there would be some specified telephone that he's allowed to use.

MR. LIGTENBERG: Exactly.

THE COURT: Has that been agreed on?

MR. LIGTENBERG: No.

THE COURT: But Pretrial Services would make a determination as to what telephone he was permitted to use and then he would only use that phone which would facilitate verification that he was only calling specified numbers?

MR. LIGTENBERG: Exactly.

THE COURT: Now the proposal is that this defendant would be released today upon the co-signatures and then have three weeks to perfect the real estate interests; is that

right?

MR. LIGTENBERG: Yes, your Honor.

MR. LEWIS: I think the proposal was that he would be released today with his signature and the co-signature of the person who's in the courtroom, who is Ezriel Rosner, and we would ask for a couple of days to get the other people there who will also cosign.

THE COURT: Mr. Ligtenberg.

MR. LIGTENBERG: That's fine.

THE COURT: Ezriel Rosner is here? Gentleman's raising his hand in the back. Thank you, sir.

All right. Mr. Jacob Rosner, why don't you stand up.

Mr. Rosner, this is really an extraordinary --

THE CLERK: I'm sorry, Mr. Adams has --

PRETRIAL OFFICER ADAMS: Your Honor, I understand that you want Pretrial should monitor the phone. I don't know if we have that capability to monitor some phone the way they (inaudible).

THE COURT: Mr. Ligtenberg, could you hear that?

MR. LIGTENBERG: No, I'm sorry.

THE COURT: Mr. Adams, who is here in the courtroom, indicated that he's not aware of any capability that Pretrial has to monitor a telephone in a remote location. In other words, he's suggesting they might not be able to implement that particular condition.

MR. LIGTENBERG: My understanding is that with one of the defendant's co-defendants, Aaron Rosner, it had the same condition. (Indiscernible) understanding that (indiscernible). But I think the condition was lifted from the conditions that were approved in that case.

THE COURT: Mr. Lewis, in light of the interest in getting this defendant released, I'm inclined to release him today without any provision for him to make phone calls until some mutually agreeable method can be worked out between the government, defense counsel and Pretrial Services.

Would there be any objection to that?

MR. LEWIS: No, your Honor. I'll be able to speak to Mr. Rosner by calling the phone where he will be living and I will work with Mr. Litenberg and his colleagues to implement this condition after his release.

THE COURT: Mr. Ezriel Rosner, is there a landline telephone in your residence?

MR. ESRIEL ROSNER: Yes.

THE COURT: I think we would all be more comfortable with that. So I will authorize defense counsel to call the residence where this defendant is living and speak to his client on that telephone until some more expanded protocol is agreed upon. That will be the extent of telephonic communication by this defendant. All right.

Anything else, Mr. Adams, before I jump into my --

PRETRIAL OFFICER ADAMS: Where he'll be living.

THE COURT: He's going to be living at 2 Rhonda Lane in Airmont, New York, which is in Rockland County, if memory serves.

It's in Rockland, is that right? Rockland County?

MR. ESRIEL ROSNER: Yes.

THE COURT: Having considered the joint proposal of defense counsel and the government and satisfied that the government has fully vetted this proposal and considered the equities set forth in Mr. Lewis' letter, I am going to set release conditions under which this defendant can be released.

Mr. Rosner, before I do that, I want you to understand this is an extraordinary opportunity that you're being granted here; do you understand that?

THE DEFENDANT: Yeah, I understand, but I got something for discussion, Judge, because what I see there's something wrong before because I have to send a letter to my lawyer and to the judge which I saw last time and that we don't want to do anything in the case, just wait, and we want to see the judge, we all five with the letters, and we want talking about presentation, we want to defend ourself. And I sent email to my lawyer Friday that I don't want he should make --

THE COURT: You know, Mr. Rosner, I don't mean to cut you off, but there is a public health emergency going on in the United States, and the Court is really only open for very

limited purposes and one of those purposes is bail proceedings like this one. Okay? We are gathered here together through extraordinary efforts of a number people, really everybody that's in the courtroom as well as counsel here on the phone to try to get you out of jail. Okay? I'm not interested -- it's not that I'm not interested, I have no authority to grant any other applications on your behalf, so I'm cutting you off. You have a right to be heard, but not here and not today. Do you understand?

THE DEFENDANT: I understand. But this condition was not discussed with me before, and I would like to discuss with him. This bail hearing here was a surprise for me because I say my lawyer to not do that --

THE COURT: Mr. Rosner, if you don't want to get out, we can just send you back to jail. That would frankly be easier for me. Your attorney and members of your family have worked hard to put this together in order to enable you to be released. This is not a negotiation. Are you prepared to comply with these bail conditions that I'm about to lay down? I'll tell you what they are first, and then you can tell me whether you're prepared to comply with them or not. Okay?

THE DEFENDANT: Okay.

THE COURT: Okay. The conditions that have been agreed to by counsel, as I understand it and subject to today's discussion here on the record, is that Mr. Rosner can be

released on a $1 million personal recognizance bond which is to be cosigned by four individuals, Ezriel Rosner, Naftoli Ilovitz, Motel Tetitelbaum and Aaron Goldberger, forgive mispronunciation. The defendant to be released today upon his own signature and the signature of Mr. Ezriel Rosner, who is present in court. The other three signators to present at the courthouse to sign the bond within three business days. The bond is to be further secured by the equity in two pieces of real property, one of them located at 2 Rhonda Lane in Airmont, New York, owned by Ezriel and Chana Rosner, the other real property located at 31 Jackson Avenue, Spring Valley, New York, that property owned by this defendant's great grandparents. The real property security to be perfected within three weeks time.

