

INDEX OF APPENDIX

A) A copy of the Judgment of the U.S. Court of Appeals for the Third Circuit denying the Petitioner's Petition for Rehearing En Banc, dated 12/16/2019;

B) A copy of the Judgment of the U.S. Court of Appeals for the Third Circuit denying the Petitioner's Appeal from the District Court's denial of his Motion for New Trial, 2019 U.S. App. Lexis 34734;

C) A copy of the Judgment of the District Court for the District for New Jersey denying the Petitioner's Motion for New Trial, 2019 U.S. Dist. Lexis 36021;

D) A copy of the District Court's Discovery Order, ECF No. 21, 05/21/2014;

E) A copy of the online article evidencing the arrest of the Government's Lead Investigator Special Agent Rick Patel prior to the trial in December 2014;

F) Copies of relevant pages of trial transcripts and the Petitioner's motions directly quoting trial transcripts as reproduced by the Government for the purposes of Supplemental Appendix (SA) submitted by the Government to the U.S. Court of Appeals for the Third Circuit;

G) The Government's Corrected Brief for Appellee, p. 23;

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1599

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 3-14-cr-00274-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., KRAUSE, RESTREPO, BIBAS, PORTER,
MATEY, PHIPPS and FUENTES*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

* Hon. Julio M. Fuentes' vote is limited to panel rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Michael A. Chagares
Circuit Judge

Dated: December 16, 2019
SLC/cc: Mark E. Coyne, Esq.
Marijan Cvjeticanin, Esq.
Ricahrd J. Ramsay, Esq.

APPENDIX B

CHAGARES, Circuit Judge.

Marijan Cvjeticanin was convicted of nine counts of mail fraud, in violation of 18 U.S.C. § 1341, based on a scheme to defraud clients through false billing practices. Cvjeticanin now appeals the District Court's denial of his two motions for a new trial. We will affirm.

I.

We write for the parties and so recount only the facts necessary to our decision.

Cvjeticanin worked as a paralegal and then as an attorney at a New York immigration law firm. As both a paralegal and as an attorney, Cvjeticanin was responsible for preparing applications for permanent residency for foreign citizen-employees of two corporate clients (including ADP) with operations in the United States. In order for corporate employers to apply for permanent residency for their foreign citizen-employees, they must demonstrate a need to hire a foreign worker for a specific position and show that there are no minimally qualified United States citizens available to fill those positions. To meet these requirements, employers must first engage in recruiting by placing print advertisements for the positions in the geographic locations where the positions are based. The law firm that employed Cvjeticanin used the services of third-party advertising agencies to place the required print advertisements.

The Second Superseding Indictment alleged that Cvjeticanin defrauded two of his law firm's corporate clients by, inter alia, convincing his law firm to replace its existing advertising agency with Flowerson Holdings, Inc., which was secretly owned and controlled by Cvjeticanin, and then billing the clients for hundreds of thousands of

dollars' worth of advertising placements that Flowerson and Cvjeticanin never placed. On June 29, 2015, the jury found Cvjeticanin guilty on all nine counts of mail fraud.

The District Court denied Cvjeticanin's motion for new trial, among other post-trial motions, and we affirmed. United States v. Cvjeticanin, 704 F. App'x 89, 94 (3d Cir. 2017), cert. denied, 138 S. Ct. 939 (2018), reh'g denied, 138 S. Ct. 1347 (2018).

In June 2018, Cvjeticanin moved again for a new trial in two separate motions, which the District Court denied, for the reasons set forth in the court's March 6, 2019 Memorandum Opinion. This timely appeal followed.

II.¹

Proceeding pro se, Cvjeticanin challenges the District Court's denial of his two motions for a new trial on numerous distinct and overlapping grounds. Before discussing the merits of Cvjeticanin's motions, we first explain why many of the claims pressed in Cvjeticanin's second motion were untimely filed and why we will affirm the District Court's dismissal of the claims on that ground.

A.

Rule 33 permits defendants to seek vacatur of judgment and the granting of a new trial where "the interest of justice so requires." Fed. R. Crim. P. 33(a). However, Rule 33 sets strict time limits for filing such motions, and the time to file depends entirely on whether the motion is "grounded on newly discovered evidence[.]" Fed. R. Crim. P. 33(b)(1). While motions based "on newly discovered evidence must be filed within 3

¹ The District Court had jurisdiction under 18 U.S.C. § 3231, and we have appellate jurisdiction under 28 U.S.C. § 1291.

years after the verdict or finding of guilty[,]” a “motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.” Fed. R. Crim. P. 33(b)(1)–(2) (emphasis added).

After his June 29, 2015 conviction, Cvjeticanin waited almost three years to file his two motions for new trial. Thus, while both motions were potentially timely to the extent they were “grounded on newly discovered evidence[,]” the time to file on any other ground had long since elapsed. On appeal, Cvjeticanin contends for the first time that all of his claims involve newly discovery evidence. But this is rewriting history. Cvjeticanin’s own second motion for new trial makes clear that it sought to raise a plethora of issues that were not based on newly discovered evidence. For example, while Cvjeticanin characterized the first motion as having been “exclusively based on newly found evidence and newly found perjuries[,]” he described the second motion by contrast as being “primarily based on due process concerns, particularly [the] Government’s known introduction of perjured testimonies and various Brady violations.” Supplemental Appendix (“SA”) 920. To the extent that the second motion is not also “exclusively” based on newly discovered evidence, it is untimely by almost three years.

The second motion identifies thirteen separate grounds for a new trial, including eight alleged instances in which the Government “knowingly solicited or introduced . . . false and perjured testimonies” as well as five claimed Brady violations. SA 922.

Seven of the bases identified by Cvjeticanin lack any remotely credible explanation as to how or why they constitute newly discovered evidence and are thus

time-barred under Rule 33(b)(2).² For example, Cvjeticanin challenges the Government's failure to turn over impeachment material of a Government witness consisting of a publicly-available newspaper article that was originally posted online in December 2014—months before trial began—with no explanation whatsoever as to how the information constitutes newly discovered evidence.

We will therefore affirm the dismissal of these new trial claims for that reason.

B.

We now turn to the remaining claims raised by Cvjeticanin in both motions for new trial. These include primarily claims that newly discovered evidence proves Cvjeticanin's lack of intent to defraud the companies, and evidence that Government witnesses perjured themselves, in some cases with the knowledge of the Government.

² These include the following claims:

- "Government Knowingly Solicited Mr. Weinberg's False Testimony Regarding Computer World Magazine Advertisements[.]" SA 941.
- "Government Solicited and Then Failed to Correct Steven Weinberg's Perjured Testimony Regarding His Knowledge Concerning Flowerson's Existence[.]" SA 955.
- "Government Knowingly Suppressed The Information That The Law Firm Of Wildes & Weinberg Changed Its Computer Servers In 2004 And Consequently Lost Its Ability To Produce Copies Of Critically Important 2002 And 2003 EMAILS[.]" SA 959.
- "Government . . . Suppressed . . . Information That, One Year Prior to The Trial, The Government's Lead Investigatory Agent . . . Was Arrested[.]" SA 962.
- "Government . . . Suppressed . . . Original And/Or Copies of Advertisements Voluntarily Provided To The Government By The Defendant[.]" SA 964.
- "Government . . . Suppressed Information From The Defense Regarding Any Aspects Of The Broadridge Investigation[.]" SA 966.
- "Government . . . Suppressed Information . . . That The Chain Of Evidence Was Irretrievably Broken[.]" SA 969.

