

No. 19-783

IN THE
Supreme Court of the United States

NATHAN VAN BUREN,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

JOINT APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

United States of America v. Nathan Van Buren
Case No. 1:16-cr-00243-ODE-JFK-1

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
06/29/2016	1	INDICTMENT with FORFEITURE PROVISION as to Nathan Van Buren (1) count(s) 1-2, 3. (ryc) (Entered: 06/30/2016)
04/25/2017	37	SUPERSEDING INDICTMENT as to Nathan Van Buren (1) count(s) 1s-2s, 3s. (bnw) (Entered: 04/26/2017)
10/23/2017	71	Minute Entry for proceedings held before Judge Orinda D. Evans: Jury Trial as to Nathan Van Buren held on 10/23/2017. Hearing not concluded. Court adjourned and will reconvene at 10/24/2017 at 9:30 am. Exhibits retained to be forwarded to the Clerk's Office. (Court Reporter Andy Ashley) (sap) (Entered: 10/24/2017)
10/25/2017	74	MOTION to Dismiss Count by USA as to Nathan Van Buren. (Brown, Jeffrey) Text Modified on

10/25/2017 (sap). (Entered:
10/25/2017)

- 10/25/2017 81 ORDER GRANTING 74 Motion to Dismiss Count 1s as to Nathan Van Buren (1). Signed by Judge Orinda D. Evans on 10/25/17. (lwb) Modified on 10/25/2017 (sap). (Entered: 10/25/2017)
- 10/25/2017 84 Minute Entry for proceedings held before Judge Orinda D. Evans: Jury Trial as to Nathan Van Buren held on 10/25/2017. Hearing not concluded. Court adjourned and will reconvene at 10/26/2017 at 9:30 am. Exhibits retained to be forwarded to the Clerk's Office. Defendant's 68 Motion to Strike is DENIED as to Nathan Van Buren (1). (Court Reporter Andy Ashley) (sap) (Entered: 10/26/2017)
- 10/26/2017 85 Minute Entry for proceedings held before Judge Orinda D. Evans: Jury Trial Concluded as to Nathan Van Buren on 10/26/2017. Exhibits retained to be forwarded to the Clerk's Office. (Court Reporter Andy Ashley) (sap) (Entered: 10/27/2017)

- 10/26/2017 86 JURY VERDICT as to Nathan Van Buren (1) Guilty on Count 2rs, 3rs. (sap) (Entered: 10/30/2017)
- 10/30/2017 87 Court, Defendant, and Government Exhibits admitted and retained at the 71 Jury Trial held on 10/23/2017, 75 Jury Trial held on 10/24/2017, 84 Jury Trial held on 10/25/2017, and 85 Jury Trial held on 10/26/2017 as to Nathan Van Buren have been received from Courtroom Deputy and placed in Exhibit Room. (Attachments: # 1 Court Exhibit 1, # 2 Def Exhibit 10, # 3 Def Exhibit 76, # 4 Gov Exhibit 1a, # 5 Gov Exhibit 3a, # 6 Gov Exhibit 4a, # 7 Gov Exhibit 5a, # 8 Gov Exhibit 6a, # 9 Gov Exhibit 7a, # 10 Gov Exhibit 8a, # 11 Gov Exhibit 9a, # 12 Gov Exhibit 10, # 13 Gov Exhibit 11, # 14 Gov Exhibit 12, # 15 Gov Exhibit 13, # 16 Gov Exhibit 14, # 17 Gov Exhibit 15, # 18 Gov Exhibit 16, # 19 Gov Exhibit 17, # 20 Gov Exhibit 19, # 21 Gov Exhibit 20, # 22 Gov Exhibit 21, # 23 Gov Exhibit 22, # 24 Gov Exhibit 23, # 25 Gov Exhibit 24,

26 Gov Exhibit 27) (sap)
(Entered: 10/30/2017)

- 05/03/2018 109 JUDGMENT AND COMMITMENT as to Nathan Van Buren (1). As to Counts 2rs, 3rs, defendant is sentenced to CBOP 18 Months on each of Counts Two and Three, to run concurrently; 2 Years Supervised Release on each of Counts Two and Three, to run concurrently; \$200 Special Assessment. Signed by Judge Orinda D. Evans on 5/2/18. --Please refer to <http://www.ca11.uscourts.gov> to obtain an appeals jurisdiction checklist-- (ddm) (Entered: 05/04/2018)
- 12/11/2019 149 NOTICE SETTING RE-TRIAL as to Nathan Van Buren. Jury Trial set for 1/21/2020 at 09:30 AM in ATLA Courtroom 1908 before Judge Orinda D. Evans. (bdb) (Entered: 12/11/2019)
- 12/31/2019 154 ORDER granting 151 Unopposed MOTION to Continue Jury Trial Date as to Nathan Van Buren (1). Jury Trial reset for Monday, 4/20/2020 at 09:30 AM before Judge Orinda D. Evans. Time excluded from December 18, 2019

to April 20, 2020. Signed by Judge Orinda D. Evans on 12/31/2019. (Rec'd in C.O. - 1/6/2020) (bdb) (Entered: 01/06/2020)