While at liberty, Mr. Rosner will reside at 2 Rhonda Lane in Airmont, New York, the residence of Mr. Ezriel and Chana Rosner, shall be subject to home confinement at that location. The authorized absences subject to approval by Pretrial Services will be for medical appointments, to meet with his counsel, to attend court appearances and to attend religious services at a synagogue located at 1 Larissa Court in Airmont, New York, only to the extent that the synagogue is able to convene services in light of current public health directives which limit large gathers of people. The home confinement is to be enforced by electronic monitoring. The

defendant, upon release, will be given the equipment to self-install.

It shall be a further condition of his release that he shall not communicate with any person currently or formerly employed by or associated with the Lev Tahor religious group. He shall not communicate with any of his co-defendants defined as the individuals named in the indictment in which he is named as well as any alleged co-conspirators such as may be identified by the government.

It is further a condition that Mr. Rosner shall have no contact whatsoever with the two individuals who have been identified as victims in this case.

Do you know who those individuals are, Mr. Rosner?

THE DEFENDANT: Yes, I know.

THE COURT: You're not permitted to have any contact with them any form whatsoever.

I am authorizing Mr. Rosner to communicate with his attorney on the landline telephone located at that Rhonda Lane address. I will consider an application to modify conditions if a protocol for additional telephone use can be worked out and practically imposed by Pretrial Services and agreed to by both sides, but for present purposes, the defendant is prohibited from using cellphones or any internet connected devices except to the extent that he may email and review case related documents on a computer at that residence.

The government is granted authority to enter that residence upon reasonable suspicion to search for prohibited electronic devices or electronic uses.

Do you understand that, Mr. Ezriel Rosner?

MR. ESRIEL ROSNER: Yes.

THE COURT: That the government, if they think that Mr. -- defendant Rosner has been violating any of these conditions, they have the right to come into your home to investigate.

You understand?

MR. ESRIEL ROSNER: Yes.

THE COURT: You're agreeing to that?

MR. ESRIEL ROSNER: Yes.

THE COURT: Okay. Can somebody tell me where Mr. Rosner's passport is, if he has one?

MR. LIGTENBERG: I'm not sure, your Honor.

THE COURT: Pretrial Services report indicates that he stated that when he was arrested in Mexico the Mexican authorities seized his American passport; does the government have any information about that?

MR. LIGTENBERG: That's possible, I can't say for sure, I apologize.

THE COURT: Mr. Rosner, do you have a United States passport?

THE DEFENDANT: I don't know, they just -- they just

make a new passport for me before they took me from Mexico it was just for one (indiscernible), it was in my hand.

THE COURT: Do you have it in your possession?

THE DEFENDANT: No.

THE COURT: All right, Mr. Rosner, I am going to direct you not to apply for any type of passport or other travel document while you're at liberty on bail conditions in this case and if that -- either your US passport or any temporary travel document that you may have received comes into your possession, you need to immediately notify your attorney who is directed to make arrangements to surrender that to the government. Do you understand?

THE DEFENDANT: I understand, and I agree with that, but I agree to get release bail, but I disagree to observe all conditions which I have know before.

THE COURT: Once again, Mr. Rosner, this is not a negotiation. If you don't want to be released on these terms, you're not going to be released.

THE DEFENDANT: That was not discussed with me before so --

THE COURT: Mr. Lewis.

MR. LEWIS: Yes, your Honor.

THE COURT: Your client is indicating that he's not agreeable to all these conditions. I think under the circumstances, I can't release him.

MR. LEWIS: I would ask your Honor to give me one moment. I did speak to my client about these conditions. I think what he does not understand is that some of the ones that concern him would be the subject of future conversation. There are no promises, but I discussed who he can call and when he can call other people like his mother. I know that that concerns him. I would just ask him to understand that these other conditions for now, when he is out, he and I will be able to talk privately and reach out to the government to discuss the things -- other things that are of concern to him. He should go ahead and proceed in that way.

THE DEFENDANT: I --

THE COURT: Mr. Rosner, I really can't release you if you are objecting to the conditions. Your attorney has worked very hard to put this together. He's telling you that he will continue to try to work out some way that you can make additional telephone calls, but you need to comply with these conditions while they're in effect. Are you prepared to do that?

THE DEFENDANT: Still disagree.

THE COURT: I'm sorry?

THE DEFENDANT: I still disagree with that.

THE COURT: You still disagree. All right.

Mr. Lewis, your client is indicating a disinclination to comply with these conditions, and frankly, under the

circumstances, I do not think that bodes well for compliance if he's already telling us that he's not going to comply. So unless someone has another or different idea, I'm going to order Mr. Rosner's continued detention.

Mr. Ligtenberg, is there anything else from the government?

MR. LIGTENBERG: No, I agree with your assessment your Honor. Thank you.

THE COURT: Mr. Lewis, thank you for your efforts. Is there anything else you want to say?

MR. LEWIS: Might we give Mr. Rosner one more chance to agree to these conditions and --

THE COURT: You know, I -- his affect here in the courtroom suggests to me that he is really very resistant to this, and under the circumstances and given nature of the case the fact that he has strong roots in a foreign country and the unique sensitivities here, I'm going to deny the application for release and order Mr. Rosner's continued detention.

Thank you all. We'll stand in recess.

THE CLERK: All rise. Court is in recess.

MR. LIGTENBERG: Thank you, Judge.

(Proceedings concluded)

Certified to be a true and accurate transcript of the digital electronic recording to the best of my ability.

U.S. District Court, Official Court Reporter