“We review the District Court’s denial of a motion for a new trial for abuse of discretion.” United States v. Schneider, 801 F.3d 186, 201 (3d Cir. 2015). Where a Rule 33 motion is based on newly discovered evidence, the movant shoulders a “heavy burden,” United States v. Brown, 595 F.3d 498, 511 (3d Cir. 2010), of proving five elements:

(a) [T]he evidence must be in fact newly discovered, i.e., discovered since trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

Schneider, 801 F.3d at 201–02 (quoting United States v. Quiles, 618 F.3d 383, 388–89 (3d Cir. 2010) (quotation marks omitted)).

The District Court concluded that Cvjeticanin’s non-time-barred claims in the first motion failed to satisfy three of these prongs, determining that Cvjeticanin (1) failed to establish that the evidence was newly discovered, (2) failed to demonstrate that his trial counsel could not have discovered the evidence sooner with due diligence, and that (3) the evidence was not of such a nature that it would probably produce an acquittal at trial.³

Because the District Court did not abuse its discretion in denying Cvjeticanin’s motions for new trial, we will affirm. While Cvjeticanin describes his (purportedly) newly-discovered evidence as exculpatory, we agree with the District Court that it was not of such nature as to probably produce an acquittal at trial. For example, Cvjeticanin

³ Similarly, the District Court concluded that even putting aside the timeliness of Cvjeticanin’s claims in the second motion, his arguments lacked merit.

contended in his first motion that his October 13, 2003 email to an ADP employee “clearly disclos[ed] that Flowerson [wa]s his (own) advertising agency[.]” therefore “clearly proving Government witnesses knowingly committed perjury which is both material and central to the Government’s case[.]” SA 826–27. Similarly, Cvjeticanin maintained that because he referred to Flowerson in another email as “my agency[.]” he had “openly disclos[ed] his ownership and control over the Flowerson agency” to ADP. SA 827. Those characterizations of the emails are, to put it mildly, a stretch. Because businesses, including law firms, often have their own preferred vendors which they use by default unless a client prefers another option, Cvjeticanin’s references to “my ad agency[.]” SA 891–92, were ambiguous at best and cannot be said to have “clearly” or “openly” disclosed anything about Cvjeticanin’s secret interest in Flowerson.

Further, while Cvjeticanin believes the “newly discovered evidence” cited in his second motion to be exculpatory, the evidence that he believes undermines the trial testimony of Government witnesses⁴ is merely impeachment evidence that leaves

⁴ For example, the following:

- “Government . . . Solicited Steven Weinberg’s False Testimony That He . . . Checked ‘All’ Advertisements In Various Public Libraries[.]” SA 925.
- “Government . . . Solicited Steven Weinberg’s False Trial Testimony That ALL Applications Filed By The Defendant Were Fraudulent[.]” SA 933.
- “Government . . . Solicited Steven Weinberg’s False Testimony That He Checked 2012 Star Ledger Advertisements[.]” SA 939.
- “Government . . . Solicited Steven Weinberg’s False Testimony Regarding The Indictment Count Nine – Oleksii Prokopchuk Case[.]” SA 944.
- “Government . . . Solicited . . . Agent Patel’s False . . . Testimony That He Checked And Reviewed ‘Hundreds Of Newspapers’ and ‘A Whole Bunch Of Things[.]’” SA 949.

undisturbed the inculpatory, recorded statements made by Cvjeticanin to Steven Weinberg, his former employer. Accordingly, and in the context of the trial evidence considered by the District Court as a whole, this impeachment material is not “of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal,” Schneider, 801 F.3d at 202. Because none of the newly-discovered evidence described by Cvjeticanin meets this standard, the District Court did not abuse its discretion in denying Cvjeticanin’s motions for new trial.

III.

For these reasons, we will affirm the District Court’s order denying Cvjeticanin’s motions for new trial.

-
- “Government Solicited . . . False Testimony Of Steven Weinberg That He Filed 100 Applications And Personally Paid For The New Advertisements[.]” SA 952.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1599

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
D.C. No. 3-14-cr-00274-001
District Judge: Honorable Michael A. Shipp

Submitted Under Third Circuit L.A.R. 34.1(a)
November 19, 2019

Before: CHAGARES, MATEY, and FUENTES, Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of New Jersey and was submitted on November 19, 2019.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the Judgment of the District Court entered on March 6, 2019, is AFFIRMED. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: November 21, 2019

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
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November 21, 2019

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RE: USA v. Marijan Cvjeticanin
Case Number: 19-1599
District Court Case Number: 3-14-cr-00274-001

ENTRY OF JUDGMENT

Today, **November 21, 2019** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App.

P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Patricia S. Dodszeweit, Clerk

By: s/Laurie
Case Manager
267-299-4936

APPENDIX C

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN

Criminal Action No. 14-274 (MAS)

MEMORANDUM OPINION

SHIPP, District Judge

This matter comes before the Court upon *pro se* Defendant Marijan Cvjeticanin's ("Defendant") post-trial motions, including: a Motion to Stay (ECF No. 142); Motion for Evidentiary Hearing, New Trial, and to Vacate Final Judgment ("Motion for New Trial I") (ECF No. 146); Motion to Dismiss or for New Trial ("Motion for New Trial II") (ECF No. 147); Motions to Expedite (ECF Nos. 145, 148, 150); and Motion to Correct PACER Entries (ECF No. 154). The United States of America (the "Government") opposed Defendant's Motion to Dismiss and Motions for a New Trial,¹ but did not oppose Defendant's Motions to Expedite and Motion to Correct PACER Entries. (ECF No. 159.) Defendant replied.² (ECF No. 161.) The Court, having carefully considered the parties' submissions, decides the matter without oral argument pursuant to Local Civil Rule 78.1, which is applicable to criminal cases under Local Criminal Rule 1.1. For the reasons stated below, Defendant's Motion to Dismiss, Motions for a New Trial, and Motions

¹ Although ECF No. 142 is entitled, "Motion to Stay," the document is best characterized as a Motion to Dismiss. Further, ECF Nos. 146 and 147 pertain to Defendant's request for a new trial. The Court, accordingly, refers to ECF No. 142 as a Motion to Dismiss, and ECF Nos. 146 and 147 as Motions for a New Trial.

² Defendant's Motion for Extension of Time to File Reply (ECF No. 160) is moot in light of his December 20, 2018 Reply (ECF No. 161). The Court, accordingly, administratively terminates Defendant's Motion for Extension of Time to File Reply. (ECF No. 160.)

to Expedite are denied. (ECF Nos. 142, 145, 146, 147, 148, 150.) The Court denies in part and grants in part Defendant's Motion to Correct PACER Entries. (ECF No. 154.)

I. Background

The underlying facts of this matter are known to the parties and will not be repeated herein. On June 29, 2015, Defendant was convicted by a jury on nine counts of mail fraud, based on a scheme to defraud clients through false billing practices. (ECF No. 70.) Following Defendant's conviction, Defendant filed several post-trial motions, including a Motion for a New Trial, which this Court denied. (ECF Nos. 77, 88, 90, 93.) The Third Circuit affirmed this Court's orders denying Defendant's Motion to Dismiss the superseding indictment, Motion for a New Trial, and restitution judgment. *United States v. Cvjeticanin*, 704 F. App'x 89 (3d Cir. 2017), *cert. denied*, 138 S. Ct. 939 (2018). Subsequently, Defendant filed the instant motions.