- 02/13/2020 157 ORDER granting 156 Defendant's Unopposed Motion for Continuance of Jury Trial as to Nathan Van Buren (1). Jury Trial reset for Monday, 6/22/2020 at 09:30 AM before Judge Orinda D. Evans. Time excluded from 2/12/2020 to 6/22/2020. Signed by Judge Orinda D. Evans on 2/12/2020. (bdb) (Entered: 02/13/2020)
- 05/19/2020 163 Joint MOTION to Continue re-trial of count 2 by Nathan Van Buren. (Attachments: # 1 Text of Proposed Order) (Durrett, Saraliene) (Entered: 05/19/2020)
- 05/26/2020 164 ORDER as to Nathan Van Buren (1) granting the parties' 163 Joint Motion for Continuance of the Re-Trial on Count 2. The trial on Count 2 of the superseding indictment is continued pending further order of the Court. Signed by Judge Orinda D. Evans on 5/20/2020. (ddm) (Entered: 05/26/2020)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

United States of America v. Nathan Van Buren
Case No. 18-12024

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
05/11/2018	CRIMINAL APPEAL DOCKETED. Notice of appeal filed by Appellant Nathan Van Buren on 05/11/2018. Fee Status: IFP Granted. [Entered: 05/16/2018 09:28 AM]
10/10/2019	Opinion issued by court as to Appellant Nathan Van Buren. Decision: Vacated and Remanded in part; Affirmed in part. Opinion type: Published. Opinion method: Signed. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . [Entered: 10/10/2019 02:32 PM]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)
) DOCKET No. 1:16-CR-
) 243-ODE-JFK
)
 v.) ATLANTA, GEORGIA
) OCTOBER 23, 2017
)
 NATHAN VAN BUREN,)
)
 Defendant.)

VOLUME 1
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ORINDA D. EVANS
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES OF COUNSEL:

For the Government: JEFFREY A. BROWN
Office of the U.S. Attorney

For the Defendant: REGINA D. CANNON
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PROCEEDINGS RECORDED BY MECHANICAL
STENOGRAPHY, TRANSCRIPT PRODUCED BY COMPUTER.

[185] THE WITNESS: ALETHA BARRETT

* * * *

DIRECT EXAMINATION

* * * *

BY MR. BROWN:

* * * *

[202:1]

Q: Deputy Chief Barrett, I'm going to direct you to the screen, and what we have up here is Government's Exhibit Number 16. Can you describe for the jury what we're looking at, and how it reflects, in fact, that a tag was run?

A. Yes, Sir. A LETS search which is law enforcement terminal search which is from our mobile data terminal which is an in-car laptop, this is a tag ran by it says ["Dispatcher Van Buren N"] which is Nathan Van Buren. It is the tag Papa Kilo Papa 1568 which is the PKP1568, and this would be where he ran the tag on 9-2 of 2015 at 9:50 in the morning.

Q. Now, you said — I'll direct you to the middle of the page. It says Dispatcher, and under Dispatcher it says ["N Van Buren"]. What is that telling us as who actually conducted actual query?

A. Yes, that shows who actually conducted the query. That is just an error in our Tyler system. Tyler is actually the database, the actual software that we use to run the system. Whether he's a dispatcher or an officer that is actually who ran the tag.

Each person is issued a username and a password that is only issued to that persona and that

person only, and that person is supposed to keep their username and password secret [203] to them. It's actually a violation of Georgia law if you give your username and password to anyone.

Q. And at the time you pulled this record, did you have any information that someone else was using Nathan Van Buren's login details to run tag inquiries?

A. No.

Q. And can we go to page 2 of Exhibit 16 please, okay, and so, Deputy Chief Barrett, page 2 of Exhibit 16 on the screen, can you explain what we're looking at here?

A. Yes, Sir. Page 2 shows at the top, this is the actual return from GCIC where you show that the tag was ran on 9-2 of 2015 at 9:50 in the morning, and it shows Papa Kilo Papa 1568, PKP1568. It shows the vehicle detail response. It shows the VIN of the vehicle, and it shows that it returns to a 2003 Mitsubishi Eclipse Spider with an unknown color. It shows the title number of the vehicle. It shows that it returns to a Southeast Marine. That's the actual owner of the vehicle. It shows it returns to 3446 Wonder Road, Suite 172. The County of the vehicle is Hall County, Foggy Branch, Georgia 35042.

