

APPENDIX A

No. 22-3171

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 26, 2022
DEBORAH S. HUNT, Clerk

MICHAEL A. HAGAR,)
Petitioner-Appellant,)
v.)
UNITED STATES OF AMERICA,)
Respondent-Appellee.)

ORDER

Before: CLAY, Circuit Judge.

Michael A. Hagar, a federal prisoner proceeding pro se, appeals the district court's order denying his motion to vacate, set aside, or correct his sentence filed under 28 U.S.C. § 2255. Hagar moves this court for a certificate of appealability and for leave to proceed in forma pauperis on appeal. *See Fed. R. App. P. 22(b), 24(a)(5).*

In 2019, a jury convicted Hagar of one count of cyberstalking in violation of a protective order, in violation of 18 U.S.C. §§ 2261(b)(6) and 2261A(2)(B) (Count 1), and two counts of making a threatening communication in interstate commerce, in violation of 18 U.S.C. § 875(c) (Counts 2 and 3). These charges arose from threatening, harassing, and intimidating emails that Hagar sent to employees of the Eaton Corporation and the Goodyear Tire and Rubber Company, his former employers, as well as law enforcement officials in Oregon. The district court sentenced Hagar to 60 months on each count to be served consecutively for a total of 180 months of imprisonment and ordered him to serve a three-year term of supervised release and to pay restitution in the total amount of \$559,486.41. On direct appeal, we affirmed Hagar's conviction and sentence. *United States v. Hagar*, 822 F. App'x 361 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 1115 (2021).

Hagar filed a timely § 2255 motion to vacate, claiming a speedy trial violation, prosecutorial misconduct, and ineffective assistance of counsel. Hagar also filed a motion to conduct discovery pursuant to Rule 6 of the Rules Governing § 2255 Proceedings. The district court denied both motions and declined to issue a certificate of appealability. This timely appeal followed.

Hagar moves this court for a certificate of appealability. *See* Fed. R. App. P. 22(b). To obtain a certificate of appealability, Hagar must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Hagar may “satisf[y] this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Where the district court rejected a claim on procedural grounds, Hagar must “show[], at least, that jurists of reason would find it debatable whether [his § 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Venue: Some of Hagar’s claims relate to his argument that the Northern District of Ohio was not the proper venue for his prosecution because his criminal conduct occurred in Oregon. Hagar’s venue argument was raised and rejected on direct appeal. We first determined that Hagar had forfeited this argument by failing to challenge venue in a pre-trial motion for change of venue or in a motion for a judgment of acquittal. *Hagar*, 822 F. App’x at 369-70. We went on to determine that, even if Hagar had not forfeited his venue argument, it would fail on the merits. *Id.* at 370-71. C.B., one of the victims named in the superseding indictment, worked at Eaton’s headquarters in Beachwood, Ohio, and Hagar sent the threatening emails referenced in Counts 2 and 3 to C.B.’s Eaton email address. In addition, Count 1 referenced the emails that Hagar sent to C.B.’s Eaton email address as part of his course of conduct to harass and intimidate R.G., the cyberstalking victim, who was related by marriage to C.B. We concluded that venue was proper because Hagar sent the emails to C.B. in the Northern District of Ohio, regardless of whether C.B.

actually read the emails. *Id.*; *see* 18 U.S.C. § 3237(a); *United States v. Jeffries*, 692 F.3d 473, 483 (6th Cir. 2012), *abrogated on other grounds by* *Elonis v. United States*, 575 U.S. 723 (2015). We also held that venue was proper under the “substantial contacts” test because Eaton and Goodyear addressed Hagar’s conduct from their respective headquarters in the Northern District of Ohio and because evidence and several witnesses were located in the district. *Hagar*, 822 F. App’x at 371; *see United States v. Brika*, 416 F.3d 514, 527 (6th Cir. 2005).

In his motion for a certificate of appealability, Hagar contends that our merits analysis of his venue argument was dicta and not binding in his § 2255 proceedings. “[A]lternative holdings are not dicta,” *Freed v. Thomas*, 976 F.3d 729, 738 (6th Cir. 2020), and our alternative holding on the merits of Hagar’s venue argument establishes the law of the case, *see Howe v. City of Akron*, 801 F.3d 718, 740 (6th Cir. 2015). And Hagar cannot use a § 2255 motion to relitigate an issue that he raised on direct appeal. *See DuPont v. United States*, 76 F.3d 108, 110 (6th Cir. 1996).

Hagar also argues in his motion for a certificate of appealability that this court erred in stating that C.B. received and reviewed Hagar’s emails at her office in Beachwood, Ohio because C.B. testified that she first saw the emails during her trial preparation. But we went on to state: “That C.B. did not see all of the messages because Eaton’s security office shielded her from them also does not matter.” *Hagar*, 822 F. App’x at 371 (citing *Jeffries*, 692 F.3d at 483).

Speedy Trial: Hagar claimed in his § 2255 motion that he is being held in violation of his right to a speedy trial under the Sixth Amendment and the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, and his right to due process under the Fifth Amendment. Hagar filed motions to dismiss, asserting that his right to a speedy trial had been violated; the district court never ruled on his motions. On appeal, we determined that Hagar had waived his speedy trial claims by failing to request and obtain rulings on his motions to dismiss before trial. *Hagar*, 822 F. App’x at 368-69. We went on to determine that Hagar’s speedy trial claims failed and that, even if there were a violation of the Speedy Trial Act, dismissal with prejudice was not warranted. *Id.* at 369.

In his § 2255 motion, Hagar first challenged the district court’s failure to grant his motion to dismiss the superseding indictment. The district court rejected Hagar’s claim, concluding that

he had abandoned his speedy trial claim by failing to obtain a ruling on his motion to dismiss and that he could not use a § 2255 motion to relitigate an issue that had been raised on direct appeal. *See DuPont*, 76 F.3d at 110. Reasonable jurists could not debate the district court's resolution of this speedy trial argument.

As his second ground for relief, Hagar argued that we violated the separation-of-powers doctrine on direct appeal by creating a new waiver rule inconsistent with the Speedy Trial Act's waiver provision, 18 U.S.C. § 3162(a)(2). We recognized that claims under the Speedy Trial Act are waived unless raised before trial and held that the failure to obtain a pre-trial ruling on a motion raising such claims "is the functional equivalent of failing to bring the claims in the first place." *Hagar*, 822 F. App'x at 368. Our ruling is consistent with the Speedy Trial Act's waiver provision. In any event, we went on to address and reject Hagar's speedy trial arguments on the merits. Reasonable jurists therefore could not conclude that Hagar's separation-of-powers argument deserves encouragement to proceed further.

Hagar's fourth ground for relief asserted that he is being held in violation of his Sixth Amendment right to a speedy trial because the government concealed the true location of Eaton's server for over two years. Hagar did not raise this argument on direct appeal. "[C]laims that could have been raised on direct appeal, but were not, will not be entertained via a motion under § 2255 unless the petitioner shows: (1) cause and actual prejudice to excuse his failure to raise the claims previously; or (2) that he is 'actually innocent' of the crime." *Ray v. United States*, 721 F.3d 758 761 (6th Cir. 2013) (quoting *Bousley v. United States*, 523 U.S. 614, 622 (1998)). Although ineffective assistance of appellate counsel may serve as cause to overcome a procedural default, *see Huff v. United States*, 734 F.3d 600, 606 (6th Cir. 2013), Hagar conceded in his § 2255 motion that he did not raise this issue on direct appeal because an appellate attorney "does not have to raise every nonfrivolous issue." Nor can Hagar establish actual prejudice because, notwithstanding the location of Eaton's server, venue was proper given that he sent threatening emails to a person located in the Northern District of Ohio and that the case involved other contacts

with the district. Hagar does not assert his actual innocence. Accordingly, reasonable jurists could not conclude that this argument deserves encouragement to proceed further.

Prosecutorial Misconduct: In his third ground for relief, Hagar claimed that the government used false information—the location of Eaton’s server—to obtain an arrest warrant and later an indictment. Hagar conceded that he did not raise his prosecutorial-misconduct claim on direct appeal because an appellate attorney “does not have to raise every nonfrivolous issue.” And, as discussed above, Hagar cannot establish prejudice or actual innocence. Reasonable jurists therefore could not debate the district court’s conclusion that Hagar had waived his prosecutorial-misconduct claim by not raising it on direct appeal and was procedurally barred from bringing it for review under § 2255.

Ineffective Assistance of Counsel: Hagar claimed ineffective assistance of counsel as his final ground for relief. To establish ineffective assistance of counsel, a defendant must show (1) “that counsel’s performance was deficient” and (2) that counsel’s “deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The performance prong requires the defendant to “show that counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 688. The prejudice prong requires the defendant to “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

Hagar first argued that his attorneys failed to obtain a copy of an email showing the complete header information with the IP address for Eaton’s server. According to Hagar, this information would have supported his motion to dismiss the superseding indictment and demonstrated that venue was improper. As addressed above, Hagar sent this email to a person located in the Northern District of Ohio. Reasonable jurists therefore could not disagree with the district court’s conclusion that knowledge of the location of Eaton’s server would not have resulted in a different outcome.

Hagar next claimed that his attorneys were ineffective for failing to raise a venue challenge. Hagar’s venue argument was raised and rejected on direct appeal. *Hagar*, 822 F. App’x at 369-

71. Accordingly, jurists of reason could not debate the district court's conclusion that Hagar's attorneys were not ineffective for failing to raise a venue challenge.

According to Hagar, his attorneys were ineffective for failing to establish that C.B. was not R.G.'s immediate family member as defined by 18 U.S.C. § 115(c)(2)(B). At trial, C.B. testified about her familial relationship with R.G., and the jury instructions defined "immediate family member" in accordance with § 115(c)(2)(B). Reasonable jurists could not conclude that this ineffective-assistance claim deserves encouragement to proceed further.

Hagar also argued that his attorneys were ineffective for failing to obtain a ruling on his motions to dismiss and that this failure resulted in our conclusion that he had waived his speedy trial claims. But we went on to determine that Hagar's speedy trial claims failed on the merits. *Hagar*, 822 F. App'x at 369. Accordingly, jurists of reason could not debate the district court's conclusion that Hagar could not show prejudice.