II. Legal Standard

Defendant moves pursuant to Federal Rules of Criminal Procedure 12(b)(2) and 33.³ Rule 12(b)(2) provides, "A motion that the court lacks jurisdiction may be made at any time while the case is pending."⁴ Rule 33 provides, in relevant part, "Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." A district court "can order a new trial only if it believes that there is a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted." *United States v. Silveus*, 542

³ All references to Rules hereinafter refer to Federal Rules of Criminal Procedure unless otherwise noted.

⁴ The Court declines to address the Government's timeliness arguments in opposition to Defendant's Rule 12(b)(2) motion because the Government failed to cite precedential case law to support its contention that the term "pending" within Rule 12(b)(2) requires Defendant to have raised his motion during the pendency of the case. (Gov't Opp'n Br. 13, ECF No. 159.) The Court is further not persuaded by the Government's assertion that the Court should construe Defendant's Rule 12(b)(2) motion as a Rule 12(b)(3) motion. (*Id.* at 15.)

F.3d 993, 1004-05 (3d Cir. 2008) (internal quotation marks and citation omitted). “There are five requirements that must be met before a court may grant a new trial on the basis of newly discovered evidence” *United States v. Quiles*, 618 F.3d 383, 388 (3d Cir. 2010). Those requirements are:

(a) the evidence must be in fact newly discovered, i.e. discovered since trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

Id. 388-389 (citation omitted). Defendant bears “a heavy burden in meeting these requirements.” *United States v. Saada*, 212 F.3d 210, 216 (3d Cir. 2000) (internal quotation marks and citation omitted). Newly discovered evidence cannot be “evidence that a reasonably competent attorney allegedly *would have discovered* by means of pretrial investigation” *United States v. DeRewal*, 10 F.3d 100, 104 (3d Cir. 1993). Thus, “newly discovered evidence must be evidence that trial counsel *could not have discovered* with due diligence before trial.” *Id.*

III. Analysis

In his Motion to Dismiss, Defendant argues the Court lacked jurisdiction to conduct the criminal trial because the federal mail fraud statute is unconstitutional, both facially and as applied. (See, e.g., Def.’s Mot. to Dismiss at 2, ECF No. 142.) Citing case law and legislative history from as far back as the 1800s, Defendant’s Motion recounts the historical origins of the federal mail fraud statute, and argues the law has been fraught with issues since its inception. (*Id.* at 4-13.) Defendant further presents a plethora of disjointed claims, many of which are unintelligible to the Court, arguing, among other things, lack of a clear scienter requirement; Congress’s and courts’ failure to satisfactorily define “fraud,” and improper capture of innocent conduct. (*Id.* 14-30.)

Defendant's as applied arguments appear to revive his prior—failed—argument that he did not commit fraud, but merely breached his contract. (*Id.* at 30-36.) *See, e.g., Cvjeticanin*, 704 F. App'x at 91 (holding Defendant's breach of contract argument was "frivolous"). Defendant also argues the federal mail fraud statute violates federalism and the Tenth Amendment. (Def.'s Mot. to Dismiss at 40-44.)

Defendant's Motions for a New Trial rely on allegedly newly discovered evidence. (Def.'s Mot. for New Trial I at 1-2, ECF No. 146; Def.'s Mot. for New Trial II at 4, ECF No. 147.) Among the several hundred pages of exhibits, Defendant submitted e-mail messages that he argues evinces that he disclosed to ADP that Flowerson was his personal advertising agency. (*See, e.g., Apps. B, D*, ECF No. 146-2.) Defendant also submitted e-mail messages that he contends demonstrates his wife openly disclosed her married name and that he did not have a scheme to defraud. (*See, e.g., App. F*, ECF No. 146-2.) Further, Defendant avers that the evidence demonstrates that the Government not only presented, but encouraged, perjured testimony at his trial. (*See, e.g., Mot. for New Trial I* at 9-10; *Mot. II* at 4-6.)

Defendant's motions lack merit. Defendant's arguments regarding the constitutionality of the federal mail fraud statute are unpersuasive, and he fails to support his numerous, and often indiscernible, contentions with competent analysis or legal support. Further, Defendant's as applied argument fails, as this Court and the Third Circuit have already rejected it as frivolous. *See Cvjeticanin*, 704 F. App'x at 91. Defendant's arguments regarding federalism, the Tenth Amendment, and the separation of powers doctrine similarly fail as Defendant's conclusory allegations also lack competent legal analysis, and fail to undermine "[t]he federal government[']s . . . interest in protecting the United States mails from being used as an instrument of fraud." *United States v. Mariani*, 90 F. Supp. 2d 574, 579 n.1 (M.D. Pa. 2000).

Further, the Court finds Defendant failed to satisfy his “heavy burden” in establishing he is entitled to a new trial. *See Saada*, 212 F.3d at 216. Preliminarily, Defendant failed to establish that the evidence is, in fact, newly discovered. In fact, many of the e-mail messages Defendant sent were authored by either himself or his wife. Moreover, Defendant failed to demonstrate that his trial counsel could not have discovered the evidence sooner with due diligence, and Defendant’s second Motion to Dismiss also wholly fails to address how the documents he submitted in support of his motion constitute new evidence.⁵ Defendant also mischaracterizes the evidence, and the Court finds it is not of such a nature that it would probably produce an acquittal at a new trial. The Court, therefore, denies Defendant’s Motions for a New Trial. The Court also denies Defendant’s Motions to Expedite because Defendant’s underlying motions lack merit.

Regarding Defendant’s Motion to Correct PACER Entries, the Court grants Defendant’s request to change the title of ECF No. 142 from “Motion to Stay” to “Motion to Dismiss.” (*See* Def.’s Mot. to Correct, ECF No. 154.) The Court denies Defendant’s request to correct his address on ECF and send e-mail messages of e-filings to his wife’s address or, alternatively, mail all e-filings to his home address. (*See id.*) Although Defendant indicates that he wishes to receive electronic filings via the Court’s electronic filing system, Defendant failed to recognize that such service requires him to waive his right to receive notice by first class mail. If Defendant consents to such waiver, the Court directs Defendant to submit correspondence to the Clerk’s Office requesting to receive documents electronically.

⁵ Defendant’s Motions for a New Trial are also untimely under Rule 33(b)(2), which allows defendants to file a motion for a new trial for reasons other than newly discovered evidence “within [fourteen] days after the verdict or finding of guilty.” Notwithstanding the timeliness of Defendant’s submissions, Defendant’s arguments are frivolous and lack merit.

IV. Conclusion

For the reasons set forth above, Defendant's Motion to Dismiss, Motions for a New Trial, and Motions to Expedite are denied. (ECF Nos. 142, 145, 146, 147, 148, 150.) The Court grants in part and denies in part Defendant's Motion to Correct PACER Entries. (ECF No. 154.) The Court will issue an Order consistent with this Memorandum Opinion.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN

Criminal Action No. 14-274 (MAS)

ORDER

This matter comes before the Court upon *pro se* Defendant Marijan Cvjeticanin's ("Defendant") post-trial motions, including a Motion to Stay (ECF No. 142); Motion for Evidentiary Hearing, New Trial, and to Vacate Final Judgment (ECF No. 146); Motion to Dismiss or for New Trial (ECF No. 147); Motions to Expedite (ECF No. 145, 148, 150); and Motion to Correct PACER Entries (ECF No. 154). The United States of America (the "Government") opposed Defendant's Motion to Dismiss and Motions for a New Trial,¹ but did not oppose Defendant's Motions to Expedite and Motion to Correct PACER Entries. (ECF No. 159.) Defendant replied. (ECF No. 161.)