Q. And so this was a record that you actually pulled out from Cumming Police Department's records; is that correct?

A. Yes, Sir.

MR. BROWN: May I approach, your Honor?

THE COURT: Yes.

BY MR. BROWN: [204]

Q. Deputy Chief Barrett, I'm handing you what's been marked as Government's Exhibit 21. Do you recognize that document? You can flip through it to make sure it's a document that you recognize. Feel free to pick it up and manipulate it.

A. Yes, Sir.

Q. And what do you recognize Government's Exhibit 21 as?

A. Nathan Van Buren's GCIC training records to include his security and integrity training records, as well.

Q. Now, are these records that are kept in the normal course of business of the Cumming Police Department?

A. Yes, Sir.

Q. In fact, did you yourself or did you direct someone to prepare and provide these documents to my office at our request?

A. Yes, Sir.

Q. Do the documents contained in Government's Exhibit 21, do they fairly and accurately depict what they show in the records of Mr. Van Buren's training?

A. Yes, Sir.

Q. Have there been any alterations, deletions or any change that you see to those documents?

A. No, Sir.

MR. BROWN: At this time, Your Honor, the Government would tender for admission Government's Exhibit 21. [205]

MS. CANNON: No objection, Your Honor.

THE COURT: It's admitted.

MR. BROWN: And, Your Honor, may be publish page 1 of Exhibit 21?

THE COURT: Yes.

BY MR. BROWN:

Q. Deputy Chief Barrett, I'll direct you to the screen and ask you to just briefly tell the jurors what we're looking at here?

A. The first page would be Mr. Van Buren's entry level terminal operator for GCIC which means that [he] passed in 2011, July of 2011 the entry level operator for GCIC which would be the modules that cover the policy manual for GCIC, entry level for driver's licenses, for tags, for NCIC, for missing persons, for those types of things.

Q. And we're not going to walk through each particular one, but just kind of overall, does this transcript show essentially the training that Officer Van Buren would have completed while he was working there with the Cumming Police Department?

A. Yes, Sir.

A. And particularly does it show training that he received on dealing with the GCIC which is a GCIC system?

A. Yes, Sir.

Q. And based on your knowledge of that training that you've trained yourself or taken these courses, do the courses detail [206] the proper way that officers should use the GCIC system to search for records?

A. Yes, Sir.

Q. Does the training also detail inappropriate uses for the GCIC system?

A. Yes, Sir.

Q. In particular I want to direct your attention to Security and Integrity Training at the bottom of that page, at the last third of the page. Are you familiar with that particular Security and Integrity type of training?

A. Yes.

Q. And does that training deal with proper and improper use of the GCIC system by law enforcement officers?

A. Yes.

Q. And does that training record show that Sergeant Van Buren completed that Security and Integrity training in 2011, February 2011 as well as in January of 2013?

A. Yes.

Q. That he actually passed that training?

A. Yes.

Q. So based on your — I think you also testified that at some point in time you were a training officer. Did you actually train officers on various training

modules that they're required to take by GCIC and the GBI?

A. Yes. [207]

Q. Can you just briefly detail for the jury what that entailed? You as the trainer what did you have to do to train officers?

MS. CANON: Your Honor, I'm going to object if we're getting into the substance of what the training was. We don't have any discovery about any policies or procedures. This shows that he took the training. It doesn't say what he learned during the training. That's my objection, a discovery violation and a hearsay violation.

MR. BROWN: I think I've laid the foundation that this officer has taken the training, and she's certainly capable to testify as to what the training entailed, Your Honor.

THE COURT: I will allow it.

BY MR. BROWN:

Q. So let's talk about the security and integrity training in particular, does the training lay out any detail relating to improper use of the GCIC system?

A. Yes, as a terminal agency coordinator which is what I was, that person is required to maintain and establish the security and integrity of the GCIC training for the agency. Currently we have another terminal agency coordinator within our agency who I require to maintain those things and keep up with the validations within our agency.

Security and integrity training you're required to [208] take every two years, and Sergeant Van Buren according to this on January 3rd, 2013 he actually took it. If you refer to the other certifications, he would have had to have taken it again later on. So that on January 3rd of 2013 I think that one is actually expired, but if you look further in the certifications, he would have had an up-to-date one there on the certifications.

But he has to certify every two years as does every certified law enforcement officer to deal with criminal histories and drivers histories and tags to even look at a GCIC, any kind of printoff for GCIC which is Georgia Crime Information Center, and also National Crime Information Center. To even look at any kind of these records, we have to be certified through the State of Georgia.

