

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA, : Case No. 07-cr-00170-SCB-TBM  
  
Plaintiff, :  
  
v. :  
  
PAUL F. LITTLE, aka MAX :  
HARDCORE, aka MAX STEINER, and :  
MAX WORLD ENTERTAINMENT, INC., :  
  
Defendants. :

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**DEFENDANTS PAUL F. LITTLE'S  
AMENDED MOTION FOR STAY PENDING APPEAL**

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Comes now Defendant, Paul F. Little, by and through undersigned counsel, and, pursuant to 18 U.S.C. § 3143(b)(1), respectfully moves this Court to issue an Order permitting him to remain free on bond pending the resolution of his appeal.

This motion is supported by the following memorandum of law.

Respectfully submitted,

/s/ James S. Benjamin

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## MEMORANDUM

### I. INTRODUCTION

On June 5, 2008, Defendant Paul Little was convicted by a jury of his peers on all ten counts charged in the Indictment. [Doc. Nos. 156, 157].

On October 6, 2008, Little was sentenced by this Court to a total of 46 months imprisonment, along with 36 months of supervised release. [Doc. No. 202].

On October 15, 2008, Little filed a Notice of Appeal of his conviction and sentence to the United States Court of Appeals for the Eleventh Circuit. [Doc. No. 206].

On October 18, Little paid his fine and his special assessment fees, as well as the corporation's special assessment fees.

For the following reasons, Little now respectfully moves this Court to issue an Order permitting him to remain free on bond pending the resolution of his appeal.

### II. ARGUMENT:

A person convicted of a federal crime is eligible for release during an appeal if a court finds:

- (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any person or to the community if released . . . and
- (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in –
  - (i) reversal,
  - (ii) an order for a new trial,
  - (iii) a sentence that does not include a term of imprisonment, or
  - (iv) 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).

In the present case, Mr. Little respectfully submits that he should be released on bond pending appeal because he is not a flight risk, because he is not a danger to society or to any person, because his appeal is not for the purposes of delay, and because there is a substantial question of law and fact likely to result in a sentence that does not include a term of imprisonment.

**A. Mr. Little Is Not Likely to Flee or Pose a Danger to the Safety of Any Person or to the Community If Released.**

It is almost indisputable that Mr. Little is not likely to flee if he is allowed to stay out on bond pending the outcome of his appeal. First of all, Little has been permitted by this Court to travel, even after his conviction, [see, e.g., Doc. Nos. 184, 185] and during this time he has caused no problems or attempted to flee. Certainly, if Mr. Little were a flight risk, he would have likely already attempted to flee. Little has been aware of the investigation and pending criminal charges for quite some time, yet has made no attempts to leave or avoid prosecution previously. Further weighing against any concerns that Little is a flight risk is the fact that Mr. Little has a house in Los Angeles, California, which he has resided in for several years and certainly would not want to jeopardize. Furthermore, despite the fact that he resides in California, Little attended all court-ordered and probation appointments without delay, and indeed has attended most court hearings and arguments prior to trial. Little has abided by and faithfully followed all terms of his release imposed by this Court and has complied with all recommendations of his probation officer over the time that this case has been pending, thus demonstrating his willingness and his desire to comply with the law and avoid any future trouble. In fact, Little has paid his fines and all special assessments already. Moreover, Little is facing a relatively short prison term of 46 months, and, as shown below, believes that he has substantial and favorable arguments on appeal, thus further limiting any possible incentive he could theoretically have to flee. Furthermore, he does not have a passport and thus

could not leave the country even if he desired. Simply put, there is no real danger that Mr. Little would flee, a fact at least arguably acknowledged by this Court in its Order allowing the Defendant to self-surrender to the designated prison.

Similarly, Mr. Little would not pose a danger to his community or any person if allowed to stay out pending appeal. Without demeaning the seriousness of this crime, it is clear that it was not in any way a violent crime or physically threatening to others. In fact, Mr. Little has never been convicted of any violent crimes, nor has he had any serious interactions with the law other than those arising from the instant case, a previous charge for driving under the influence, and two minor misdemeanors in 1991. The case sub judice was not the “typical” case of violence or drugs, where it may be argued that the Defendant, if released, may seek violent retribution or revenge against those associated with his case. To the contrary, this is the rare type of case where, due to the nature of the obscenity laws, one does not know for sure whether one has committed a crime until after one has been convicted. In sum, there is no indication whatsoever that he is a danger or threat to anyone in the community and thus Little can be released pending appeal.