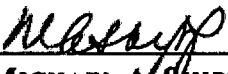
The Court, having carefully considered the parties' submissions, decides the matter without oral argument. For the reasons set forth in the Court's Memorandum Opinion, and for other good cause shown,

IT IS on this 5th day of March 2019, **ORDERED** that:

1. Defendant's Motion to Stay (ECF No. 142) is **DENIED**.

¹ Although ECF No. 142 is entitled, "Motion to Stay," the document is best characterized as a Motion to Dismiss. Further, ECF Nos. 146 and 147 pertain to Defendant's request for a new trial. The Court, accordingly, refers to ECF No. 142 as a Motion to Dismiss, and ECF Nos. 146 and 147 as Motions for a New Trial.

2. Defendant's Motion for Evidentiary Hearing, New Trial, and to Vacate Final Judgment (ECF No. 146) is **DENIED**.
3. Defendant's Motion to Dismiss or for New Trial (ECF No. 147) is **DENIED**.
4. Defendant's Motions to Expedite (ECF Nos. 145, 148, 150) are **DENIED**.
5. Defendant's Motion to Correct PACER Entries (ECF No. 154) is **DENIED** in part and **GRANTED** in part.
6. Defendant may submit proper formal consent to receive electronic filings with the Clerk's Office, requesting to correct his address on ECF and send e-mail messages or e-filings to his wife's address, or, alternatively, mail all e-filings to his home address. In that request, Defendant must consent to waiving his right to receive notice by first class mail.
7. The Court directs the Clerk to change the title of ECF No. 142 to Motion to Dismiss.
8. The Court administratively terminates ECF No. 160.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :
 :
 : Criminal No. 14-274 (MAS)
 v. :
 : **ORDER FOR DISCOVERY**
 : **AND INSPECTION**
 MARIJAN CVJETICANIN :
 :

In order to eliminate unnecessary motions for discovery in this case, to eliminate delays in the presentation of evidence and the examination of witnesses, and to expedite the trial pursuant to the provisions of the Speedy Trial Act of 1974,

IT IS ORDERED:

1. Conference. Within ten (10) days from the date hereof the attorneys representing the United States and the defendant shall meet or confer to seek to resolve any discovery issues prior to the filing of motions, and the United States shall permit the defendant to inspect, and shall permit defendant to photograph or copy, or shall furnish a photograph or copy of:

(a) All statements of the defendant required to be produced under Rule 16(a)(1)(A), (B) or (C), Fed.

R. Crim. P.

(b) Defendant's prior criminal record as required by Rule 16(a)(1)(D), Fed. R. Crim. P.

(c) All documents and tangible objects required to be produced under Rule 16(a)(1)(E), Fed. R. Crim. P.

(d) All reports of examinations and tests required to be produced under Rule 16(a)(1)(F), Fed. R. Crim. P.

(e) All summaries of expert witnesses' testimony, required to be produced under Rule 16(a)(1)(G), Fed. R. Crim. P. The summaries provided shall describe the witnesses' opinions, the bases and reasons therefore, and the witnesses' qualifications.

(f) Any material evidence favorable to the defense related to issues of guilt, lack of guilt or punishment which is known or that by the exercise of due diligence may become known to the attorney for the United States, within the purview of Brady v. Maryland and its progeny.

(g) If there is more than one defendant named in the indictment, and if the United States intends to introduce into evidence in its case-in-chief a confession made to law enforcement authorities by one defendant which names or makes mention of a co-defendant, then the United States must make a copy of that statement or confession available to counsel for the non-declarant defendant, along with a proposal for its redaction to conform with the

requirements of Bruton v. United States. If the government makes no such disclosure and turnover within the time period allowed, the confession may not be received at a joint trial of the declarant and non-declarant defendants. If, within ten (10) days after receipt of the confession and its redacted version, counsel for the non-declarant defendant makes no objection to the redacted statement, the defendant will be deemed to have acceded to the receipt of the redacted statement into evidence.

(h) A defendant who receives discovery pursuant to this Order shall be deemed to have requested such disclosure for the purpose of triggering defendant's reciprocal discovery obligations under Rule 16(b), Fed. R. Crim. P. The defendant shall have ten (10) days from its receipt of discovery from the United States to produce its reciprocal discovery.

(i) Any defendant intending to offer a defense of alibi or insanity or mental condition shall comply with the requirements of Rules 12.1 and 12.2, Fed. R. Crim. P.

2. Disclosure Declined. If, in the judgment of the United States Attorney, in order to protect the identity of a confidential informant or undercover agent, to prevent interference with an ongoing investigation, to protect the integrity of the criminal proceeding, or to otherwise serve the interests of justice, any disclosure set forth in paragraph 1 hereof should not be made, disclosure may be declined, and

defense counsel advised in writing of the declination within five (5) days of the conference.

A defendant who seeks to challenge the declination may move the Court for relief in the following manner:

(a) No later than ten (10) days from the time that the government declines, the defendant shall file a motion for discovery or inspection.

(b) The motion shall conform to the schedule set forth in paragraph 12 of this Order, unless otherwise ordered by the Court.

(c) The motion shall set forth: (1) the statement that the prescribed conference was held; (2) the date of the conference; (3) the name of the attorney for the United States with whom the conference was held; (4) the matters which were agreed upon; and (5) the matters which are in dispute and which require the determination of the Court.

(d) In responding to any such motion, the United States must show good cause for the declination of discovery, and in doing so may invoke the provisions of Fed. R. Crim. P. 16(d)(1).

3. Rule 404(b) Evidence. The United States shall provide notice to the defense of all evidence it intends to offer of other crimes, wrongs or acts within the meaning of Rule 404(b)

of the Federal Rules of Evidence, not less than ten (10) calendar days prior to the date of trial, except that for good cause shown, the Court may excuse such pretrial notice.

4. Jencks and Giglio Material. The United States agrees to produce all statements within the meaning of the Jencks Act, 18 U.S.C. § 3500, and impeachment evidence within the meaning of Giglio v. United States, 405 U.S. 150 (1972), sufficiently in advance of the witness's testimony to avoid delay in the trial. Similarly, the defense shall produce "reverse Jencks" statements sufficiently in advance of the witness's testimony to avoid delay in the trial.

5. Continuing Duty. Any duty of disclosure and discovery set forth herein is a continuing one and the attorneys for all parties shall produce any additional discoverable information.

6. Exhibits. The United States shall pre-mark all exhibits that it intends to introduce as part of its case-in-chief and shall permit defense counsel to inspect and copy such exhibits thirty (30) days prior to trial. A set of such pre-marked exhibits with an exhibit list shall be given to the trial judge's deputy clerk no later than the first day of trial. The defendant's exhibits shall also be pre-marked and, unless otherwise ordered by the Court upon the defendant's application, shall be disclosed to the United States within

seven (7) days after the United States' disclosure. Defense counsel, in an appropriate case, may apply to the Court for an order requiring the United States to pre-mark exhibits more than thirty (30) days in advance of trial. The United States and the defense shall also pre-mark all Jencks Act materials and "reverse Jencks" pursuant to Rule 26.2, Fed. R. Crim. P., so that no trial delay is encountered.