According to Hagar's motion for a certificate of appealability, his next three ineffective-assistance claims related to his sentencing. Hagar first claimed that his attorneys were ineffective for failing to subpoena the Oregon Employment Department to obtain the information that Eaton provided regarding his separation. Hagar argued that this information would show that Eaton's human resource director made a false report to the Clackamas County Sheriff's Department about him throwing chairs. Hagar next asserted that his attorneys were ineffective for failing to obtain invoices from Eaton's security company to show that witnesses provided false testimony at trial about the dates that Eaton hired security. Hagar also claimed that his attorneys were ineffective for failing to subpoena T-Mobile for his cellphone's ping data and failing to obtain a spreadsheet detailing Goodyear's expenses for hiring security to observe him. According to Hagar, this information would show that an Eaton supervisor provided false information to law enforcement that he traveled to Eaton's facility and sat across the street around 3:00 p.m. on Monday through Friday. Hagar failed to establish a reasonable probability that his sentence would have been different if his attorneys had obtained these documents. Accordingly, reasonable jurists could not conclude that these ineffective-assistance claims deserve encouragement to proceed further.

Motion for Discovery: Hagar seeks a certificate of appealability as to the district court's denial of his motion to conduct discovery. Hagar's motion sought discovery to support his prosecutorial-misconduct and ineffective-assistance claims. In a § 2255 proceeding, the district court may allow discovery "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief." *Thomas v. United States*, 849 F.3d 669, 680 (6th Cir. 2017). The district court pointed out that Hagar's prosecutorial-misconduct claim was procedurally barred and determined that his allegations failed to establish that, if the facts were fully developed, he would be entitled to relief on his ineffective-assistance claims. Reasonable jurists would not debate the district court's denial of Hagar's discovery motion.

For these reasons, this court **DENIES** Hagar's motion for a certificate of appealability and **DENIES** as moot his motion for leave to proceed in forma pauperis on appeal.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 26, 2022
DEBORAH S. HUNT, Clerk

No. 22-3171

MICHAEL A. HAGAR,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before: CLAY, Circuit Judge.

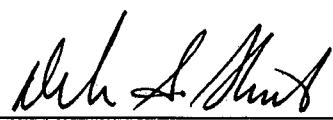
JUDGMENT

THIS MATTER came before the court upon the application by Michael A. Hagar for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX B

No. 22-3171

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 16, 2022
DEBORAH S. HUNT, Clerk

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Michael A. Hagar, a pro se federal prisoner, petitions the court to rehear en banc its order denying his motion for a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. See Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

John S. Smith

Deborah S. Hunt, Clerk

APPENDIX C

No. 22-3171
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 3, 2022
DEBORAH S. HUNT, Clerk

MICHAEL A. HAGAR,)
Petitioner-Appellant,)
v.) ORDER
UNITED STATES OF AMERICA,)
Respondent-Appellee.)

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Michael A. Hagar petitions for rehearing en banc of this court's order entered on July 26, 2022, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX D

Case: 1:16-cr-00273-DCN Doc #: 159 Filed: 02/02/22 1 of 9. PageID #: 1593

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL HAGAR,)	CASE NO. 1:16 CR 273
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
UNITED STATES OF AMERICA,)	MEMORANDUM OPINION
)	AND ORDER
Respondent.)	
)	

This matter comes before the Court upon Michael Hagar's (hereinafter "Mr. Hagar") prose Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. (ECF #148). The petition raises three grounds for relief: (1) ineffective assistance of counsel, (2) denial of the right to a speedy trial, and (3) prosecutorial misconduct. The Government filed a Response in Opposition and Mr. Hagar filed a Reply. (ECF #150, 153).

Background

On March 1, 2019, following a jury trial, Mr. Hagar was convicted of: (1) cyberstalking in violation of a protective order, in violation of 18 U.S.C. §§ 2261A(2)(B), and 2261(b)(6), and (2) two counts of making an interstate threatening communication, in violation of 18 U.S.C. § 875(c). (ECF # 98). He was sentenced to 180 months imprisonment on June 7, 2019. (ECF #112). The United States Court of Appeals for the Sixth Circuit affirmed the trial court's judgment on appeal. Subsequently, Mr. Hagar filed a petition for certiorari in the U.S. Supreme Court which was denied on January 11, 2021.

Mr. Hagar filed the instant motion on August 16, 2021. He now seeks to correct his sentence pursuant to U.S.C. § 2255 on the basis that he is being held in violation of the right to effective assistance of counsel, the right to a speedy trial, and his right under Fifth Amendment Due Process Clause to be free from prosecutorial misconduct.

Legal Standard

A petitioner that moves to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. §2255 must demonstrate that: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. *See* 28 U.S.C. § 2255; *Hill v. United States*, 368 U.S. 424, 426-27 (1962). As such, a court may grant relief under § 2255 only if a petitioner has demonstrated “a fundamental defect which inherently results in a complete miscarriage of justice.” *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003) (internal quotation and citation omitted). If a § 2255 motion, as well as the files and records of the case, conclusively show that the petitioner is entitled to no relief, then the court need not grant a hearing on the motion. *See* 28 U.S.C. § 2255; *see also Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996) (recognizing that evidentiary hearing is not required when the record conclusively shows that petitioner is not entitled to relief).

To “obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal.” *United States v. Frady*, 456 U.S. 152, 166 (1982). Once a defendant has waived or exhausted his right to appeal, “we are entitled to presume he stands fairly and finally convicted.” *Id.* at 164. Thus, to prevail on a § 2255 motion, Mr. Hagar must prove by a preponderance of the evidence that his constitutional rights were denied or infringed. *United States v. Wright*, 624 F.2d 557, 558 (5th Cir. 1980).

Analysis

A. Ineffective Assistance of Counsel

Mr. Hagar raised a claim of ineffective assistance of counsel on essentially three grounds: (1) counsel's failure to obtain certain documents and records; (2) counsel's failure to assert an improper venue argument; and (3) counsel's failure to request the District Court rule on his two Motions to Dismiss. In order to prevail on an ineffective assistance of counsel claim, a petitioner must show that his counsel's performance was deficient and "fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 686-88 (1984). A petitioner must also establish prejudice. To establish prejudice, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Judicial scrutiny of counsel's performance must be "highly deferential" and counsel's conduct should be evaluated from "counsel's perspective at the time." *Id.* at 689.

Mr. Hagar's first and primary allegation is that his trial attorney failed to obtain relevant documents, invoices, and records. In support of his ineffective assistance of counsel claim, Mr. Hagar asserts that his attorneys failed to obtain a copy of an email with the header listing the IP address, information from the Oregon Employment Department, invoices from Eaton's private security firm, data from T-Mobile for Mr. Hagar's prepaid cellphone, and the spreadsheet from Goodyear detailing their expenses incurred from hiring a private security firm to observe Mr. Hagar. In order to show that Mr. Hagar's counsel provided ineffective counsel by failing to obtain certain documents, Mr. Hagar must specifically explain what should have been obtained and why. *United States v. Robson*, 307 F. App'x 907, 910 (6th Cir. 2009).

Mr. Hagar claims that the email with the header listing the IP address would have established his burden of proof for his second motion to dismiss and would have demonstrated that venue was improper. However, the recipient of the email was in the Northern District of

Ohio and therefore the location of the server outside the Northern District of Ohio was irrelevant and knowledge of the location of the server would not have resulted in a different outcome in terms of the motion or at trial.

Mr. Hagar also asserts that the information Eaton provided to the Oregon Employment Department regarding Mr. Hagar's termination would show that Ryan Keen's statement to Deputy Woodward about an investigation into Mr. Hagar throwing chairs at the workplace was false. He also argues that the invoices from Eaton's security company would show what dates security was hired for Mr. Raulino's home and for the Wilsonville facility and would prove that Marc Elliot and Joseph Raulino gave false testimony at trial. Lastly, Mr. Hagar claims that the spreadsheet from Goodyear and his cellphone data would show that he did not travel to Eaton's facility in Wilsonville at 3:00PM Monday through Friday, and, therefore, testimony given at trial that he was spotted outside the facility was false. The court is required to examine a counsel's conduct from the counsel's perspective at the time of the conduct. *Id.* At 689. Mr. Hagar's counsel, during discovery, had no reason to believe that false testimony would be given at trial. Further, even if this information had been introduced at trial, overwhelming evidence, such as the emails sent by Mr. Hagar himself, still existed for the jury to find Mr. Hagar guilty of cyberstalking and making interstate threatening communications. As a result, Mr. Hagar cannot show that a failure to procure this information deprived him of a fair trial and led to an unreliable result.

Mr. Hagar's second allegation is that the Northern District of Ohio was an improper venue, and his trial attorney was ineffective for failing to pursue this issue pre- and post-trial. Mr. Hagar claims that had his trial attorney obtained a copy of an email with the header listing the IP addresses, he could have demonstrated that venue was improper. The improper venue claim was raised on direct appeal and decided against Mr. Hagar. Mr. Hagar cannot relitigate an

issue already raised on appeal unless “highly exceptional circumstances” exist, “such as an intervening change in the law.” *DuPont v. United States*, 76 F.3d 108, 110 (6th Cir. 1996); *Ford v. United States*, 36 F.3d 1097 (6th Cir. 1994).

Even if Mr. Hagar had not already raised the venue issue on direct appeal, his improper venue claim would fail because one of the victims received the threatening emails in the Northern District of Ohio. *United States v. Hagar*, 822 F. App’x 361, 370 (6th Cir. 2020), cert. denied, 141 S. Ct. 1115, 208 L. Ed. 2d 557 (2021). *See also United States v. Jeffries*, 692 F.3d 473, 483 (6th Cir. 2012) (finding venue proper in the district where the video link was received despite it being recorded and uploaded in another district). Venue is also not a jurisdictional issue and is therefore not cognizable under § 2255. *Williams v. U.S.*, 582 F.2d 1039, 1041 (6th Cir. 1978); *see also Patton v. U.S.*, 281 U.S. 276, 298 (1930) (stating that Article III, Section II of the Constitution is not jurisdictional). Therefore, this Court finds that Mr. Hagar’s counsel was not ineffective on these grounds.

Mr. Hagar claimed ineffective assistance of counsel for failure to request that the District Court rule on his two Motions to Dismiss for violation of a speedy trial. Although the Sixth Circuit did not reach the merits on the speedy trial grounds because they found that Mr. Hagar waived his claims by failing to request a ruling, the court opined that “even if we ruled on Hagar’s claims he would still lose.” *Hagar*, 822 F. App’x at 368. Therefore, even if counsel made an error, Mr. Hagar cannot establish reasonable probability of a different outcome sufficient to prove ineffective counsel.