So integrity and security awareness training we have — we receive what the sanctions are, and to disseminate this information we can be sanctioned 15 years or a 50,000 dollar fine, and so —

Q. Let me stop you there. As it relates to dissemination, does it relate to using the information for a nonlaw enforcement purpose?

A. Yes.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF) DOCKET No. 1:16-CR-
AMERICA,) 243-ODE-JFK
)
v.) ATLANTA, GEORGIA
) OCTOBER 24, 2017
)
NATHAN VAN BUREN,)
)
Defendant.)

VOLUME 2
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ORINDA D. EVANS
SENIOR UNITED STATES DISTRICT JUDGE

* * * *

[229]

[DIRECT EXAMINATION OF ALETHA BARRETT]

* * * *

[BY MR. BROWN]:

Q. Was that — yesterday we admitted an exhibit that showed the actual query, and you've identified that exhibit and it's in evidence —

A. Yes, Sir.

Q. — was that the same date that that was ran?

A. Yes, Sir.

Q. I just want to make sure I publish what's already in evidence as Government's Exhibit 16, and

just to make sure we're clear, Deputy Chief Barrett, what date was this tag ran?

A. On 9-2-2015 at 9:50 a.m.

Q. So based on the previous exhibit, would Officer Van Buren been on duty at the time the tag was run?

A. Yes, Sir.

Q. So, Deputy Chief Barrett, we left off yesterday talking about this record, and I want to go back to that today and finish that up.

So you were explaining — can you just explain briefly what the record is, and then I'll ask you some questions about the record?

A. This record shows the GCIC query where Nathan Van Buren ran the tag on 9-2 of 2015 at 9:50 in the morning.

Q. And I think you left off yesterday testifying about that you actually were a trainer that trained officers as it relates to the proper and improper use of the GCIC database; is that correct?

[230]

A. Yes, Sir.

Q. And had Mr. Van Buren received the training on the proper use of the GCIC database?

A. Yes, he had.

Q. And does that training for officers explicitly cover the proper purposes for GCIC and improper purposes and penalties for improperly using the GCIC database?

A. Yes.

Q. So based on that training, what is an improper purpose for an officer to run something on the GCIC system?

A. Any noncriminal justice use.

Q. What does that mean; what does it mean noncriminal justice use?

A. For any personal use. There's only certain ways that a person can use tag information, and those are criminal justice uses. If an individual wants their tag run, and you can prove that that person owns that vehicle, they can receive that information, or if a tow truck operator has a vehicle in their possession, that person can receive that information. If they have that vehicle in their possession, they can receive that information.

Q. Is it proper for a police officer to run his friend's tag or run a tag of a cute girl he saw riding down the road; is that proper?

A. Absolutely not.

[231]

Q. And is that against the law in Georgia?

A. It is, and that's covered in that training.

Q. What about getting money from a buddy to run one of his friends; is that proper?

A. That is illegal.

MR. BROWN: Your Honor, that's all I have of this witness at this time.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MS. CANNON:

Q. I have some questions for you, Ma'am, related to what you said yesterday, and some things I want to clarify for the jury today, okay?

A. Yes, Ma'am.

Q. The first thing I want to start with is what you just stated to the jury is that you believe based on what you heard that maybe Mr. Van Buren committed a violation of state law, correct?

A. Yes.

Q. But there's never been state charges filed in this case, correct?

A. Yes.

Q. In fact, based on that information, it was never referred to a state agency for prosecution, was it?

A. No, Ma'am.

* * * *

[243]

Q. And, lastly, I believe we have just one more. Deputy Chief, there's another report, and this one is dated August 6th. Again has this been submitted to you?

A. Yes.

Q. Again Sergeant Van Buren is reporting what he's learned from Amber Fouts who is also a victim in the case, correct?

A. Yes.

Q. And in it he advises her to seek a temporary protective order, correct?

A. Yes.

Q. Even though she's claiming Andrew Albo is the one who's been harassing her, correct?

A. Yes.

Q. In fact multiple text messages and phone calls that she believes are from Andrew Albo, correct?

A. Yes.

Q. He submitted that and completed the reports as required for his position, correct?

A. Yes.

Q. During this entire investigation, Mr. Van Buren used his work-issued phone, correct?

A. Yes.

Q. And the sergeant also used his work-issued computer, correct?

A. Yes.

[244]

Q. He was assigned a GCIC password, correct?

A. Yes.

Q. Once you finish the training, you get a password, so he had that password that he obtained from the training, correct?