7. Authenticity of Exhibits. The authenticity of all exhibits disclosed to and examined by counsel pursuant to the provisions of paragraph 6 of this Order shall be deemed to have been accepted by either the defendant or the United States unless counsel files with the Court, fourteen (14) days prior to the date of trial, a notice that the authenticity of one or more exhibits will be contested at trial, together with a statement delineating why the authenticity of the exhibit is being challenged together with a certification that the challenge to authenticity is being made in good faith.

8. Chain of Possession. When counsel has examined an exhibit disclosed prior to trial pursuant to the provisions of paragraph 6 of this Order, the chain of possession of the exhibit will be deemed to have been accepted by either the defendant or the United States unless counsel files with the Court fourteen (14) days prior to the date of trial, a notice that the chain of possession of the exhibit will be contested at trial together with a statement delineating that the chain of

possession of the exhibit is being challenged and a certification that the challenge to the chain of possession is being made in good faith.

9. Scientific Analysis. When any party has disclosed the scientific analysis of an exhibit proposed to be introduced at trial by that party, which analysis has been determined by an expert in the field of science involved, then the scientific analysis of the exhibit will be deemed admitted unless counsel for a party receiving the disclosure files with the Court, fourteen (14) days prior to trial, a notice that the scientific analysis of the exhibit will be contested.

10. Other Motions by Defendant. Motions regarding defenses or objections permitted pursuant to Rules 12 and 41(g), Fed. R. Crim. P., including, inter alia, motions for suppression of evidence, shall be made within thirty (30) days from the date hereof unless good cause for delay is shown.

11. Translations. In the event that the United States intends to utilize translations of any conversations, copies or transcripts of such translations shall be produced for defense counsel no later than thirty (30) days prior to the date of trial. The correctness of any such translation or transcript will be deemed admitted, unless defense counsel serves and files with the Court, fourteen (14) days prior to the date of trial, a notice that counsel objects to the translation or

transcript, specifying the portions thereof to which objection is made and counsel's contentions as to the correct translation.

12. All pretrial motions not otherwise specifically provided for in this or other Orders of the Court in this case will be deemed waived unless they are filed and served not later than:

Pretrial motions filed by:	<u>June 17, 2014</u>
Opposition due:	<u>July 1, 2014</u>
Motions hearing date:	<u>July 15, 2014</u>
Trial set for:	<u>August 4, 2014</u>

13. Counsel shall furnish to the Court, five (5) days prior to the date of trial, requests to charge and proposed voir dire questions.

s/Michael A. Shipp

MICHAEL A. SHIPP, U.S.D.J.

Dated: May ²¹~~15~~, 2014

APPENDIX F

1 is we put in front of them. They're not checking the ads. So
2 he says, the only way that anybody would know the ads weren't
3 being placed is if we were using a separate advertising
4 company, except he wasn't, he was using himself.

5 So now, what a great idea. Now I can bill for
6 services that I don't even need to provide. So instead of
7 basically having advertising be printed, I can essentially
8 print money, because that's what these invoices were. Every
9 invoice he sent to ADP and Broadridge was basically another
10 \$3,000 in his pocket for doing absolutely nothing. Okay.
11 That's the plan.

12 Now, how does this plan work? The only way the plan
13 works is if he conceals his ownership and his interest in
14 Flowerson Advertising. So we got the plan in place, all
15 right. Check that box, mail fraud; first element. Plan,
16 check, got it. Second, intent. Did he act with the intention
17 to further that plan? Did he act knowingly and purposefully
18 to deceive ADP and Broadridge? All you got to do, when you
19 want to ask yourself about intent, is to look at what he did
20 and the lengths to which he went to conceal the fact that he
21 was Flowerson Holdings. Because Flowerson is the vehicle for
22 the fraud. It doesn't work if everyone knows that he's
23 Flowerson. So what does he do?

24 You heard the testimony, again, of Ms. Sielewonczuk
25 and Ms. Sacristan. They took the stand and they told you they

1 MR. CARLETTA: Thank you, your Honor. If it please
2 the Court, members of the jury, last Monday when this trial
3 started, the government stood up here and told you this is a
4 case about a lawyer who exploited his position at his firm of
5 Wildes and Weinberg. He took advantage of two of its largest
6 corporate clients, ADP and Broadridge, companies worth
7 collectively over a billion dollars. How he fleeced them for
8 hundreds of thousand of dollars over a period of three years
9 by a false billing scheme whereby he billed them for services
10 which he never rendered and never intended to provide.

11 We told you that he did this through the use of an
12 advertising company called Flowerson Holdings, Flowerson
13 Advertising, which he concealed and secretly kept from Wildes
14 and Weinberg, from ADP and from Broadridge. Now, the only
15 thing different between today and last Monday is that now this
16 is no longer just an allegation, it is no longer merely an
17 accusation, it is fact. It is 100 percent true. And the
18 reason why is because over the last week you had the
19 opportunity to sit here and see the government's evidence.
20 You saw how this case unfolded. You heard the testimony from
21 the various witnesses. You watched the videotape, very long
22 videotape, you heard the audio. You saw the documents and you
23 read the e-mails. You know as sure you are sitting here today
24 that that defendant, Marijan Cvjeticanin, is guilty beyond any
25 doubt whatsoever of each and every count of mail fraud alleged

OPENING STATEMENT - NAVARRO

1 ladies and gentlemen of the jury, this case is about a lawyer
2 who stole hundreds of thousands of dollars from his client
3 through a false billing scheme. The man is sitting right
4 there at the defense table and his name is Marijan
5 Cvjeticanin.

6 We will prove to you through overwhelming evidence
7 that for a period of almost three years the defendant
8 routinely billed his client for services he never performed.
9 We will show you how the defendant perpetrated the fraud
10 through an intricate web of lies that included false names of
11 companies he secretly controlled and fabricated documents.

12 You will see and hear how the fraud went down.
13 You're going to hear it from multiple witnesses. You're going
14 to hear the defendant when he was confronted about the fraud
15 admitted much of it, and he tried to threaten the former boss
16 and victims in this case to not go to law enforcement. Before
17 I get to the evidence in more detail let me introduce the
18 prosecution team. I'm Francisco Navarro. I'm an Assistant
19 United States Attorney. Dennis Carletta is also an Assistant
20 United States Attorney. Rick Patel from the Department of
21 Homeland Security. And our paralegal cannot be here today.
22 Her name Gayle Horton. Together we represent the United
23 States of America.

24 Now, talking about the case, you're going to hear the
25 defendant is a lawyer admitted to practice law in New York.

—OPENING STATEMENT - NAVARRO—

1 tell ADP and Broadridge to sweep it under the rug. He said, I
2 won't say anything if you don't say anything.

3 Now, Mr. Weinberg obviously did not take him up on
4 his offer. He reported it to law enforcement. And Mr.
5 Weinberg is also going to take you, by the way, through the
6 individual files, show you what was done, what should have
7 been done, and then what the defendant did.

8 After you hear from Mr. Weinberg you're going to hear
9 from Special Agent Rick Patel, Department of Homeland
10 Security. Special Agent Patel is going to tell you about when
11 he conducted a lawful search of the defendant's home. In his
12 home, Agent Patel found the doctored ads. You're going to see
13 them here in court. We're going to show you the ads.