Finally, Mr. Hagar claims ineffective assistance of counsel regarding his prosecutorial misconduct claim. Specifically, Mr. Hagar alleges that his counsel was ineffective in not obtaining information regarding the true location of Eaton’s server from the Government. It is unclear whether this claim applies to Mr. Hagar’s trial counsel or appellate counsel. Regardless,

Mr. Hagar has failed to prove that the Government committed misconduct. Therefore, Mr. Hagar cannot prove that he was prejudiced by counsel's failure to obtain the information allegedly concealed by the Government. This Court concludes that Mr. Hagar has failed to show that his counsel was ineffective under *Strickland*. 466 U.S. 668 (1984).

B. Right to Speedy Trial

Mr. Hagar also claims that he is being held in violation of the Speedy Trial Act, 18 U.S.C. §§ 3161, et seq., and the Sixth Amendment right to a speedy trial. Mr. Hagar claims that the district court erred in failing to decide on his motions to dismiss, which were based on the alleged violation of the Speedy Trial Act. The Sixth Circuit found that Mr. Hagar waived his speedy trial claims. The Sixth Circuit stated that Mr. Hagar's failure to secure rulings on his motions in the district court amounted to an abandonment of the claims. 822 F. App'x at 368. *See also United States v. Harris*, 165 F.3d 1062, 1066 (6th Cir. 1999) (finding the appellant abandoned his claim on appeal by failing to request a ruling on a discovery motion at trial or at the final pretrial conferences). In addition, "a § 2255 motion may not be used to relitigate an issue that was raised on appeal." *DuPont*, 76 F.3d at 110. Mr. Hagar, himself, admits that he already raised this issue in his appeal to the Sixth Circuit. This Court finds that Mr. Hagar is procedurally barred from bringing a claim for violation of the right to a speedy trial because he abandoned his claim, and the issue was already litigated on direct appeal.

C. Prosecutorial Misconduct

Mr. Hagar claims that the government committed prosecutorial misconduct by using false information to obtain an arrest warrant and later an indictment. He contends that the Government violated his right to effective assistance of counsel, when it concealed the true location of Eaton's server for over a two-year period. Mr. Hagar admitted he did not raise his prosecutorial misconduct argument on direct appeal. (ECF # 148). A "failure to raise an argument at trial or on

direct appeal is waived on collateral review under § 2255, absent a showing of both cause and actual prejudice.” *Murr v. United States*, 200 F.3d 895, 900 (6th Cir. 2000) (citing *United States v. Frady*, 456 U.S. 152, 164-65, 167). A petitioner shows cause by establishing that he was prevented from raising a claim by an external impediment. *Murray v. Carrier*, 477 U.S. 478, 492 (1986). As discussed above, Mr. Hagar argues in his reply to the government’s response that he did not pursue a prosecutorial misconduct claim due to ineffective counsel. (ECF # 153). Mr. Hagar, himself, stated that the prosecutorial misconduct claim was not raised on direct appeal because his attorney was not required to raise every nonfrivolous issue (ECF #148). In addition, Mr. Hagar’s counsel was not ineffective in failing to obtain the information allegedly concealed by the Government. As a result, this Court finds that Mr. Hagar waived his claim of prosecutorial misconduct by not raising it on direct appeal and is procedurally barred from bringing it for review under § 2255.

D. Discovery Request

On January 3, 2022, Mr. Hagar filed a Motion to Conduct Discovery Pursuant to Rule 6 of the Rules Governing Section 2255 Proceedings. (ECF # 156). On January 18, 2022, the Government filed their Response in Opposition. (ECF # 157). Mr. Hagar filed a Reply to the Government’s Response in Opposition on January 31, 2022. (ECF #158). Under Rule 6, “a judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal or Civil Procedure.” 28 U.S.C.S. § 2255 Proc. R. 6(a). In order to meet the good cause requirement, a petitioner must make specific allegations that show that the petitioner may be able to demonstrate that he is entitled to relief if the facts are developed fully. *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)).

Mr. Hagar claims that discovery will allow him to support his claims of prosecutorial misconduct and ineffective assistance of counsel. (ECF # 156). As discussed above, Mr.

Haggar's prosecutorial misconduct claims are procedurally barred and as a result he fails to make a showing of good cause. *See Pizzuti v. United States*, 809 F. Supp. 2d 164, 183-84 (S.D.N.Y. 2011) (stating that the petitioner's discovery request was procedurally barred because he failed to raise the claim on direct appeal and had not shown cause or prejudice). Mr. Hagar seeks to discover a copy of an email with the header listing the IP address, information from the Oregon Employment Department, invoices from Eaton's private security firm, data from T-Mobile, and the spreadsheet from Goodyear in order to fully support his ineffective counsel claim. As discussed above, although Mr. Hagar does make specific allegations, these allegations do not establish that if the facts were developed fully, he would be entitled to relief. The overwhelming evidence presented against Mr. Hagar at trial would not be refuted by the documents requested by Mr. Hagar in his Motion to Conduct Discovery. As a result, Mr. Hagar's Motion to Conduct Discovery is DENIED.

Certificate of Appealability

Pursuant to 28 U.S.C. § 2253, the Court must determine whether to grant a certificate of appealability as to any of the claims presented in the Petition. 28 U.S.C. § 2253 provides, in part, as follows:

- (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
 - (B) the final order in a proceeding under section 2255.
- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

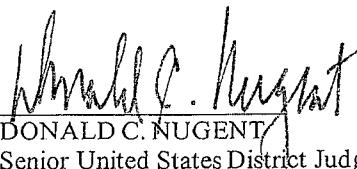
In order to make “substantial showing” of the denial of a constitutional right, as required under 28 U.S.C. § 2255(c)(2), a habeas prisoner must demonstrate “that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issue presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983).)

Where a district court has rejected the constitutional claims on the merits, the petitioner must demonstrate only that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack*, 529 U.S. at 484. For the reasons stated above, the Court concludes that Mr. Hagar has failed to make a substantial showing of the denial of a constitutional right and there is no reasonable basis upon which to debate this Court's procedural rulings. Accordingly, the Court declines to issue a certificate of appealability.

For the reasons set forth above, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 (ECF #148) is DENIED. Because the files and records in this case conclusively show that Petitioner is entitled to no relief under § 2255, no evidentiary hearing is required to resolve the pending Motion. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.

DATED: February 1, 2022

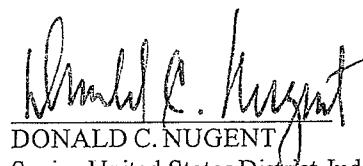

DONALD C. NUGENT
Senior United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

) CASE NO. 1:16 CR 273
MICHAEL HAGAR,)
)
Petitioner,) JUDGE DONALD C. NUGENT
)
v.)
)
UNITED STATES OF AMERICA,)
) ORDER
)
Respondent.)
)

For the reasons set forth in this Court's Memorandum Opinion and Order, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence in Accordance with Title 8 U.S.C. § 2255 is DENIED. The court hereby orders that this case be dismissed with prejudice. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.


DONALD C. NUGENT
Senior United States District Judge

DATED: February 1, 2022

APPENDIX E

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA) CASE NO. 1:16 CR 273
)
Plaintiff)
) JUDGE DONALD C. NUGENT
vs.)
)
MICHAEL HAGAR) MOTION TO DISMISS
) (ORAL HEARING REQUESTED)
Defendant)

Now comes the Defendant, MICHAEL HAGAR, by and through his attorney, James A. Jenkins, and pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, 18 U.S.C. §3161 *et seq.* and the Speedy Trial Act of 1974, requests a dismissal of any and all charges currently pending by the United States of America for the reasons set forth more fully in the Brief attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ James A. Jenkins
JAMES A. JENKINS (0005819)
55 Public Square, Suite 2100
Cleveland, Ohio 44113
216/363-6003
Facsimile: 216/363-6013
Email: jajenkins49@hotmail.com

S E R V I C E

A copy of the foregoing Motion to Dismiss was filed electronically this 22nd day of January, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ James A. Jenkins
JAMES A. JENKINS
Attorney for Defendant

BRIEF

Defendant herein was arrested on or about May 3, 2016, as a result of certain criminal conduct alleged to have occurred against the State of Oregon during the months leading up to his arrest. A complaint was filed against him on or about June 14, 2016, and an initial appearance was set for July 7, 2016, July 26, 2016, and finally, on August 2, 2016. The matter was bound over to the Grand Jury and Hagar's arrest warrant (executed July 7, 2016) was finally returned August 12, 2016. Mr. Hagar was indicted August 24, 2016 and he was arraigned September 19, 2016. His case has been pending through the current date.

Mr. Hagar was initially represented by Darin Thompson of the Federal Public Defender's Office, however, undersigned counsel replaced Mr. Thompson at defendant's request on May 30, 2018. Mr. Hagar was also advised of his speedy trial rights and the seventy (70) days in which the government is obligated to bring him to trial. Extensions of his speedy trial time or continuance requests were filed October 13, 2016, October 19, 2016, January 24, 2017, April 11, 2017, August 3, 2017, August 28, 2017, October 30, 2017, February 6, 2018, and on September 5, 2018. New counsel was assigned May 30, 2018, and Defendant was informed of the Speedy Trial time being tolled by changing attorneys. By counsel's calculations, Mr. Hagar served an inordinate amount of time detained on these charges in the Northern

District of Ohio, well in excess of the time mandated by the Speedy Trial Act of 1974. His waivers of Speedy Trial should be set aside as they were signed under the mistaken belief that the federal government had evidence of the emails (which are the subject of this prosecution) having traveled through this Court's jurisdiction. As proof that the government had no such evidence, a superseding indictment was filed September 11, 2018. To this day, defendant believes that the subject emails had absolutely no nexus to this Court's jurisdiction.

It was and remains no fault of the accused that he has not been given his day in court inasmuch as his "waivers" were signed under the mistaken belief that this Court had jurisdiction. Therefore, it is defendant's position that the government has attempted to impede the Constitutional rights of the accused to a speedy trial.

The Speedy Trial Act of 1974, codified as 18 U.S.C. § 3161 *et seq.*, provides for the time period allowed between indictment or initial appearance and trial. To establish a violation of the Sixth Amendment right to a speedy trial, four factors must weigh in defendant's favor: 1) length of delay; 2) reason for the delay; 3) defendant's assertion of right to a speedy trial; and 4) prejudice suffered as a result of the delay.