A. Yes.

Q. So that was proper in terms of him getting the password, correct?

A. Yes.

Q. He followed the internal policies you all have in terms of getting folks authorized to use the password?

A. Yes.

Q. Not everyone in your department has a password, correct?

A. Yes.

Q. But they've all gone through the training, correct?

A. Yes.

Q. Okay. Do you have any people in your department who don't have passwords for GCIC?

A. No.

Q. So everyone with the department has a password, correct?

A. A username and password for GCIC.

Q. If they've gone through the training?

A. They went through the training, yes.

Q. But I wouldn't be able to do it because I haven't done the [245] training, correct?

A. No.

Q. But if I had the password, then I could?

A. Yes.

Q. Deputy Chief, when you submitted this case to the federal agents, all you had was that recording, correct, that we just heard today?

A. Yes.

Q. On that recording you heard nothing about Sergeant Van Buren's interest in helping drug trafficking, did you?

A. No.

Q. You heard nothing on that tape about Sergeant Van Buren helping Andrew Albo involved in any kind of sex trafficking of minors, did you?

A. No.

Q. This was about a loan, correct?

A. About a what?

Q. A loan, correct?

A. Yes.

Q. And the violation that you heard on that tape had to do with his ethical duty to the job and to the community, correct?

A. Yes.

Q. And he was fired for that, right?

A. He decided to resign.

* * * *

[253] DIRECT EXAMINATION [OF NEAL
GERSTENBERGER]

* * * *

BY MR. BROWN:

Q. Good morning, Mr. Gerstenberger.

A. Good morning, Sir.

Q. Where are you employed?

A. Georgia Bureau of Investigation.

A. And how long have you been with the Georgia Bureau of Investigation?

A. Thirty-one years.

Q. And can you just enlighten the jury on what is the Georgia Bureau of Investigation, and what do you guys do there?

A. The Georgia Bureau of Investigation is the top law enforcement agency for the State of Georgia. We have three divisions. We have the Division of Forensic Sciences which most people know as the Crime Lab. We have the Investigative Division which is where all the agents reside and investigative services are provided, and then the third division we have is [254] the Georgia Crime Information Center, and that is where I am employed.

We have responsibility for the criminal history repository. We have responsibility for the law enforcement network that agencies use to run information. We have responsibility for the sex offender registry, the protective order registry. All those different databases that you hear about, we're responsible for those databases.

Q. So can you give the jurors the background of the GCIC system, what does GCIC stand for, and when you refer to the GCIC system, what are we referring to?

A. GCIC is the Georgia Crime Information Center. That's one of the divisions within the Bureau. So there are a lot of different systems, but one of the things that we talk about many times is what we call the CJIS

system, the Criminal Justice Information System Network, and that is the data communications network that the GBI is responsible for maintaining and managing, and that network, that's a statewide data communication network, and that provides criminal justice agencies access to a number of computerized criminal databases, databases that are maintained by Georgia state agencies or agencies in Georgia and other states at NCIC.

Q. And I think you testified that you're the assistant deputy director?

A. Yes, Sir.

[255]

Q. So what are your duties and responsibilities as the Assistant Deputy Director?

A. My duties and responsibilities as one of the assistant deputy directors within the Georgia information Center is responsibility for the criminal history repository. So when an individual is arrested whether that be for the first time or a subsequent time, we're either creating a criminal history record for that individual based on the fingerprints that we receive, or we're updating that individual's criminal history record.

Likewise, more and more, there's more and more access or requests for criminal history record information from employers for licensing and employment and housing, those types of decisions. So all of those cards whether it's an arrest card or a fingerprint card for an arrest or a fingerprint card for a background check, all those come to us. We process

those and provide the appropriate response back to the law enforcement criminal justice agency or the licensing or employment agency whether that be a school board, Georgia board of realtors, board of nursing, whoever that may be.

Q. Can you explain or tell the jurors what NCIC stands for?

A. NCIC is the National Crime Information Center.

Q. And what does that mean?

A. Well, the National Crime Information Center is housed at the FBI headquarters in Clarksburg, West Virginia, and NCIC is [256] a computerized database of many different files, wanted persons, stolen vehicles, stolen articles, sex offender registry, protective orders, gangs, fugitives, known suspected terrorists. There are many, many files that are contained within NCIC that are accessible by law enforcement criminal justice agencies.

Q. Now where is that information housed; where is the information kept?

A. It is kept at FBI headquarters in Clarksburg, West Virginia.

Q. Okay. And let's just — I want to direct you back to Georgia here, and does the GBI and GCIC in particular regulate how local police officers access databases maintained by your agency?

A. Well, it comes through the — all those inquires come through that CJIS network that we just discussed, and that is a web based or internet based application. So any user on that system has to have a

user I.D. and password to get into the system to run any kind of inquiry.

Q. Does any kind of inquiry include a police officer checking a license tag number; would that come through the system maintained by the GBI under GCIC?

