

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA                    )  
  )  
                  v.                                )        CRIMINAL NO. 02-10013-WGY  
  )  
RICHARD C. REID                                )

DEFENDANT'S MOTION TO DISMISS COUNT NINE

Count Nine, ostensibly brought under 18 U.S.C. § 1993 ("Terrorist attacks and other acts of violence against mass transportation systems"), charges that on December 22, 2001, defendant willfully attempted to wreck, set fire to, and disable a "mass transportation vehicle, American Airlines Flight 63, a Boeing 767-300 International airliner operated by American Airlines, a mass transportation provider engaged in and affecting interstate and foreign commerce," while the flight carried passengers en route from Paris to Miami. Because, as set forth below, Count Nine does not state a crime, defendant moves to dismiss that count.

I. AN AIRPLANE IS PLAINLY NOT A "MASS TRANSPORTATION VEHICLE"

Count Nine, as its caption makes clear, is brought under clauses (1) and (8) of subsection (a) of 18 U.S.C. § 1993. (Because § 1993 is a recent enactment, a copy is attached for convenience, as is a copy of Count Nine.) Clause (1) of § 1993(a) punishes "[w]hoever willfully wrecks, sets fire to, or disables a mass transportation vehicle or ferry" provided that

the act satisfies the commerce clause requirement set forth at the end of subsection (a). Clauses (2) through (7) punish various other acts directed against "mass transportation vehicle[s] or ferr[ies]," against persons involved in maintaining and operating them, against mass transportation signal systems, against people on the property of mass transportation providers, etc. Clause (8) punishes attempts (or, as we argue below, purports to do so), threats, and conspiracies to do any of the acts described in (1) through (7). Section 1993(c), a definition section for § 1993, defines "mass transportation" as follows:

the term "mass transportation" has the meaning of that term in section 5302(a)(7) of title 49, United States Code, except that the term shall include schoolbus, charter, and sightseeing transportation.

Title 49 is the title of the United States Code that covers transportation. Section 5302 of Title 49 is a definition section for chapter 53 of Title 49, chapter 53 being entitled "Mass Transportation." Subsection (a)(7) of § 5302 reads:

"mass transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, and sightseeing transportation.

It is obvious from reading § 1993 itself, even without considering the specific definition of "mass transportation" in Title 49, that an airplane is not a "mass transportation vehicle." This is true for two reasons: airplanes are not

"vehicles" and airplanes are not involved in "mass transportation."

### 1. Airplanes are Not Vehicles

Airplanes are not vehicles as that word is used in speaking of transportation of people, namely "a conveyance moving on wheels, runners, tracks, or the like, as a cart, sled, automobile, or tractor, etc." Random House Dictionary of the English Language, 2d. ed., 1987. (Only in a somewhat artificial sense of "vehicle" might a plane be deemed such -- as "any means in or by which someone travels or something is carried or conveyed; a means of conveyance or transport: a *motor vehicle*; *space vehicles*," another meaning the same dictionary gives for the word (emphasis in original). But in that figurative sense a canoe would be deemed a "vehicle," as would an elevator.) See also definition no. 6 in the Oxford English Dictionary, 2d. ed. (A means of conveyance provided with wheels or runners and used for the carriage of persons or goods; a carriage, cart, wagon, sledge, or similar contrivance.") Airplanes, though they have wheels (or pontoons) to allow them to get into the medium in and by means of which they move -- the air -- clearly do not move on wheels, runners, or rails. That ferries, though also not vehicles in the normal sense, are explicitly included in § 1993 shows that airplanes are excluded.

### 2. Airplanes are Not Used in "Mass Transportation"

Equally obvious is that airplanes are not used in "mass transportation."

Mass transportation or transit connotes buses, trolleys, subways, commuter trains, ferries -- the means by which the mass of people, particularly in congested areas, get from one place to another in public conveyances.

That § 1993 adopts the definition of "mass transportation" in 49 U.S.C. § 5302 (with the addition of schoolbus, charter, and sightseeing transportation) confirms the obvious. Chapter 53 of Title 49 is devoted, with apparently only one minor exception, to federal funding in aid of urban mass transportation. (The exception allows ferries that are part of a system receiving federal funding under chapter 53 to be, in certain circumstances, "operated occasionally outside the urbanized area in which service is provided.") The "policies, findings, and purposes" section of Title 53, 49 U.S.C. § 5301, shows beyond doubt that "mass transportation" as used in chapter 53 has nothing to do with airplanes. Subsection (f) of § 5301 reads as follows:

(f) General Purposes.--The purposes of this chapter are--

- (1) to assist in developing improved mass transportation equipment, facilities, techniques, and methods with the cooperation of public and private mass transportation companies;
- (2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development with the cooperation of public and private mass transportation companies;
- (3) to assist States and local governments and their authorities in financing areawide urban mass transportation systems that are to be operated by public or private mass transportation companies as decided by local needs;
- (4) to provide financial assistance to State and local governments and their authorities to help

carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals; and  
(5) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its urban mass transportation requirements.