Barker v. Wingo, 407 U.S. 514, 530 (1972). See *United States v. O'Dell*, 247 F3d 655,667-736 (6th Cir. 2001).

In *United States v. Taylor* 487 U.S.D. 326 (1988), the United States Supreme Court upheld the Ninth Circuit and the District Court which dismissed criminal

charges against the accused due to violations of Taylor's right to a speedy trial.

In addressing the four factors, it is apparent that defendant will have been confined for a period in excess of the seventy (70) days during which the government is required to bring him to trial. November 27, 2016 marked the seventieth day after defendant's arraignment. Delaying the trial until well past the seventy days, is violative of Mr. Hagar's right to speedy trial. The reason for the delay cannot be blamed on the Defendant. Defendant was coerced into believing this Court had jurisdiction and having since learned otherwise, he has certainly asserted his desire to have the matter heard promptly according to the Speedy Trial Act. Finally, "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Doggett v. United States*, 505 U.S. 647, at 655 (1992); *Norris v. Schotten*, 146 F.3d 314, 328 (6th Cir.). Defendant asserts that he is not obligated to provide any affirmative proof of prejudice where he has been restrained of his liberty for even one hour more than the Speedy Trial Act of 1974 specifies.

WHEREFORE, Defendant respectfully requests this Honorable Court dismiss the charges reflected in the Superseding Indictment filed September 11, 2018.

/s/ James A. Jenkins
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APPENDIX F

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see any assurance that if you were on the street, that the public would be protected at all. In fact, I see just the exact opposite.

The court sentenced Hagar to 60 months on each count, to be served consecutively, for a total of 180 months. It ordered Hagar to pay \$155,654 to Eaton and \$403,832.41 to Goodyear.

This appeal follows.

II. Analysis

A. Speedy Trial Claims

Hagar argues that the district court erred when it failed to grant his motions to dismiss the indictment for Speedy Trial Act violations. He argues that the first motion should have been granted because he was arrested on July 7, 2016, but not indicted until August 24, 2016, in violation of the 30-day window of 18 U.S.C. § 3161(b). In his second motion to dismiss, Hagar claimed that seventy days passed from the date of his arraignment on the superseding indictment, September 19, 2018, and his trial, in violation of § 3161(c).

Speedy Trial Act claims “by their own terms must be raised pre-trial or be forever waived.” *United States v. Pickett*, 941 F.2d 411, 416 (6th Cir. 1991); *United States v. Stewart*, 628 F.3d 246, 253 (6th Cir. 2010). This is not exactly Hagar’s problem, because he brought his motions pretrial; the problem is that he failed to secure rulings on those motions from the district court. Similar claims are generally treated as abandoned and therefore not reviewable on appeal. *See, e.g., United States v. Harris*, 165 F.3d 1062, 1066 (6th Cir. 1999) (treating the appellant’s failure to request a ruling on a discovery motion at trial or at the final pretrial conferences as abandonment of the claim on appeal); *see also United States v. Franklin*, 197 F.3d 266, 270 (7th Cir. 1999) (stating that a defendant faces waiver if he fails to renew a pretrial motion that the trial court has not ruled on). And with good reason: “motions appealed in this fashion . . . [may] encourage parties to cache unanswered motions and, by doing so, disrupt the efficient function of the judicial process.”

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Franklin, 197 F.3d at 270. Thus, “[i]f a motion is not acted upon, a litigant had better renew it. He may not lull the judge into thinking it has been abandoned and then, after he has lost, pull a rabbit out of his pocket in the form of the forgotten motion.” *Id.* (quoting *United States v. Taglia*, 922 F.2d 413, 416 (7th Cir. 1991)).

We agree with the government that “failing to request and obtain rulings on such [raised-but-unruled-upon] claims is the functional equivalent of failing to bring the claims in the first place,” and such claims are therefore waived.² Moreover, plain error review is unavailable because “a defendant whose trial does not begin on time is deemed to have waived the right to move for dismissal.” *United States v. Brown*, 498 F.3d 523, 529–30 (6th Cir. 2007) (quoting *Zedner v. United States*, 547 U.S. 489, 494 (2006)).

Even if we ruled on Hagar’s claims he would still lose. Hagar’s first speedy trial claim is premised on the misunderstanding (based on a scrivener’s error) that he was arrested by federal authorities on July 7, 2016.³ But Hagar could not have been in federal custody on July 7. Hagar was arrested by Oregon state authorities in June 2016. He remained in state custody until his initial appearance in federal court on August 2, after the Marshals’ Service executed the federal writ on August 1. On August 2, Hagar was merely in the temporary custody of the Northern District of Ohio, pursuant to the writ of *habeas corpus ad prosequendum*. See *United States v. Munro*, 436 U.S. 340, 362 (1978); *Stewart v. Bailey*, 7 F.3d 384, 389 (4th Cir. 1993). The Speedy Trial clock was still not triggered since “only federal arrest, as distinct from state arrest, triggers the protections of the Speedy Trial Act.” *United States v. Copley*, 774 F.2d 728, 730 (6th Cir. 1985).

² In contrast, at the trial’s outset, Hagar requested a ruling on his motion *in limine* to preclude firearms evidence.

³ Perhaps this occurred because Hagar’s initial appearance was originally scheduled for July 7, 2016. That did not happen, however.

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In any event, Hagar was indicted 23 days later, on August 24, 2016, within 30 days. *See* 18 U.S.C. § 3161(b).

Hagar's second speedy trial act claim also falls flat. First, it is different from and contradictory to the argument he made before the district court. There, Hagar argued that his speedy trial waivers were based on his mistaken belief that the government had evidence of certain emails that created jurisdiction for the district court. On appeal, Hagar claims that the district court should have dismissed the superseding indictment under the Speedy Trial Act because he did not execute a speedy trial waiver when the superseding indictment was filed and more than 70 days elapsed between September 19, 2018 and February 26, 2019. We can therefore refuse to consider Hagar's argument. *See New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001). Second, Hagar forgets that he himself requested a continuance after the government filed the superseding indictment on September 11.

Even if we found a Speedy Trial Act violation, we would not dismiss the indictment with prejudice. Hagar's offenses were extremely serious. Hagar himself contributed to much of the delay in this case by filing numerous continuance motions and a request for new counsel. Hagar also has not shown actual prejudice from the delay such as loss of evidence, and there is not a whiff of prosecutorial bad faith. *See Sylvester v. United States*, 868 F.3d 503, 512 (6th Cir. 2017) (identifying the three factors this court considers when deciding to dismiss an action with or without prejudice). Thus, even assuming a Speedy Trial Act error, the government could re-indict Hagar.

B. Venue Claim

On appeal Hagar contends that the Northern District of Ohio was an improper venue and that the district court "did not have jurisdiction to impose a criminal judgment against him"

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In his Rule 29 motion for judgment of acquittal, Hagar argued that the district court did not have jurisdiction over this case because the emails and correspondence occurred outside of the Northern District of Ohio and suggested that the case could only be tried in Oregon. He did not argue for a judgment of acquittal on venue grounds. The two concepts are distinct. *See, e.g., United States v. Obak*, 884 F.3d 934, 936–37 (9th Cir. 2018). He therefore forfeited the venue argument. *See United States v. Dandy*, 998 F.2d 1344, 1356–57 (6th Cir. 1993) (holding that when a defendant raises specific arguments in a Rule 29 motion, he forfeits arguments not made).

And, even if he had not forfeited his venue claim,⁴ it would fail because one of the victims, C.B., worked in Beachwood, Ohio at Eaton’s headquarters. Hagar sent threatening emails to C.B.’s Eaton email address. She received and reviewed them at her office in Beachwood, Ohio.⁵ Thus, venue was proper because the emails were sent from Oregon to C.B. in the Northern District of Ohio. *See United States v. Jeffries*, 692 F.3d 473, 483 (6th Cir. 2012), *abrogated on other grounds by Elonis v. United States*, 135 S. Ct. 2001 (2015) (holding that venue was proper in the Eastern District of Tennessee, where victims received threatening YouTube video via the internet sent from the Western District of Tennessee); *see also United States v. Singer*, 782 F.3d 270, 278 (6th Cir. 2015), *abrogated on other grounds by Musacchio v. United States*, 136 S. Ct. 709 (2016) (holding that in a mail fraud case venue is proper where the mail was sent or received).

Further, our “substantial contacts” test is also satisfied. *See Brika*, 416 F.3d at 527. “That test takes into account a number of factors—the site of the defendant’s act, the elements and nature of the crime, the locus of the effect of the criminal conduct, and the suitability of each district for accurate fact finding.” *Id.* (cleaned up). Eaton and Goodyear are both headquartered in the

⁴ The government acknowledges that it is possible to view Hagar’s “jurisdictional” challenge as raising venue.

⁵ Additionally, Count 1 of the superseding indictment referenced those messages because R.G., the cyberstalking victim, was related to C.G.

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Northern District of Ohio and dealt with the effect of Hagar's actions from their respective Ohio headquarters. Thus, the "locus of the effect" of Hagar's conduct was felt in both Oregon and the Northern District of Ohio. *See id.* Several of the witnesses and much of the evidence was also located in Ohio.

That Hagar did not know his messages were "re-routed" or forwarded to the Northern District of Ohio is irrelevant. *See United States v. Houston*, 683 F. App'x 434, 438 (6th Cir. 2017) (observing, in a case involving interstate threats, that the "route" the defendant's threats took after he pronounced them were relevant to determining where "he would be subject to prosecution," regardless of the defendant's knowledge that the communications would be routed across state lines). That C.B. did not see all of the messages because Eaton's security office shielded her from them also does not matter. *Cf. Jeffries*, 692 F.3d at 483 (holding that the interstate threats statute "prohibits a communication containing any threat regardless of whether the threat reaches the target") (cleaned up). In short, the government's evidence easily satisfied the preponderance of evidence standard that venue was proper in the Northern District of Ohio. *See Grenoble*, 413 F.3d at 572 (a district court's decision to deny a properly preserved venue motion is reviewed de novo, and the government must show by a preponderance of evidence that venue was proper).

C. Firearms and Ammunition Evidence

During the hearing on Hagar's motion *in limine* concerning the firearm evidence obtained from his residence, the government explained that the evidence

basically . . . goes to one of the intent elements of the stalking statute which requires the intent to kill, injure, harm, intimidate. It goes directly to that in preparation for the plan to carry that out to have that intent . . . It also goes to establishing whether or not these are true threats under [18 U.S.C. §] 875 and whether they were enacted with a purpose . . . to threaten or injure . . .