A. Yes, Sir.

Q. I want to show you what's been marked as Government's Exhibit Number 17, and you have a copy.

[257]

Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. BROWN:

Q. Mr. Gerstenberger, I'm showing you what's been marked as Government's Exhibit 17. Do you recognize that document?

A. Yes, Sir, I do.

Q. You can pick it up and flip through it and make sure I didn't have my kids' crayon drawing on the second page.

A. Yes, Sir, I recognize this.

Q. Okay. And what is it?

A. This shows where a license tag – there was an inquiry made on a license tag for registration information on that vehicle.

Q. Let me stop you there. So is that a record that is kept in the normal course of business for the GBI?

A. Yes, Sir.

Q. And is that a true and accurate copy of a record that's actually maintained by the GBI and provided to my office?

A. Yes, Sir.

Q. Have there been any changes or alterations or deletions that you can tell from looking at those two pages?

A. No, Sir, there are not.

MR. BROWN: At this time, Your Honor, the Government would tender Government's Exhibit 17 into evidence.

MS. SHEPARD: No objection, Your Honor.

[258]

THE COURT: It's admitted.

MR. BROWN: Can we publish, please, Your Honor?

THE COURT: Yes.

BY MR. BROWN:

Q. Publish page 1 first. What are we looking at here, Mr. Gerstenberger?

A. The first page is just a certificate of authenticity of the records, the attached records that they are true and accurate and a record that would be maintained.

Q. And what is the tag there that was the offline search; what tag number is that?

A. The tag was PKP1568.

Q. Can we publish page 2 please? Looking at this page, can you give an overview to the jury of what we're looking at as it relates to what's maintained by the actual GBI just from looking at this; what does that page show us?

A. The page shows us that there was a registration query done by a law enforcement agency. It shows the license tag that was queried, the license tag year, date and time that that query was made.

Q. What is the date and time of that query?

A. September 2nd, 2015.

Q. And then midway through, what is that showing us at the bottom[;] like was there a response from that query?

A. Yes, Sir, it shows the response that came back from the [259] Department of Revenue. The Department of Revenue maintains all vehicle registration information in the State of Georgia. So when that inquiry came to us through to the CJIS network, we have a message switch, and it's kind of like directing traffic, so that inquiry came to us from the local law enforcement agency.

That tag request once it hit our system, we then shipped that out to the Department of Revenue. A response came back from the Department of Revenue to our message switch, and then we in turn routed it back to the inquiring agency.

Q. If we can highlight the bottom portion of page 1? So NCIC, what does that refer to —

A. NCIC1 is the NCIC terminal showing where an inquiry was sent to NCIC on that tag.

Q. I'm not asking for all the technical details, but you stated that your office doesn't maintain NCIC records, and you've already testified that's maintained in West Virginia; is that correct?

A. Yes, Sir.

Q. So when a local officer does his search, give us the 5,000 foot view; is their [sic] an inquiry sent to NCIC to check and see if there was a record?

A. Yes, behind the scenes, the system programmatically sends what is called QV or Query Vehicle, and that goes out to NCIC to see if that vehicle is stolen or has been reported stolen [260] anywhere, whether that be Georgia or any other state. So in this case that query came back from NCIC that showed the vehicle was not stolen or reported as stolen.

Q. And also I want to direct your attention to the limitations on the GCIC system and access maintained by GCIC. Are there restrictions placed on users as to what kind of information under what circumstances they can obtain information?

A. Yes, and it's for authorized normally law enforcement purposes only.

Q. And are users trained on what are the proper and improper uses of the actual system that the GBI maintains?

A. Yes, Sir, agencies do receive training on proper use of the system and the different databases.

Q. Is it proper for a local police officer to run a tag in exchange for money?

A. No, Sir.

Q. And does the training detail criminal penalties for actually violating the rules for accessing information contained in GCIC and CJIS?

A. Yes, Sir, it does touch on that, cover that, Yes, Sir.

Q. And I think we left off, Mr. Gerstenberger, you talked about penalties, are criminal penalties involved for individuals that unlawfully or improperly access materials maintained by GCIC and CJIS; is that correct?

[261]

A. Yes, Sir.

Q. And are the criminal penalties outlined in the training materials for use of that information system?

A. Yes, Sir.

Q. And do you know what that penalty is, and what is prohibited?

A. I know that the penalties can involve prison time, fines – I'm sorry, what's the other question?

Q. And do you know what particular law that is a violation of?

A. It's unauthorized access and use of the data from those databases.

Q. And in preparation for your testimony, did you provide me a document outlining penalties involved with improperly accessing the GCIC network?