14 We're going to show you that he had a warehouse of
15 ads in his home. Special Agent Patel will testify that the
16 ads and all newspaper clippings were strewn on a table larger,
17 much larger than the defense table -- either the government
18 table or defense table. He's going to show you the folders
19 where the ads were found and you will see that they are
20 literally in the process of being doctored.

21 You're going to hear from ADP and Broadridge
22 employees. They're going to testify that they had no idea
23 that he controlled Flowerson. We're going to show you e-mails
24 that shows the lengths he went to hide the ownership of
25 Flowerson. Always referring to them in the third person.

—OPENING STATEMENT - NAVARRO—

1 They, the advertising company, never me or my.

2 You're going to hear that he had his wife assist him
3 with this but she used her maiden name in all correspondence
4 so nobody would know she was connected to him. You're going
5 to hear that he signed faked names for fictitious people, the
6 documents. For example, you are going to hear that he would
7 sometimes signed his name as Marty Flowerson so that nobody
8 would know that it was really Marijan Cvjeticanin. We'll show
9 you that there really is no Marty Flowerson.

10 You're also going to hear about something called an
11 agency profit agreement. One of the things the defendant said
12 on the videotape was that he was permitted to do this by ADP
13 and Broadridge. They told him, you could bill to Computer
14 World, for example, and you don't have to place the ads, you
15 could keep it as your profit. You're going to hear that on
16 the tape.

17 You're going to hear from the ADP and Broadridge
18 employees that they obviously never agreed to any such thing,
19 never heard of anything like that. You're also going to hear
20 from Special Agent David Rowinski from the Department of
21 Homeland Security. He's going to tell you about the analysis
22 he did of the defendant's bank records. He's going to tell
23 you those bank records show that the payments from ADP and
24 Broadridge went to an account in the name of Flowerson
25 Holdings and the signature on that account was the

1 the defendant went to his boss at Wildes and Weinberg and said
2 he wanted to switch the advertising agency. Didn't want to
3 use the one they had used for a long time and he want to
4 switch to one called Flowerson Advertising. Remember that
5 name, Flowerson.

6 Sometimes you will see it as Flowerson Advertising,
7 sometimes you will see it as Flowerson Holdings. You're going
8 to hear from his boss that the boss said okay, fine, switch
9 it.

10 What the defendant didn't tell anyone, what he didn't
11 tell his boss, what he didn't tell anyone at Wildes and
12 Weinberg, what he didn't tell ADP and what he didn't tell
13 Broadridge was that he owned Flowerson. He owned it. Not
14 only did he own it, he controlled it on a day-to-day basis,
15 him and his wife. And he used Flowerson as the vehicle to
16 commit the fraud. Here's how he did it.

17 Flowerson was supposed to place these advertisements
18 in various newspapers and magazines for the clients. In many
19 instances, which we will show you, we'll take you in detail
20 through them, he didn't do that. He simply pocketed the
21 money.

22 And you know what, I'm going to show you what an
23 invoice from Flowerson looks like right now. Just take a
24 moment. Look at that for a minute. Realize it's a little
25 small and a little far for some, but generally speaking, let

1 defendant's.

2 And then he's going to tell you about how the money
3 was taken from that Flowerson account and sent to the
4 defendant's personal checking and savings accounts.

5 After you've heard all of the evidence, you're going
6 to see that every excuse the defendant has come up with, the
7 ever-changing excuses he comes up with are disproven by the
8 evidence. You're going to see the defendant is guilty of mail
9 fraud, all nine counts, and we're going to be asking you to
10 return a verdict to that effect. Thank you.

11 THE COURT: Counsel. Ms. Gauli-Rufo.

12 MS. GAULI-RUFO: Thank you, your Honor. Good
13 afternoon. Good afternoon, counsel. Ladies and gentlemen of
14 the jury, I just want to start off by saying that Marijan
15 Cvjeticanin, who is sitting here right now, is not guilty.
16 Not guilty of any of the nine counts that in the superseding
17 indictment.

18 My name is Lorraine Gauli-Rufo. I represent Marijan
19 Cvjeticanin. I, together with Thomas Ambrosio and Wilma
20 Sierra, are the attorneys and the investigator for Marijan
21 Cvjeticanin.

22 The government stood here a moment ago and told you
23 its version of the event of the charges. But this case,
24 ladies and gentlemen, this case does not involve fraud. This
25 is a case about an unwritten agreement, an unwritten agreement

1 applications approved, did they?

2 A. No, they did not.

3 Q. The defendant further states "well, they did because they
4 have e-mails from me. Meaning they know, you know, my e-mails
5 from, you know, your firm or our firm and they said oh, yes,
6 perfect, do it that way." Do you have any understanding --
7 what did you understand the defendant to mean when he said
8 that?

9 A. I have no idea what he was alluding to, I suspect he was
10 alluding to the fact that they didn't know what was going on.

11 Q. Did you ever see these e-mails?

12 A. No.

13 Q. Did you have any access to e-mails?

14 A. I have access to all e-mails.

15 Q. Do you have any idea if these e-mails actually exist?

16 A. For my investigation, they do not.

17 Q. The defendant further states, they're not going to go,
18 and if they do, they'll have to revoke all of these I-140s
19 with whatever consequences there will be.

20 What kind of consequences would there be?

21 A. It would be very embarrassing to the corporation. These
22 individual workers, you know, we're dealing with people, would
23 be hurt by this. These people are workers. They are looking
24 to immigrate with their families and themselves, and this
25 would be a huge setback to that process if they revoked the

1 Englewood, New Jersey, and we have an office in Aventura Miami
2 also.

3 Q. How long have you been working for Wildes and Weinberg?

4 A. I've been working there since 1971, 44 years.

5 Q. 44 years. Do you have a primary area of expertise?

6 A. My area of expertise is immigration law, sir.

7 Q. Have you been doing that for 40 years?

8 A. Yes, I have.

9 Q. Now, what types of clients do you have at Wildes and
10 Weinberg?

11 A. I like to say at Wildes and Weinberg we represent a full
12 spectrum of clients. Many of our clients are large
13 corporations. I represent athletes, entertainers who enter
14 United States and need visas to work here. We do some defense
15 work representing people who are being deported from the
16 United States also.

17 Q. Now, you reference the fact that you have some corporate
18 clients; is that correct?

19 A. That is correct.

20 Q. Are you familiar with two corporations named ADP and
21 Broadridge?

22 A. Very much so, yes.

23 Q. And have you represented those corporations in the past?

24 A. Yes, I have.

25 Q. And do you -- does your firm currently represent them in

1 Q. Okay. Now, was the defendant -- was part of the
2 defendant's job to help take that verbiage that we were
3 talking about from the abstracts from the company ADP and
4 Broadridge, was it part of his job to help come up with the ad
5 descriptions?

6 A. It was part of his job to oversee that that was done.

7 Q. Okay. And he got paid for that by you, correct?

8 A. Correct, yes, definitely.

9 Q. Now, was the defendant utilizing the advertising company
10 known as Creative Effects in connection with these permanent
11 labor applications in or about January 2010 to September 2012?

12 A. No.

13 Q. No, he wasn't. What entity was he using -- strike that.
14 Why wasn't he using that entity?

15 A. Marijan at one time came to me and told me that he did
16 not want to use Creative Effects any longer, that he felt that
17 they were not doing an adequate job, that he was having
18 difficulty in dealing with them and he wanted to use a
19 different agency. I told him that if he could find another
20 agency that would do it for us, it was okay to use another
21 agency.