In two of the government's exhibits, Exhibits 128 and 129, Hagar specifically threatened to shoot people. The court overruled Hagar's motion.

APPENDIX G

TRIAL TESTIMONY EXCERPTS OF C.B.

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1 THE WITNESS: Thank you.

2 (Witness excused).

3 THE COURT: You may call your next witness.

4 MR. RIEDL: Thank you, Your Honor.

14:50:24 5 MR. KAKANI: Thank you, Judge.

6 The Government calls Cynthia Burke.

7 THE COURT: Ms. Burke, would you raise your
8 right hand for me?

9 CYNTHIA BURKE,

10 of lawful age, a witness called by the Government,

11 being first duly sworn, was examined

12 and testified as follows:

13 THE COURT: Please have a seat.

14 Can you tell us your full name and spell
14:50:59 15 your last name?

16 THE WITNESS: Cynthia Sue Burke, B-U-R-K-E.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION OF CYNTHIA BURKE

19 BY MR. KAKANI:

14:51:07 20 Q. Ms. Burke, could you please tell the jury where it
21 is that you work?

22 A. Eaton.

23 Q. And best you can, speak into the microphone so
24 everyone can hear.

14:51:18 25 A. Eaton, Eaton Corporation.

1 Q. How long have you been working for Eaton
2 Corporation?

3 A. Twelve years.

4 Q. And what is your title there right now?

14:51:26 5 A. I'm the Vice President of the Administrative Center
6 of Excellence in Information Technology.

7 Q. And what does that mean?

8 A. It means that I'm responsible for all the
9 applications, all the systems that are used by the
10 corporate officers, HR, finance, tax, treasury, legal.

11 Q. How long have you been in that particular position
12 at Eaton?

13 A. Since I began at Eaton.

14 Q. The whole time, so twelve years?

14:51:57 15 A. Indeed.

16 Q. Okay. Where do you work? Where physically do you
17 work, I should say?

18 A. I work in Beachwood.

19 Q. Here in Ohio?

14:52:06 20 A. Yes. At Eaton Center, 1000 Eaton Boulevard.

21 Q. Okay. And for those twelve years that you've been
22 the Vice-President of the Administrative Center For
23 Excellence, have you been in Beachwood for those twelve
24 years?

14:52:22 25 A. No. There were other locations prior to Beachwood.

1 That location is relatively new, within the past five
2 years?

3 Q. Okay. How long have you been -- I'm sorry, so how
4 long have you been in that Beachwood location?

14:52:33 5 A. Since its inception.

6 Q. Five years?

7 A. Five years.

8 Q. Okay.

9 A. Um-hmm.

14:52:37 10 Q. Including 2016?

11 A. Yes.

12 Q. Do you know someone named Rebecca Gentle?

13 A. I do.

14 Q. How do you know Rebecca Gentle?

14:52:48 15 A. She's my step-niece.

16 Q. Okay. So if you could explain that relationship to
17 the jury.

18 A. My mother married her grandfather back in 1981, and
19 I've known Becky since she's been born.

14:53:04 20 Q. Okay. And her mother is your --

21 A. She's my stepsister.

22 Q. Okay. And what's her mother's name?

23 A. Karen.

24 Q. What's her full name?

14:53:14 25 A. Karen Gentle.

1 Q. Okay. And your full name is what?

2 I'm sorry, let me take that back.

3 What was your maiden name?

4 A. Williams.

14:53:26 5 Q. Okay. And do you have any social media accounts?

6 A. I do.

7 Q. What social media accounts do you have?

8 A. I have Facebook and I have LinkedIn.

9 Q. Okay. So starting first with Facebook, what is
10 your profile name on Facebook?

11 A. CyndeeWilliamsBurke.

12 Q. Okay. And with LinkedIn, what is your profile name
13 for LinkedIn?

14 A. I'm not sure.

14:53:53 15 Q. Okay. Fair enough. Going back to Rebecca Gentle,
16 do you know where she works?

17 A. Yes. Eaton.

18 Q. Okay. How long has she been working at Eaton?

19 A. I don't know.

20 Q. Okay. Does she work in the Beachwood location?

21 A. No.

22 Q. Do you know where she works?

23 A. She works in Oregon.

24 Q. Okay. And do you have an Eaton e-mail account?

25 A. I do.

1 Q. What is your Eaton e-mail account?

2 A. CynthiaSBurke@Eaton.com.

3 Q. Okay. And when you check your Eaton e-mail, where
4 would -- so when you're getting e-mail, where would that
14:54:33 5 be sent to when you would check it?

6 A. I would be checking it in my office. I would be
7 checking it on my phone.

8 Q. Okay. And your office is in Beachwood, Ohio?

9 A. Indeed.

10 Q. Okay. Now, let me ask you, I'm going to draw your
11 attention to some items I think you've had a chance to
12 look at before.

13 Could we pull up Exhibit 123? Okay. And
14 before today, have you had an opportunity to look at this
14:55:03 15 e-mail?

16 A. Yes.

17 Q. Okay. And if we could do 123-A.

18 Have you had an opportunity to look at
19 these e-mails?

14:55:13 20 A. Yes.

21 Q. Okay. And going through here, I want to draw your
22 attention specifically to Page 6 of 123-A.

23 Okay. At the top there, if we can
24 highlight that top part. Do you see a reference to your
14:55:33 25 name?

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1 sanity."

2 Q. Now, at the time that all these e-mails we just
3 went through -- so not the Facebook messages but the
4 Exhibits 125 through 138 that you've just looked at -- at
5 the time that they were sent, did you actually review
6 them?

7 A. No.

8 Q. Okay. So you reviewed them at a later date?

9 A. Yes.

15:15:15 10 Q. Okay. But throughout that time in 2016, this time
11 frame that we've been looking at, where did you
12 physically work for Eaton Corporation?

13 A. In Beachwood, Ohio.

14 Q. And where would you have received e-mails addressed
15:15:29 15 to you at Eaton?

16 A. In Beachwood, Ohio.

17 Q. Okay. I'm going to bring up Exhibit 213, please.

18 Have you had a chance to review this image?

19 A. I have.

15:15:45 20 Q. Okay. And if we could just zoom in on just the top
21 portion there.

22 Do you recognize what this is here?

23 A. I do.

24 Q. What is it?

15:15:55 25 A. It's a note referring to my LinkedIn name, that I'm

1 friends with Becky's mother Karen Bode Gentle, and the
2 time that I had at the time in 2016.

3 Q. Okay. And how about down here?

4 A. And my Facebook. It is almost my name. It's
15:16:23 5 missing the S on Williams, but it's close.

6 Q. Okay. And over here?

7 A. And then it says I'm friends with Becky's mother
8 Karen Bode Gentle.

9 Q. Did you write this note?

10 A. No.

11 Q. Okay. Did you send this note to Michael Hagar in
12 Oregon?

13 A. No.

14 MR. KAKANI: Could I have a moment, Your
15:16:52 15 Honor?

16 THE COURT: You may.

17 MR. KAKANI: Your Honor, I have nothing
18 further. Thank you.

19 THE COURT: Thank you.

20 You may cross-examine.

21 CROSS-EXAMINATION OF CYNTHIA BURKE

22 BY MS. SERRAT:

23 Q. Good afternoon, Ms. Burke.

24 A. Good afternoon.

25 Q. You said you worked at Eaton Corporation for

1 approximately twelve years, is that correct?

2 A. Yes.

3 Q. Do you know Matthew Coberly?

4 A. Yes.

15:17:30 5 Q. Did you at any point discuss -- and don't tell me
6 the discussions -- but discuss this case with Matthew
7 Coberly?

8 A. Yes.

9 Q. Were you aware that Matthew Coberly was
15:17:43 10 intercepting all of these e-mails that you just went over
11 with the Government on behalf of Eaton Corporation?

12 A. Yes.

13 Q. When was the first time that you saw these e-mails
14 that you just reviewed with the Government in your
15:17:57 15 capacity at Eaton Corporation?

16 A. When the District Attorney showed them to me.

17 Q. And when would that have been?

18 A. 2018.

19 Q. So prior to 2018, you had no knowledge that
15:18:11 20 Mr. Hagar had sent any of these e-mails to your Eaton
21 e-mail address, is that correct?

22 A. That's correct.

23 Q. With regard to these e-mails, do you commonly use
24 your e-mail at Eaton Corporation?

15:18:30 25 A. Yes.

1 Q. Is there a -- essentially a corporate book of what
2 everyone's e-mails would be, or how would you access
3 someone else's e-mail from Eaton Corporation if you were
4 trying to e-mail someone?

15:18:43 5 A. I would look it up in the address book if I didn't
6 know it.

7 Q. So there's an Eaton address book available for
8 Eaton employees?

9 A. Yes.

15:18:52 10 Q. Regarding Facebook, your Facebook is a public
11 Facebook, would that be correct?

12 A. Yes.

13 Q. Same with your LinkedIn, it's public information?

14 A. That's correct.

15:19:02 15 Q. And your relationship with Becky as well as Becky's
16 mother, that, was that noted on your LinkedIn and your
17 Facebook profile page?

18 A. Yes.

19 Q. And you said that Ms. Rebecca Gentle was your
15:19:17 20 step-niece.

21 I'm not good with family trees. Could you
22 once again explain how she is related to you?

23 A. My mother married Karen's father Tom Bode.

24 Q. Okay.

15:19:35 25 A. Karen married Al Gentle, so we're stepsisters.

*

1 Q. Okay.

2 A. Okay? Through marriage.

3 Karen married Al Gentle and had two
4 daughters, so I would be her step-aunt.

15:19:53 5 Q. Step-aunt. Thank you for explaining that.

6 You're still currently employed at Eaton
7 Corporation, is that correct?

8 A. That's correct.

9 Q. Does Eaton have a Code of Ethics for their
10 employees?

11 A. We do.

12 Q. Is it something that is enforced with current
13 employees, what their Code of Ethics would be?

14 A. We do, yes.

15:20:20 15 Q. And one of those, of course, would be being
16 truthful and being a good employee, would that be
17 correct?

18 A. That's correct.

19 Q. And obviously if someone violated the Code of
15:20:30 20 Ethics, there would be consequences that could lead to
21 termination?