A. The training materials, yes.

Q. Would looking at the training materials refresh your memory as to the exact penalties that are in place for individuals that violate or improperly access GCIC?

A. Yes, 16-9-90 through 94 or wherever it may be, password disclosure and those kind of things?

Q. For improperly accessing the GCIC network?

A. Right, that is —

MS. SHEPARD: Objection, Your Honor, I would just argue that the foundation hasn't been laid for this. It seems [262] that the witness is not clear as to what the penalties are with regards to these questions, and in regards to what sort of violations.

MR. BROWN: I'm still asking some questions.

THE COURT: Overruled at this time.

* * * *

[267:8]

(IN OPEN COURT)

THE COURT: Did you have another question?

MR. BROWN: I do, Judge.

BY MR. BROWN:

Q. So, Mr. Gerstenberger, we were doing an awkward dance relating to the training in this case and improper use of GCIC.

So my question to you as it relates to this is it improper to use the GCIC network for your own personal gain?

A. Yes, it is improper.

Q. So it would be improper for me if I'm authorized to use GCIC to take money from someone to run a query; is that improper?

A. That is improper.

Q. And is it also improper to do it for a noncriminal justice or nonlaw enforcement purpose, is that an improper use of the network?

A. Yes, that would be an improper use.

[268]

MR. BROWN: That's all I have, Judge. Thank you.

CROSS-EXAMINATION

BY MS. SHEPARD:

Q. Good morning, Mr. Gerstenberger.

A. Good morning.

Q. I just have a few questions. You talked about there being multiple levels or multiple databases that are included in GCIC, correct?

A. Yes, Ma'am.

Q. So there's more than one type of GCIC inquiry, correct?

A. Correct.

Q. So, for example, one sort of GCIC inquiry could be looking into someone's entire criminal history, right?

A. Yes, Ma'am.

Q. But the exhibit that the Government showed that you identified up on the screen, that was a specific inquiry into a license tag, correct?

A. Yes, Ma'am.

Q. A vehicle license plate?

A. Yes, Ma'am.

Q. And the information that we saw produced in that license plate included the owner of the car, correct?

A. Yes, Ma'am.

Q. The address associated with the registration?

A. Yes, Ma'am.

[269]

Q. The insurance status?

A. Yes, Ma'am.

Q. And you indicated it would also report if the court [sic] had been reported stolen, correct?

A. Yes, Ma'am.

Q. So if a law enforcement officer – let me rephrase this. That inquiry did not produce any additional criminal history or any additional information about the owner of the vehicle, correct?

A. That is correct.

Q. Okay. So if someone were to look up my license plate, see my car, a police officer see my car in the parking lot and have some reason to suspect the owner of the car and run my tag, they would identify my name if I'm the registered owner, correct?

A. Yes, Ma'am.

Q. And if they wanted to find out more information about me, they would be able to do additional inquiries?

A. Yes, Ma'am.

Q. And if a police officer were to see my car parked somewhere and think that I was engaged in some sort of illegal conduct, it would be proper for them to run my tag as part of their investigation, correct?

A. Yes, Ma'am.

Q. And generally as part of an investigation, it is proper [270] for local law enforcement officers to use the GCIC tag inquiries, correct?

A. Yes, Ma'am.

MS. SHEPARD: Thank you.

THE COURT: Shall the witness be excused?

MR. BROWN: Very brief redirect, Judge.

THE COURT: Very brief.

MR. BROWN: Yes, Judge.

REDIRECT EXAMINATION

BY MR. BROWN:

Q. On cross, defense counsel asked you a hypothetical about a law enforcement officer seeing her vehicle and engaged in some kind of, you know, conduct, she said for some reason, law enforcement reason, and the officer ran the tag, and she asked you if that was proper, and you said it would be proper; is that correct?

A. Yes, if there's a law enforcement reason or legitimate —

Q. Right, so my question is just the reverse of that. If a law enforcement officer sees a tag and wants to run a tag for a girl he thinks is pretty to find out what her name is, would that be a proper use of the network?

MS. SHEPARD: Objection, Your Honor, asked and answered repeatedly on direct.

THE COURT: Overruled.

MR. BROWN: You can answer the question.

[271]

THE WITNESS: That would be improper use.

MR. BROWN: That's all I have, Judge. Thank you.

THE COURT: Who's next?

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF) DOCKET No. 1:16-CR-
AMERICA,) 243-ODE-JFK
)
v.) ATLANTA, GEORGIA
) OCTOBER 25, 2017
)
NATHAN VAN BUREN,)
)
Defendant.)

VOLUME 3
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ORINDA D. EVANS
SENIOR UNITED STATES DISTRICT JUDGE

* * * *

[380:21]

THE COURT: All right. Ms. Shepard, you may proceed.