22 Q. Now, did he explain to you what the particular
23 difficulties he was having were?

24 A. He wasn't getting tear sheets, meaning that he wasn't
25 getting proof that the ads were placed properly, they were

1 making mistakes he said, that type of thing.

2 Q. Did you have an personal knowledge of any of these --

3 A. No, I did not.

4 Q. -- alleged issues?

5 A. No, I did not.

6 Q. Did any other lawyers in your firm make a switch from
7 Creative Effects to this other agency?

8 A. No, they did not.

9 Q. Did any other lawyers in your firm indicate any alleged
10 problems with this ad agency as alleged by the defendant?

11 A. No, they did not.

12 Q. Did the defendant tell you the name of the entity he
13 wanted to switch to?

14 A. No.

15 Q. No.

16 A. No, he did not.

17 Q. Sitting here now, do you know the name of the entity that
18 he used to place these advertisements?

19 A. In 2010, the agency --

20 Q. Sitting here now do you know who it was?

21 A. Yes, I do.

22 Q. Who was it?

23 A. Flowerson.

24 Q. Flowerson. All right. How did you -- what is it that
25 you know about Flowerson, if anything?

1 Q. What is it?

2 A. It's a labor certification issued to Broadridge Financial
3 Solutions in reference to Sandeep Vemasani.

4 Q. Sandeep Vemasani?

5 A. Vemasani.

6 Q. And who prepared that document?

7 A. Marijan.

8 Q. Again, at the risk of beating a dead horse, how do you
9 know that?

10 A. That was Marijan's job in my office.

11 Q. Anyone else's job to prepare these filings?

12 A. No, it was Marijan's job.

13 Q. Now, if we move to pages 5 and 6 of this filing, can you
14 please tell the jury on which dates newspaper advertisements
15 were purported to have been run in the newspaper and
16 specifically the *Star Ledger*?

17 A. It's alleged that advertisements were placed in the *Star*
18 *Ledger* on March 4, 2012 and also in the *Star Ledger* on
19 March 11, 2012.

20 Q. Did you have an opportunity to review the *Star Ledger*
21 from those dates?

22 A. Yes, I did.

23 Q. And did you have the opportunity to confirm whether or
24 not an ad had actually been run on those dates as purported by
25 the defendant in that DOL filing?

1 A. And it would describe the job in detail, the position.

2 Q. Meaning what?

3 A. Well, as part of the application, the company has to
4 describe what the position is that they are seeking to have
5 certified.

6 Q. Okay. And then you also mentioned some recruitment
7 efforts. Do you have to detail recruitment efforts in this
8 9089 form?

9 A. The regulations require that we go through five different
10 steps of recruitment in order to prove that the company has
11 tried to find the worker for a position.

12 Q. Of those types of recruitment, are newspaper
13 advertisements one of the forms acceptable to the Department
14 of Labor?

15 A. The regulations specifically requires that two Sunday
16 newspaper ads be placed in a publication of general
17 circulation in the area where the services are to be rendered.

18 Q. Now, this advertisement, I assume in the report you're
19 indicating in a 9089 that an ad had been placed, correct?

20 A. Every application has that in it, yes.

21 Q. So the advertisement has to be placed in a newspaper
22 before the DOL 9089 -- the 9089 form is submitted to the DOL,
23 correct?

24 A. Without any question, yes.

25 Q. That's basically detailing the recruitment efforts you

1 of its regularly conducted business?

2 A. Yes.

3 MR. NAVARRO: Move to admit Government Exhibit 11,
4 your Honor.

5 THE COURT: Ms. Gauli-Rufo.

6 MS. GAULI-RUFO: No objection, your Honor.

7 THE COURT: So moved.

8 (Government's Exhibit 11 E-mail 10/2/09 in evidence.)

9 Q. I'm handing you what's been marked Government Exhibit 12.
10 Do you recognize it?

11 A. Yes, I do.

12 Q. Can you tell me briefly what it is?

13 A. It's an e-mail from the Wildes and Weinberg servers with
14 a PDF file attached.

15 Q. Who is the -- which e-mail address sent from?

16 A. It's from Marijan's Wildes and Weinberg account.

17 Q. Who is it sent to?

18 A. Flowinvest@aol.com.

19 Q. What's the date on it?

20 A. March 22, 2010, 12:09 p.m.

21 Q. Is it the regular practice of Wildes and Weinberg to
22 maintain copies of all e-mails sent to and from it's e-mail
23 address?

24 A. Yes.

25 Q. Was this e-mail kept by Wildes and Weinberg in the course

1 A. Uh-huh.

2 Q. That went from Wildes and Weinberg to Flowerson Holdings,
3 saying I need the ad for applicant Patel?

4 A. No.

5 Q. Did you ever hear a voice message where somebody from
6 Flowerson called and left a message on the voice message
7 system that said the ad for application Patel was done on the
8 following dates in the following newspaper?

9 A. I did not know Flowerson existed until September of 2012
10 when we read his e-mails period.

11 Q. That's not my question. My question is did you ever hear
12 an e-mail -- a voice message where somebody from an
13 advertising agency was calling in and left a message of the
14 dates that are supposed to be --

15 A. Most definitely not.

16 Q. Okay. And did you ever see a letter that was drafted by
17 Wildes and Weinberg in the form of a fax or a letter that was
18 put in the mail that said we're doing our 9089 filing for
19 application X, please tell us what dates and what paper the ad
20 was placed?

21 A. No, I never saw that.

22 Q. And I understand that when you did your reviews --

23 A. Pardon me?

24 Q. When you did the review, the pre-filing review?

25 A. Oh, yes.

1 Q. And the only thing that he needed in connection with
2 hiring a firm in Virginia would have been one to two pages per
3 filing, which would say, "Star Ledger, Sunday" --

4 A. Yes.

5 Q. -- "May 21st" --

6 A. Two pages, it's on two pages, two of five of the
7 application, that's right.

8 Q. So a total of 212, there would be, you know, 424 pages?

9 A. Yeah, right.

10 Q. Do you recall if you had a cover letter saying, Mike,
11 look at these --

12 A. No, I didn't, it was conversations that we had. He
13 wanted to see the documents. He wanted to see what we were
14 talking about. And I remember carrying boxes with two other
15 individuals up into his office, where they may still be, I
16 don't know.

17 Q. Was that -- where is his office located? Same building
18 as yours?

19 A. Oh, no, no, no. He's further downtown.

20 Q. Okay. And do you recall approximately what day, what
21 month that was, what year?

22 A. What I know is that the review and investigation occurred
23 in March of 2013, so it was sometime around March, February of
24 2013.

25 Q. Because the videotape, I believe, is March 27, 2013?

- 1 Q. At the house?
- 2 A. Yes, his wife and I believe his young child was there as
3 well.
- 4 Q. And do you remember -- in the course of the investigation
5 did you learn what his wife's name was?
- 6 A. I did. It's Katica -- I don't know if I'm pronouncing it
7 correctly, but it's Katica Cvjeticanin.
- 8 Q. And did you happen to also learn her maiden name?
- 9 A. I did. Katica Papac.
- 10 Q. Papac. And have you seen that name Kathy or Katica Papac
11 on any other documents in this case?
- 12 A. I have.
- 13 Q. What kind of documents?
- 14 A. In numerous e-mails from Flowerson Holdings, Global
15 Media. The maiden which was Kathy Papac.
- 16 Q. In any of those documents did you see the use of the
17 marital name?
- 18 A. No.
- 19 Q. By the way?
- 20 A. Not in those documents, no.
- 21 Q. Was it always the maiden name?
- 22 A. It was always the maiden name, correct.
- 23 Q. All right. Now, when you went to the defendant's house
24 to arrest him, what happened when you got there?
- 25 A. So, we had an arrest warrant. Obviously I wasn't the

1 Mr. Weinberg, can you read the name of the business on
2 this request for taxpayer ID -- identification number and
3 certification?