22 A. That is correct.

23 Q. In this case do you -- I mean, even prior to today
24 had you ever met Michael Hagar?

15:20:40 25 A. No.

1 Q. To your knowledge, has he ever been present at
2 Eaton Corporation in Beachwood, Ohio where you work?

3 A. Not that I'm aware of.

4 Q. Do you have any knowledge of him ever being in the
15:20:51 5 State of Ohio from 2013 to current?

6 A. Am I aware? Can you repeat the --

7 Q. Are you -- yes, I will rephrase.

8 Are you aware of Michael Hagar ever being
9 present in the State of Ohio? Do you have any personal
15:21:12 10 knowledge as to that?

11 A. No.

12 Q. So you weren't aware of any of these e-mails until
13 2018 from Michael Hagar to your Eaton Corporation e-mail,
14 correct?

15:21:22 15 A. That's correct.

16 Q. So as a result, you had never replied to any of the
17 e-mails, is that correct?

18 A. That's correct.

19 Q. You had never asked Mr. Hagar to stop contacting
15:21:29 20 you?

21 A. I have -- did not.

22 Q. Did you ever reply to any of the correspondence
23 from Mr. Hagar or involved in this case?

24 A. I did not.

15:21:39 25 MS. SERRAT: No further questions at this

1 time, Your Honor.

2 THE COURT: Thank you.

3 Mr. Kakani, anything?

4 MR. KAKANI: Very briefly, Judge.

15:21:49 5 REDIRECT EXAMINATION OF CYNTHIA BURKE

6 BY MR. KAKANI:

7 Q. You never asked Mr. Hagar to stop e-mailing you, is
8 that right?

9 A. No, I -- I didn't.

15:21:55 10 Q. You never responded to him, is that right?

11 A. That's correct.

12 Q. But he still sent all those e-mails to your e-mail
13 account at Eaton that we just went through, right?

14 A. Yes.

15:22:03 15 Q. Okay. And if someone wanted to send you an e-mail
16 at your work in Ohio, what account would they send it to?

17 A. CynthiaSBurke@Eaton.com.

18 Q. And you were asked about when you saw the Eaton
19 e-mails it wasn't until about roughly 2018, is that
20 correct?

21 A. That's correct.

22 Q. What about the Facebook messages that we went
23 through?

24 A. I saw Facebook messages in May of 2016 when Becky
25 called me to say, "I think there might be things posted



APPENDIX H

Online Traceroute Test

Enter IP or Domain to Trace Route:

etn.com

Trace Route

IP Pinger

IP to Location

IP to Hostname

More Tools

Domain DNS Validation

Reverse IP Lookup

DNS of NS Records

MX Lookup

Show More

All Tools

Converted IPv6 for: etn.com

Start: 2022-07-12T23:46:34+0500

HOST: DNSChecker.org

		Loss%	Snt	Last	Avg	Best	Worst	StDev
1.1--	???	100.0	3	0.0	0.0	0.0	0.0	0.0
2.1--	10.74.196.71	0.0%	3	1.7	1.5	0.9	1.9	0.5
3.1--	138.197.251.10	0.0%	3	1.1	1.4	1.1	2.0	0.4
4.1--	138.197.248.60	0.0%	3	0.7	0.8	0.7	1.0	0.2
5.1--	138.197.244.26	0.0%	3	0.9	1.7	0.9	2.1	0.7
6.1--	???	100.0	3	0.0	0.0	0.0	0.0	0.0
7.1--	ael.3.bar2.Louisville1.level3.net (4.69.137.193)	0.0%	3	30.1	29.6	29.2	30.1	0.4
8.1--	EATON-CORPO.bar2.Louisville1.Level3.net (4.14.57.158)	0.0%	3	30.0	30.1	30.0	30.3	0.2
9.1--	192.104.67.8	0.0%	3	31.0	30.9	30.3	31.3	0.5

About TraceRoute Tool

Online Traceroute keeps a record of the whole path through which network request routes to the provided Domain or IP Address. It records each hop to the destination point and then shows the complete route of a request.

What Is Traceroute?

A traceroute is a network testing term that shows a network connection's real-time path taken by a packet to reach a network resource. It examines the hops that communication will follow across the IP network.

Traceroute, also referred to as tracert on Windows operating systems and traceroute on Linux-based systems, is a utility that uses ICMP packets to record the route from one network resource to another through the internet. It measures the time taken for each hop as the packet is routed to the destination. For accuracy,

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Accept

APPENDIX I

etn.com

domain.glass (<https://domain.glass>) > / com (<https://domain.glass/whois/com>) >
/ etn.com (<https://domain.glass/etn.com>)

[HTTP Headers](#) [Search Results](#) [WHOIS](#) [DNS](#)

[ns1.eaton.com](https://domain.glass/ns1.eaton.com) (<https://domain.glass/ns1.eaton.com>) [ns2.eaton.com](https://domain.glass/ns2.eaton.com) (<https://domain.glass/ns2.eaton.com>)
[192.104.67.8](https://domain.glass/192.104.67.8) (<https://domain.glass/192.104.67.8>) [mail.eaton.com](https://domain.glass/mail.eaton.com) (<https://domain.glass/mail.eaton.com>)
[192.104.67.3](https://domain.glass/192.104.67.3) (<https://domain.glass/192.104.67.3>) [192.104.67.6](https://domain.glass/192.104.67.6) (<https://domain.glass/192.104.67.6>)
[192.31.41.35](https://domain.glass/192.31.41.35) (<https://domain.glass/192.31.41.35>) [hostmaster.etn.com](https://domain.glass/hostmaster.etn.com) (<https://domain.glass/hostmaster.etn.com>)
[zenith-etn.com](https://domain.glass/zenith-etn.com) (<https://domain.glass/zenith-etn.com>) [www.dyvirt-etn.com](https://domain.glass/www.dyvirt-etn.com) (<https://domain.glass/www.dyvirt-etn.com>)
[etn.com](https://domain.glass/etn.com) (<https://domain.glass/etn.com>)

Website Status 

DNS resolution of *etn.com* points to 192.104.67.8 with a location in Kalamazoo, Michigan US. Domain name registration belongs to *Eaton Corporation*, registered through Csc Corporate Domains, Inc..

[archive.org](https://web.archive.org/web/2030/http://etn.com) (<https://web.archive.org/web/2030/http://etn.com>)

[Google Search](https://www.google.com/search?q=site%3Aetn.com) (<https://www.google.com/search?q=site%3Aetn.com>)

Social Media	Twitter [nitter] (https://nitter.domain.glass/search?f=tweets&q=%22etn.com%22)	Reddit [libredata]
Footprint	Reddit [teddit] (https://teddit.domain.glass/r/all/search?q=%22etn.com%22)	
External Tools	Google Certificate Transparency (https://transparencyreport.google.com/https/certificates?cert_sear)	

[http:1.665](http://1.665)

gethostbyname 192.104.67.8 [192.104.67.8] (/192.104.67.8)

IP Location Kalamazoo Michigan 49001 United States of America US

Latitude / Longitude	42.29171 -85.58723
Time Zone	-04:00
ip2long	3228058376

Top Pages

suggestions: [etn.com.mx](#) [etn.com.mx destinos](#) [etn.com.mx facturacion](#) [etn company](#)
[eaton company in pondicherry](#) [eaton company pune](#) [etn commodity](#) [etn competitors](#) [etn composition](#)
[etn compra anticipada](#) mobile: [etn.com.mx](#) [etn.com.mx destinos](#)

About (<https://zenith-etn.com/>)

- zenith-etn.com (<https://zenith-etn.com/>)

Welcome to the ZEBrafish Neuroscience International Training Hub ZENITH ! The aim of ZENITH is to train a new generation of neuroscientists in cutting-edge... zenith-etn.com

Neuroscience, Brain, Behavior, Laboratory, Doctor of Philosophy, Function (mathematics), International Congress of Mathematicians, Optics, Ethology, Zebrafish, Mathematics, Physics, Biology, Computer simulation, Science, Genetics, Research, Human brain, Training, Interdisciplinarity,

dyvirt-etn.com – Dynamic virtualisation: modelling performance of engineering structures (<https://www.dyvirt-etn.com/>)

- www.dyvirt-etn.com (<https://www.dyvirt-etn.com/>)

Zdyvirt-etn.com Dynamic virtualisation: modelling performance of engineering structures

Research, Engineering, Digital twin, European Union, Robotics, ITN, Virtualization, Series A round, Innovation, Type system, Twitter, Eventbrite, Training, Workshop, Hardware virtualization, Computer network, Doctor of Philosophy, Computer performance, Computer simulation, Video,

[Google](#) (<https://www.google.com/search?q=site:etn.com>) [Bing](#)
[\(https://www.bing.com/search?q=site:etn.com\)](#) [Duck Duck Go](#) (<https://duckduckgo.com/?q=site:etn.com>) [Yacy](#)
[Mojeek](#) (<https://www.mojeek.com/search?q=etn.com&site=etn.com>)
[\(https://search.domain.glass/yacysearch.html?query=site%3Aetn.com\)](#)

APPENDIX J

151.110.126.183

domain.glass (<https://domain.glass>) > / (<https://domain.glass/whois/>) >
/ 151.110.126.183 (<https://domain.glass/151.110.126.183>)

[HTTP Headers](#) [Search Results](#) [WHOIS](#) [DNS](#)

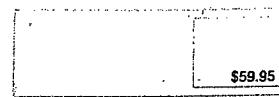
[a.root-servers.net \(<https://domain.glass/a.root-servers.net>\)](#) [nstld.verisign-grs.com \(<https://domain.glass/nstld.verisign-grs.com>\)](#)
[151.110.126.183 \(<https://domain.glass/151.110.126.183>\)](#)

Website Status

This IP address is located in Cleveland, Ohio US.

	archive.org (https://web.archive.org/web/2030/http://151.110.126.183)	
	Google Search (https://www.google.com/search?q=site%3A151.110.126.183)	
Social Media Footprint	Twitter [nitter] (https://nitter.domain.glass/search?f=tweets&q=%22151.110.126.183%22)	Reddit [teddit] (https://teddit.domain.glass/r/all/search?q=%22151.110.126.183%22)
External Tools	Google Certificate Transparency (https://transparencyreport.google.com/https/certificates?cert_sear)	
gethostbyname	151.110.126.183 [151.110.126.183] (/151.110.126.183)	
IP Location	Cleveland Ohio 44122 United States of America US	
Latitude / Longitude	41.471249 -81.515517	
Time Zone	-04:00	
ip2long	2540601015	

APPENDIX K



Tools [API](#) [Research](#) [Data](#)

[ViewDNS.info](#) > [Tools](#) > **Reverse IP Lookup**

Takes a domain or IP address and does a reverse lookup to quickly shows all other domains hosted from the same server. Useful for finding phishing sites or identifying other sites on the same shared hosting server.