Id. (emphasis supplied). The underlined phrases in (2), (3), and (5) and the reference in (1) to public and private mass transportation companies and in (3) to the elderly, disabled, and disadvantaged show that "mass transportation" refers to garden variety mass transit as used by commuters and others. A perusal of the titles of the chapter 53's sections -- e.g., "Metropolitan planning" (§ 5303), "Transportation management areas" (§ 5304), "Private enterprise participation in metropolitan planning . . ." (§ 5306), "Grants and loans for special needs of elderly individuals and individuals with disabilities" (§ 5310), "Financial assistance for other than urbanized areas" (§ 5311), "Bus testing facility" (§ 5318), "Bicycle facilities" (§ 5319) -- and their contents again confirms the obvious: the relevant definition of "mass transportation" does not include travel by Boeing 767 or, indeed, by airplanes at all.

II. SECTION § 1993 OF TITLE 18 PROVIDES NO PUNISHMENT FOR AN ATTEMPT

The general structure of § 1993(a) is as follows:

(a) General prohibitions. Whoever willfully--

- (1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry;
- (2) places . . . ;

- (3) sets fire to . . . ;
- (4) removes appurtenances from . . . ;
- (5) interferes with . . . ;
- (6) commits an act . . . ;
- (7) conveys . . . ; or
- (8) attempts, threatens, or conspires to do any of the aforesaid acts,

shall be fined under this title or imprisoned not more than twenty years, or both, if such act is committed, or in the case of a threat or conspiracy such act would be committed, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, that person travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act.

Accordingly, § 1993(a) makes a clear distinction between seven different acts, or sets of acts, as set forth in (1) through (7), and attempts, threats, and conspiracies "to do any of the aforesaid acts." This distinction is carried into the final, long catchall phrase of subsection (a)(1), from "shall be fined" to the end. On the one hand, the catchall phrase establishes a punishment "if such act is committed . . . on, against, or affecting a mass transportation provider" in commerce or "if in the course of committing such act" the person in question either crosses (or communicates across) a state line "in order to commit such act" or transports materials across a state line "in aid of the commission of such act." On the other hand, the catchall establishes punishment for anyone who threatens or conspires to do any of acts (1) through (7) "if such act would be committed, on, against, or affecting a mass transportation provider" in commerce. While the catchall

specifies a punishment for the seven substantive acts and for threats and conspiracies to do these seven acts, there is no mention in § 1993(a) of a punishment for an attempt to do any of the acts.

The government may argue that, despite § 1993(a)'s wording, attempts to commit any of the acts in (1) through (7) are made criminal. The government may argue that attempts, as distinguished from threats or conspiracies, are themselves "acts" referred to in the catchall clause that can be "committed." Therefore, it may argue, the phrase "if such act is committed" includes attempts among "such" acts.

There are at least three reasons why this argument cannot be correct. First, the phrase "such act" in the catchall phrase of § 1993(a) plainly refers back to the word "acts" immediately before the phrase, in "(8) attempts, threatens, or conspires to do any of the aforesaid acts," where "acts" refers to the substantive offenses in (1) through (7).

Second, if "such act" includes an attempt to commit one of the substantive offenses in (1) through (7), the phrase "in the course of committing such act, that person travels or communicates across a State line in order to commit such act" becomes meaningless. Even if one could speak of attempts as being "committed" in the same way one can speak of substantive crimes being committed, it makes no sense to talk of anyone doing something "in order to commit" the attempt or "in aid of the commission of" the attempt. Someone attempting to commit a

crime acts with the intent to commit the crime itself, not with the intent to commit the attempt to commit the crime.

Third, if attempts could be deemed "such acts" in the catchall phrase in § 1993(a), threats could be as well, and there would be no reason to include the special provision for threats ("in the case of a threat . . . such act would be committed") in the catchall.

CONCLUSION AND REQUEST FOR HEARING

For all these reasons, Count Nine should be dismissed.

Defendant requests a brief hearing in connection with this motion.

RICHARD C. REID  
By his attorneys,

Tamar R. Birckhead  
B.B.O. #561657  
Owen Walker  
B.B.O. #513040  
Federal Defender Office  
408 Atlantic Avenue, 3rd Floor  
Boston, MA 02210  
Tel: 617-223-8061

CERTIFICATE OF SERVICE

I, Owen S. Walker, hereby certify that a true copy of the above document was served upon Assistant U.S. Attorneys Timothy Q. Feeley and Colin Owyang by delivery on March 16, 2002.

Owen S. Walker