4 A. This is -- the name is Flowerson Holdings Inc. and
5 business name Flowerson Advertising under that.

6 Q. All right. And the address?

7 A. 6 LT John Olsen Lane, Saint James, New York.

8 Q. Can you tell what company this was sent to right there on
9 the right hand side?

10 A. It was sent to Broadridge Financial Solutions.

11 Q. Can we scroll down a little bit. Can you see who it's
12 signed by?

13 A. Signed by Marty Flowerson.

14 Q. What's the date there?

15 A. March 31st, 2010.

16 Q. And lastly, sir, I'm going to show you what's been marked
17 as Government Exhibit 10 in evidence. Also in evidence. Do
18 you recognize that document?

19 A. Yes.

20 Q. Again what is this?

21 A. This is a transmission by Paul Viola off of Marijan's --
22 it says from Marijan. So Paul went into Marijan's computer
23 and sent that, got a copy of that, of the e-mail that was sent
24 by Marijan to Flowerson on February 22, 2010.

25 Q. From the defendant to himself essentially?

1 of papers in Mr. Weinberg's office.

2 Q. Now, following that, and that the video recording we saw
3 in court?

4 A. That's correct.

5 Q. For the past two days?

6 A. Yes.

7 Q. After you had the video recording and after you had the
8 initial discussions with people from ADP and Broadridge and
9 Wildes and Weinberg, what additional steps did you take, if
10 any, to further investigate the case?

11 A. I obtained an arrest warrant. After I determined all the
12 evidence that I saw, I decided that it might be a good time to
13 go before a judge, swear out a complaint, and get an arrest
14 warrant.

15 Q. And was that warrant and your decision to go get a
16 warrant, was that based simply on statements to you, or was it
17 based on your review of documents or any other kind of
18 evidence?

19 A. Review of documents, statements, basically a whole -- a
20 whole bunch of things.

21 Q. And approximately how long were you investigating the
22 case before you made the decision to try to get an arrest
23 warrant?

24 A. I think I started the case February 2013. I want to say
25 February 11th. I'm not positive on the exact date. And I

1 labor certification to review, and that he was responsible for
2 the statements contained in the labor certification or to
3 verify that they were truthful.

4 Q. So if somebody else had -- somebody had to type that
5 information in at Wildes and Weinberg, correct?

6 A. We had a staff, yes.

7 Q. They had to go in and they had to type in the
8 descriptions and the dates on the publication, the name of the
9 publication, all throughout the form, correct?

10 A. No.

11 Q. No one had to type that?

12 A. You said someone had to do it.

13 Q. Somebody had --

14 A. Some individual had to do it, yes.

15 Q. Yes?

16 A. But I'm not saying that it wasn't Marijan who did it.

17 Q. Are you saying that it was Marijan that would type
18 everything onto --

19 A. I'm saying that it was Marijan that would type in the
20 information on the ads that were --

21 Q. No. I'm talking about the 9089 form.

22 A. Yes.

23 Q. The entire form.

24 A. I'm saying that I know that the form was completed in
25 part by others, but that the information contained in

1 A. The representation of a company like ADP doesn't only
2 deal with labor certifications, it deals with the whole
3 complex immigration problem. And there are many aspects of
4 that problem aside from the labor certification process.

5 Q. And so a firm like yours, even though you're doing these
6 labor certifications, during that process, you may be handling
7 many other things, for -- in connection with the particular
8 applicant, correct?

9 A. Yes, definitely. When you say "applicant," you mean the
10 foreign worker --

11 Q. Yeah, the foreign worker applicant, yes.

12 A. Yes. We are involved with obtaining temporary documents
13 and permanent documents, extensions of papers, travel permits,
14 many different aspect of the process.

15 Q. And it would be fair to say that a firm that had a lot
16 less experience than your firm might not be as successful at
17 getting clients, because if mistakes are made, the applicants
18 don't get approved?

19 A. Major corporations do not hire firms that do not have
20 experience, firms that are not -- that do not have expertise
21 in a particular field. They would not hire a small firm to do
22 something, they look for the experts in the field.

23 Q. So if you met with a new client, let's say, I'll just
24 throw out a name, Exxon. One of the things you're going to
25 say, Look, we've been doing this for a long time. We have 44

1 A. Correct.

2 Q. Again, Agent Patel, did you have the opportunity to
3 review the newspapers from the *Star Ledger* in connection with
4 this filing?

5 A. I did.

6 Q. And did you review the -- obviously, you clearly reviewed
7 the real newspapers on December 19th and January 16th,
8 correct?

9 A. That's correct.

10 Q. And did you find a real ad there?

11 A. I did not.

12 Q. And did you review the newspapers from the Sunday edition
13 of the *Ledger* in October of 2010?

14 A. Correct.

15 Q. And November of 2010?

16 A. Correct.

17 Q. And did you find any advertisements in connection with
18 this specific job description?

19 A. With this specific job, no, I did not.

20 Q. How about *Computer World*?

21 A. I did not find any ads for *Computer World*.

22 Q. We'll do one more. Parul Soni?

23 A. Same kind of set up.

24 Q. Yup. Exhibit 9 is the DOL filing. The ads were
25 purported to have been run in the *Star Ledger*, again,

APPENDIX G

No.°19-1599

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,

Appellant

Appeal from the Final Order in a Criminal Case of the United
States District Court for the District of New Jersey (Crim. No. 14-
274). Sat Below: Honorable Michael A. Shipp, U.S.D.J.

CORRECTED BRIEF FOR APPELLEE

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Sheila Strommen] . . . completely eviscerates the Government's scheme to defraud argument. Without it there is simply no proof of fraud in this matter . . . , regardless of how many advertisements the Appellant did, or didn't run . . . "). Cvjeticanin did not—and cannot—make that showing.

To determine whether the subject emails would likely cause an acquittal on retrial, the District Court had to weigh the emails "against all of the other evidence in the record, including the evidence already weighed and considered by the jury in the defendant's first trial." *U.S. v. Kelly*, 539 F.3d 172, 189 (3d Cir. 2008). It could not, as Cvjeticanin's opening brief suggests, view the emails "in a vacuum." *Id.*

Having presided over Cvjeticanin's four-day trial, the District Court was well equipped to make that assessment. The evidence established that Cvjeticanin billed ADP and Broadridge for hundreds of thousands of dollars' worth of advertisements that his company never placed. SA69, 75–80; SA1087, at DE105. The Government introduced inculpatory video and audio

analysis of his *Brady* claims. The court did no such thing. In fact, it had no occasion to evaluate the merits of those claims because it dismissed them as untimely. *See infra* Section B. Thus, the District Court did not, as Cvjeticanin suggests, depart from existing Third Circuit precedent regarding newly discovered *Brady* evidence or create a circuit split in that regard.