**B. The Appeal Will Raise Substantial Questions of Law and Fact Likely to Result in a Reversal, a New Trial, or a Reduced Sentence to a Term of Imprisonment less than the Total of the Time Expected for the Duration of the Appeal Process.**

Mr. Little will likely raise many of the same issues in his appeal that he has raised before this Court in his Motion for a New Trial and/or Judgment of Acquittal or in the pretrial motions for dismissal. Although this Court overruled these various Motions, it is nonetheless respectfully submitted that these issues, at a minimum, do raise “substantial questions of law” which the court of appeals may find sufficiently compelling to overturn Little’s conviction on some or all counts. As such, it is submitted that these issues are likely to result in a reversal, an order for a new trial, or

a reversal on some counts which would likely result in a reduced sentence of less time than is expected for the duration of the appeal process.

This Court is well aware of the issues raised by the Defendant, as they have been raised on numerous occasions and thoroughly briefed and extensively argued in this Court. As such, and in order to avoid duplicitous paperwork and to preserve time and resources of counsel and the Court, Little will not repeat the substance of those arguments here. Instead, Defendant will briefly outline the issues to be raised on appeal and refer the Court and opposing counsel to the relevant documents where those issues have been briefed in detail, which arguments will be adopted as if fully rewritten herein.

Defendant submits that the following issues, numbered (1) through (7), will be raised on appeal, and present substantial questions of law or fact likely to result in a reversal, new trial, or reduced sentence:

- 1. The federal obscenity statutes unconstitutionally invade upon the right to sexual privacy guaranteed by the substantive due process clause and are unworkable when applied to the internet.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Motion to Dismiss Indictment [Doc. No. 56].

- 2. The trial court erred in permitting the government to publish excerpts of the charged DVDs, thereby prohibiting the jury from considering the material as a whole, and further erred in precluding Defendants from playing the entire contents of four of the five charged DVDs to the jury in open court.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Motion for New Trial and/or Judgment of Acquittal [Doc. No. 168].

- 3. The Court erred in denying Defendants' motion for recusal based on the Court's comments indicating it had formed an opinion as to the guilt of the Defendants prior to the conclusion of the government's case in chief.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Motion for New Trial and/or Judgment of Acquittal [Doc. No. 168].

- 4. The government presented insufficient evidence that Defendants had the requisite level of knowledge that the U.S. mail would be used to ship the material in question in counts five through ten.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Reply [Doc. No. 154] to the Government's Response to Defendants' Motion for Judgment of Acquittal.

- 5. Irregularities in the jury deprived Defendants of their protected Sixth Amendment right to a trial by a jury of their peers and rendered the jury's verdict inherently unreliable.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Motion for New Trial and/or Judgment of Acquittal [Doc. No. 168].

- 6. The government failed to establish the obscenity *vel non* of the charged video clips and DVDs, particularly when considered in reference to the dominant and submissive sexually deviant group.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Motion for New Trial and/or Judgment of Acquittal [Doc. No. 168].

- 7. The trial court erred in overruling defendants' motion for judgment of acquittal on the grounds that the federal obscenity statutes cannot be applied to the world wide web.**

In support of this argument, Defendants adopt as if fully rewritten here the memorandum contained in Defendants' Motion to Dismiss Indictment [Doc. No. 56].

### **III. GOVERNMENT OBJECTION**

Undersigned counsel has spoken with Department of Justice Trial Attorney LisaMarie Freitas, who objects to this Motion.

### **IV. CONCLUSION**

Because, as shown above, Mr. Little is not a flight risk, because he is not a danger to society or to any person, because his appeal is not for the purposes of delay, and because there is a substantial question of law and fact likely to result in a reversal, a new trial, or at least a reduced sentence of less time than is expected for the duration of the appeal process, and pursuant to 18 U.S.C. § 3143(b)(1), Defendant Paul Little respectfully moves this Court allow him to remain released on bond pending the outcome of his appeal.

Respectfully submitted,

/s/ James S. Benjamin

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Counsel for Defendant Paul F. Little

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing document was provided via the Court's electronic notification system to: Edward McAndrew, 1400 New York Ave. NW, Suite 600, Washington, DC 20005, and LisaMarie Freitas, 1400 New York Ave. NW, Suite 600, Washington, DC 20005, on this <sup>23rd</sup> day of October, 2008.

/s/ James S. Benjamin  
JAMES S. BENJAMIN (Florida Bar No. 293245)

Counsel for Defendants Paul F. Little