Domain / IP: **GO**

Reverse IP results for 192.104.67.8

There are 1 domains hosted on this server.
The complete listing of these is below:

Domain	Last Resolved Date
etn.com	2022-08-03

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APPENDIX L

Viewdns.info

Home equity is an amazin

Tools API Research Data

[ViewDNS.info](#) > Tools > Reverse IP Lookup

Takes a domain or IP address and does a reverse lookup to quickly shows all other domains hosted from the same server. Useful for finding phishing sites or identifying other sites on the same shared hosting server.

Domain / IP: **GO**

Reverse IP results for 151.110.126.183

=====

There are 0 domains hosted on this server.

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[Feedback / Suggestions](#) / [Contact Us](#) - [Privacy Policy](#)

APPENDIX M

TRIAL TESTIMONY EXCERPTS OF MATTHEW COBERLY

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 27 of 120. PageID #: 485

126

1 A. Sure. At that point it was e-mails.

2 Q. Okay. And how were you aware of the e-mails?

3 A. The team in Oregon would forward them to me,
4 primarily the HR representative.

13:47:27 5 Q. Okay. And on top of e-mails, were there any other
6 forms of communication going to Eaton employees?

7 A. Eventually the e-mails evolved to telephone calls.

8 Q. Okay. Any other type of social media?

9 A. Yeah, there were also some Facebook communications.

13:47:46 10 Q. Okay. And how long approximately -- so he was
11 terminated in November of 2015?

12 A. Correct.

13 Q. And for how long afterwards did this stream of
14 communications occur?

13:47:59 15 A. I believe the last e-mail came on June 3rd of 2016.

16 Q. Okay. And during that entire time frame from
17 November of 2015 to June 3rd of 2016, were all the
18 e-mails continuously going to Eaton e-mail boxes?

19 A. Yes. And some others.

13:48:16 20 Q. Okay. Did Eaton take any steps at any point in the
21 interim to handle all the e-mail traffic coming to its
22 employees?

23 A. We did. Because of the frequency of the e-mails
24 and then the recipient list, the frequency was increasing
13:48:31 25 and the addressee list or the recipient list kept getting

1 broader, employees were finding them disconcerting so we
2 made the decision, I made the decision to redirect the
3 e-mails as they came in so that we could monitor them but
4 not have them going to all of the employees and
13:48:47 5 disrupting our work flow.

6 Q. Okay. And as you were monitoring them, where were
7 you monitoring them?

8 A. Ryan Keen was monitoring them and forwarding them
9 to me.

10 Q. Okay. So when you would actually see the e-mails,
11 where were you?

12 A. I was seated in Beachwood, Ohio.

13 Q. And over the course of you monitoring these e-mails
14 over these several months, what did you notice, if
13:49:10 15 anything, about the tone of the e-mails?

16 A. I would use the word escalating. It started off
17 with kind of an insulting, there were words like, you
18 know, "You're incompetent," you know, "you're stupid,"
19 words like that.

20 And then it quickly went to more of like a
21 harassment tone. For example, there was comments about
22 "I know where you live." There was statements that their
23 e-mail addresses have been posted on a ISIS blog so that
24 they would receive messages.

25 There were comments that referenced

1 A. If it was done, it was done locally and I'm not
2 aware of it.

3 Q. Okay. I'm going to bring up Exhibit 105 now.

4 All right. So just starting with the top
13:59:15 5 there, are those, in the "To" lines there, are those
6 Eaton employees?

7 A. Yes. Again the same two Eaton employees Andrea
8 Russell and Rebecca Gentle.

9 Q. Okay. And for all the e-mails I'm going to show
13:59:28 10 you going forward, you've had a chance to review them
11 before testifying here today?

12 A. Correct.

13 Q. All right. And is it -- where did you review, when
14 you first got these e-mails so back in 2016, where did
13:59:39 15 you actually review them?

16 A. They were e-mailed to me at my Eaton account, so in
17 my office in Beachwood I would open and review the
18 e-mails.

19 Q. Okay. So is this a forward -- does this appear to
13:59:51 20 be a forward of Exhibit 104?

21 A. Correct. That's the way I would have received
22 them.

23 Q. Okay. And going now to Exhibit 109.

24 And if we could just go in on the top part
14:00:11 25 there before the forward.

1 Q. And what was that other company?

2 A. Goodyear.

3 Q. Okay. And what were you aware of in terms of
4 Goodyear's response to Michael Hagar?

14:01:34 5 A. Goodyear, I believe, was a little more aggressive
6 in terms of my understanding is that they did hire
7 surveillance teams to follow Michael Hagar in the Oregon
8 area of Portland, Oregon.

9 Q. Okay. Now, I'm going to draw your attention to,
14:01:53 10 sorry, Exhibit 128. I'll just go to the first part.

11 You've had a chance to review this as well?

12 A. Yes, I have.

13 Q. Okay. And can you tell us just, first of all,
14 what's the date on this e-mail?

14:02:09 15 A. June 2nd, 2016.

16 Q. Okay. And who is it from?

17 A. Michael Hagar.

18 Q. All right. And among the many recipients here, do
19 you recognize any Eaton employees here?

14:02:23 20 A. Yes.

21 Marc Elliott is a plant manager at
22 Mr. Hagar's former place of employment.

23 Rebecca Gentle is a former coworker.

24 Cynthia Burke works in the IT department in
14:02:35 25 the same building I do at Eaton Center in Beachwood,

1 Ohio.

2 Amir Messih I'm not personally acquainted
3 with, but I know he's also an employee.

4 And Joseph Raulino is Mr. Hagar's former
14:02:50 5 supervisor.

6 Q. What does it say in the subject line on this
7 e-mail?

8 A. "I am going to shoot one of my guards soon. And
9 then I will makes certain all of you are shot, also."

14:03:03 10 Q. Okay. Where did you receive this e-mail?

11 A. At my office in Beachwood.

12 Q. And what day did you receive it?

13 A. I believe it was the same day.

14 Q. I'm going to also ask you the same questions.

14:03:18 15 So Exhibit 129. And again just the top
16 part, please.

17 Is this similar to 128?

18 A. Correct. It's from Michael.

19 Q. Okay. And is it addressed to the same individuals
14:03:36 20 at Eaton?

21 A. Yes, I see the same names, Marc Elliott, Cynthia
22 Burke, Rebecca Gentle, Joseph Raulino, Amir Messih.

23 Q. Okay. And what does this say for the subject line?

24 A. "I only have to shoot your kneecap and you will
14:03:49 25 never walk again."

1 Q. Okay. And where did you receive this e-mail?

2 A. Also at my office in Beachwood.

3 Q. Okay. Upon seeing Exhibits 128 and 129, as the
4 head of corporate security for Eaton, what was your
14:04:03 5 response to receiving those e-mails?

6 A. Again we immediately contacted local law -- as with
7 the team in Oregon to immediately notify local law
8 enforcement, and I notified the Federal Bureau of
9 Investigation.

14:04:16 10 Q. Okay. Now, if we could bring up Exhibit 133. Just
11 on the top part there, please.

12 Was this another e-mail that was forwarded
13 to your account here in Beachwood, Ohio?

14 A. Yes.

14:04:33 15 Q. Okay. And who is this addressed to?

16 A. Rebecca Gentle.

17 Q. Okay.

18 A. And Cynthia Burke.

19 Q. And what's the middle e-mail address over there?

14:04:41 20 A. So the first Rebecca Gentle e-mail address would
21 have been her Eaton e-mail address, and the second one is
22 her Gmail address.

23 And then Cynthia Burke's appears to be her
24 Eaton e-mail address as well.

14:04:54 25 Q. Okay. And can you read the subject line of that

1 e-mail?

2 A. "If I cannot have my life you will not have
3 yours."

4 Q. Okay. And then just starting from here, "If you do
14:05:03 5 not put an end to this," if you could start reading that
6 sentence.

7 A. "If you do not put an end to this I will go to
8 Columbia, Maryland and tell you family personally what
9 you are responsible for. I never want to have anything
14:05:17 10 to do with any of you. You are all scum of the earth and
11 you all deserve each other. If you think I will let them
12 lie about me, you are wrong. You will pay for what has
13 happened to me. I have given you a chance to do the
14 right thing."

14:05:30 15 Q. Okay. And at this time where was Cynthia Burke
16 working?

17 A. At Eaton Center in Beachwood, Ohio.

18 Q. Okay. And if we could go to Exhibit 134. And
19 again just zoom up to the top, please.

14:05:52 20 Was this another e-mail you received in
21 your office here in Cleveland, Ohio?

22 A. Yes, it is.

23 Q. Okay. And who is this one addressed to?

24 A. It's addressed to Marc Elliott.

14:06:04 25 Q. All right. And what's the date on this?

1 "To" line, was this addressed to individuals at Eaton as
2 well?

3 A. Yes, it is.

4 Q. Who was it addressed to?

14:07:43 5 A. Andrea Russell, Amir Messih, Marc Elliott, Rebecca
6 Gentle.

7 Q. Okay. And what's the subject of this e-mail?

8 A. "Tell Goodyear to stop following me."

9 Q. And what's the date?

14:07:57 10 A. April 23rd, 2016.

11 Q. And at this time what was your understanding of
12 what Goodyear was trying to do for its employees?

13 A. They were -- they had a surveillance team watching
14 Mr. Hagar to see if he posed any threat to their
15 employees.

16 Q. Okay. Were you aware of whether or not, in the
17 course of your role as the corporate security director
18 for Eaton Corporation, whether or not Michael Hagar,
19 after he was terminated, was seen in the Wilsonville,
20 Oregon plant for Eaton?

21 A. There was an occasion where he was spotted on,
22 well, two that I recall.

23 On one occasion he was spotted driving
24 through the parking lot of the facility.

14:08:34 25 And I believe on a second instance he was

1 seen to be standing across the street from the facility.

2 Q. Okay. All right.

3 MR. KAKANI: I have nothing further. Thank
4 you, Judge.

14:08:45 5 THE COURT: Thank you.