MS. SHEPARD: Good morning, Your Honor. I am going to present a motion, a Rule 29 motion for judgment of acquittal as to both counts. I do have sort of a multitiered argument as to each count, and if the court would, if it would be your [381] pleasure, I have prepared sort of a bullet point memo going through my argument that might be helpful to follow along.

THE COURT: Thank you.

* * * *

[390:3]

MS. SHEPARD: Okay. Now as to the computer fraud count 18 [] USC, 1030(a)(2)(C) is the particular statute or particular code section that's been charged in the indictment here, and it addresses intentional access of a computer without authorization or exceeding authorized access, and as Sergeant Van Buren is charged [sic], he's particularly charged with exceeding his authorized access.

* * * *

[391:20]

But in looking at the case law that does address this section, it establishes that accessing information that you have access to, accessing it for an improper or impermissible purpose does not exceed authorized access as meant by 1030(A), . . .

* * * *

[396:17]

MR. BROWN: As to Count 2, defense counsel is right except they did not give the court Eleventh Circuit law that directly addresses this issue. The case is *United States versus Rodriguez*. There's a split in the circuit —

THE COURT: About what?

MR. BROWN: There's a split in the circuit as to whether given the defense counsel's analogy of having a key. The Ninth Circuit and other circuits take the position that no, once an employee has access, that's it. Once they're there, [397] they're there, and they cannot be charged with violating the statute.

The Eleventh Circuit and other circuits say no, you can exceed your authorized access, even though you're allowed to be there, once you get there and do something that's outside the scope of what you're allowed to do, you're exceeding your authorized access, and the *Rodriguez* case from the Eleventh Circuit deals with a Social Security employee who was on the Social Security database legally and rightfully, but he exceeded his access by actually searching for information for a nonbusiness purpose, and the court said yes, he violated the statute, and I'll tender this to the court if the court wants to see the decision. The last time I checked it is still good law, and there is a split in the circuit.

THE COURT: Okay. Is that it?

MR. BROWN: Yes, Your Honor. Thank you.

* * * *

[399:14]

THE COURT: I'm going to deny the defense's motion.

* * * *

[399:21]

[THE COURT]: * * * So I think there is enough evidence to go to the jury for them to decide on Count 1, and the same thing on Count 2, I think there is enough evidence to send this charge to the jury. So I will deny the motion.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF)	DOCKET No. 1:16-CR-
AMERICA,)	243-ODE-JFK
)	
v.)	ATLANTA, GEORGIA
)	OCTOBER 26, 2017
NATHAN VAN BUREN,)	
Defendant.)	

VOLUME 4
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ORINDA D. EVANS
SENIOR UNITED STATES DISTRICT JUDGE

* * * *

[CLOSING ARGUMENTS]

[519:6]

MR. BROWN: So Count 3 as you're going to see in the indictment that you have is Computer Fraud, and it's essentially relating to the same conduct that we've been talking about in this entire case. What conduct is that, the GCIC tag query, and the elements that I suspect the Government – the judge will charge you on that:

One, the Defendant intentionally accessed a computer in a way or to an extent beyond the permission given. So I asked Aletha Barrett, Deputy Chief, his commanding officer, I asked Neal Gerstenberger, and I asked other law enforcement

officers, they came up, I think there were defense witnesses about as a law enforcement officer do you have access to GCIC. Yes, you have to have training. They mentioned the training. What did that training talk about or discuss? Well, it says — these are two things you can't do. You can't run access information on that system for your own private gain, prohibited. Two, you cannot do it for a nonlaw enforcement purpose.

So he has access, but he exceeded his authorized access by doing that, and I think this is a concept not just [520] for public employees. Many of you work on computers in your own jobs. You have access to computers to do your job. If you go on the computer and access personal information and provide it to someone else, you've exceeded your authority.

You're allowed to be on the network, but once you're using the network that's against what your job or policy prohibits, you've exceeded your access. You've gone too far, and this is the concept that this Defendant violated. He violated this federal law when he ran that tag query for his own personal benefit and for a nonlaw enforcement purpose.

And Count 2, the second element, the Defendant received information from the computer used in or affecting interstate or foreign commerce or communication, that's stipulated, and you can look at the stipulation. So that's not in dispute.

So the third element is for private gain. The Defendant admitted that September 3rd, 2015, his interview, he received a thousand dollars for doing that, his own private gain.

* * * *

[CLOSING STATEMENT]

[542:4]

[MS. CANNON]: Computer fraud and abuse, did he exceed his authority? No. His former boss told him that – told us that he had a password. He was certified for GCIC searches. That they do it, running tags. She does. The other officers have, and I think she said everyone there in her department, they have the password. They receive the training.