6 Any cross-examination?

7 MS. SERRAT: Yes, Your Honor.

8 CROSS-EXAMINATION OF MATTHEW COBERLY

9 BY MS. SERRAT:

14:08:57 10 Q. Good afternoon, Mr. Coberly.

11 Have you ever met Michael Hagar?

12 A. I have not.

13 Q. You've not had any conversations with him
14 throughout your investigation and work on this case?

14:09:06 15 A. I have not.

16 Q. You used the word "Forwarded" a lot.

17 Were all the e-mails that you looked at
18 regarding Mr. Hagar forwarded to you to your offices in
19 Beachwood?

14:09:16 20 A. That's correct.

21 Q. Was Mr. Hagar ever put on notice that his e-mails
22 were being forwarded to the Northern District of Ohio or
23 your Beachwood office?

24 A. Not that I'm aware of.

14:09:27 25 Q. So there was no direction put out to him or an

1 automatic response or notification saying that his
2 e-mails were being forwarded to the Northern District of
3 Ohio?

4 A. No. Not that I'm aware of.

14:09:37 5 Q. The Government went through some exhibits with you.
6 And I apologize, I do not have the technology here, but I
7 will ask you regarding some of those exhibits starting
8 with Government's Exhibit 4.

9 There was a second paragraph that you read
14:09:53 10 out loud.

11 Can you also read out the last paragraph of
12 Government's Exhibit 4?

13 A. "Eaton reserves any and all its rights in law or
14 equity, and, should you fail to cease and desist as
14:10:08 15 requested herein, Eaton may have no option but to pursue
16 appropriate legal action against you, including monetary
17 and injunctive relief."

18 Q. So did this letter basically state that Eaton might
19 decide to pursue civil damages against Mr. Hagar if he
14:10:22 20 did not abide by the cease and desist?

21 A. I think it says "legal action against you."

22 I guess that would include civil.

23 Q. But it does not state in there criminal action,
24 criminal investigation, FBI, any sort of criminal aspect
14:10:36 25 to that?

1 A. No, it doesn't state that in there.

2 Q. Did you ever speak with Hans M. Van Dyke, D-Y-K-E?

3 A. I did not.

4 Q. How were you given the e-mail to him in
14:10:49 5 Government's Exhibit 100?

6 A. It had been redirected to the box where we were
7 capturing the e-mail from Mr. Hagar.

8 Q. And regarding this redirection, was it an automatic
9 filter set up for certain e-mail addresses, or how did
14:11:02 10 that work with the redirection?

11 A. Yes. That's correct. If it -- when -- the e-mail
12 address that was coming in from Mr. Hagar was
13 automatically redirected to a box where we could review
14 them.

14:11:12 15 Q. So to your knowledge, you have no idea what
16 Mr. Hagar's relationship was with Hans M. Van Dyke?

17 A. I personally do not.

18 Q. Okay. And you don't know if they've ever gone out
19 target shooting before, if they had a cordial
20 relationship; you have no knowledge?

21 A. I don't.

22 Q. To your knowledge, were any other e-mails from
23 Mr. Hagar directed to Hans Van Dyke in your investigation
24 of Mr. Hagar?

14:11:33 25 A. Not that were forwarded to me.

1 Q. So this is the only e-mail, Government's Exhibit
2 100, that states, "Hi, Hans, it's Mike Hagar, I got a
3 cool toy. I've attached two photos of it. Mike told me
4 about it and I like it. I've not tried it out yet. Let
5 me know I (sic) you want to go target shooting sometime."

6 | Correct?

7 You just read that out of context? You
8 have no other knowledge other than what the e-mail
9 states?

14:12:00 10 A. I do not.

11 Q. Okay. Who is Ryan Keen?

12 A. Ryan Keen is an HR manager for Eater.

13 Q. And what was Ryan Keen's involvement in Mr. Hagar's
14 termination from Eaton Corporation?

14:12:17 15 A. Because the decision was made at the -- his place
16 of employment to terminate his employment, that would
17 have been within the HR process so he would have had
18 oversight of that, that termination.

19 Q. Were you ever put on notice of what Mr. Hagar was
20 fired for from Eaton Corporation?

21 A. Yes.

22 Q. And what was that?

23 A. There were, as I recall, performance concerns and
24 inability to control his anger.

14:12:40 25 Q. Were you present at the time he was terminated from

1 Eaton Corporation?

2 A. I was not.

3 Q. Do you know who was present in the room when he was
4 terminated?

14:12:49 5 A. I believe it was Marc Elliott and possibly Joe
6 Raulino.

7 I've had verbal or telephone conversations
8 with the team, but I don't know who was physically in the
9 room. I wasn't there.

10 Q. Were there any issues presented directly after his
11 termination from Eaton Corporation, that day,
12 that -- were there any issues that you became aware of
13 from his termination like security or any, any issues?

14 A. There was a report a few days after his termination
15 from another employee, yes.

16 Q. And what did that state?

17 A. It was an employee that was -- expressed concern
18 because Mike Hagar had told him that he was going to do
19 what it takes to hurt Joe Raulino.

14:13:17 20 Q. And who was this employee?

21 A. I don't have the name.

22 Q. So you don't recall who allegedly made this
23 statement?

24 A. I don't remember it off the top of my head, no.

14:13:39 25 Q. How many people work for Eaton Corporation in

1 Beachwood, Ohio?

2 A. I don't know exactly.

3 It's a -- I mean, I'd be guessing. It's a
4 fairly large building in Beachwood.

14:13:52 5 Q. To your knowledge, has Mr. Hagar ever set foot in
6 Beachwood, Ohio at the Eaton headquarters?

7 A. To my knowledge, no.

8 Q. Regarding Government's Exhibits 128 and 129, those
9 were forwarded to you, correct, in Beachwood, Ohio?

14:14:24 10 A. That's correct.

11 Q. Are there any individuals listed in the "To" box
12 that work in your office in Beachwood?

13 A. Yes.

14 Q. And who would that be?

14:14:34 15 A. Cynthia Burke.

16 Q. And where was Cynthia Burke working in June 2nd of
17 2016?

18 A. I believe she was working at Beachwood Center.

19 Q. Do you know that for a fact?

14:14:46 20 A. Eaton Center in Beachwood.

21 She worked there before and she works there
22 now, so I'm making an assumption that she worked there on
23 that date as well.

24 Q. Okay.

14:14:55 25 MS. SERRAT: Your Honor, may I have a

1 Was this notice given to him?

2 A. Yes, it was.

3 Q. And what was this telling him not to do?

4 A. It was telling him to stop sending e-mails and to
5 stop calling.

6 Q. Okay. And Cynthia Burke worked in the Northern
7 District of Ohio, is that correct?

8 A. That's correct.

9 Q. All right. And you were also asked whether or not
0 that notice, that Exhibit Number 4, said that he could be
1 criminally charged.

12 In your experience as corporate security
13 director, in your 27-plus years as a former Federal
14 Bureau of Investigation agent, could Eaton Corporation
15 bring criminal charges against Michael Hagar?

16 A. We can, and we did report it to law enforcement
17 agencies.

18 Q. Okay. But can they actually arrest him and charge?

19 A. No. No, we cannot do that.

14:17:13 20 Q. Okay. And Ryan Keen, you were asked some questions
21 about him.

22 Do you know physically where his offices
23 are?

24 A. His -- you know, I actually don't know exactly
25 where he is. I think he currently resides in South

1 Carolina.

2 Q. Okay.

3 MR. KAKANI: All right. Nothing further.

4 A. I'm not sure if that's where it was at the time,
14:17:33 5 no.

6 MR. KAKANI: Okay. Nothing further.

7 THE COURT: Anything further?

8 MS. SERRAT: No, Your Honor.

9 THE COURT: Thank you. You're excused.

14:17:40 10 Watch your step going down, please.

11 (Witness excused).

12 THE COURT: You may call your next witness.

13 MR. RIEDL: Thank you, Your Honor.

14 The Government calls Michael Roberts.

14:18:16 15 THE COURT: Mr. Roberts, would you raise
16 your right hand for me?

17 MICHAEL ROBERTS,

18 of lawful age, a witness called by the Government,
19 being first duly sworn, was examined

14:18:22 20 and testified as follows:

21 THE COURT: Please have a seat.

22 Mr. Roberts, would you tell us your full
23 name and spell your last name?

24 THE WITNESS: Sure. It's Michael E.
14:18:34 25 Roberts, R-O-B-E-R-T-S.

APPENDIX N

COPY OF EMAIL FOR COUNT 3 RECEIVED BY RYAN KEEN

INFORMATION

Clackamas County Sheriff's Office LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2016-14957

Due to the nature and timing of this threat, I am sending this to both of you. I also left Deputy Blair a message on his cell phone. Please also note that Deputy Burwell (Marion County) is on the email below. He just wrote back and advised he is on the case and is coordinating with the various PD's.

Senior Deputy Ted Burwell
Judicial Security/Threat Management
Marion County Sheriff's Office
100 High St. NE
Salem, OR 97301
Office: 503.588.5107
Cell: 503.932.5476
Fax: 503.588.7945
tburwell@co.marion.or.us

Becky forwarded the email below to Officers Duong and Gossen with the Multnomah (Portland Police Department).

Recall that tomorrow is Becky's hearing with Mr. Hagar, so this is a bit more alarming than normal.

Please call me at any time should we need to discuss.
Marc

630-808-9502

From: Keen, Ryan
Sent: Thursday, June 02, 2016 3:19 PM
To: Nelson Jennifer A.; Elliott, Marc C
Cc: Coberly, Matt
Subject: Fwd: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON

This one is pretty threatening. Marc please forward to your contacts at clackamas and for becky to send to portland. Burwell was on this one so he will see it. Jennifer use as you see fit for tomorrows hearing.

Begin forwarded message:

From: Michael Hagar <ronin62474@hotmail.com>
Date: June 2, 2016 at 6:12:59 PM EDT
To: "Mariel.Mota@mcda.us" <Mariel.Mota@mcda.us>, "Jeffrey.Lowe@mcda.us" <Jeffrey.Lowe@mcda.us>, "Christopher.Wyrostek@mcda.us" <Christopher.Wyrostek@mcda.us>, "Mary.Ryan@mcda.us" <Mary.Ryan@mcda.us>, "Diana.I.Fleming@doj.state.or.us" <Diana.I.Fleming@doj.state.or.us>, "marc.elliott@eaton.com" <marc.elliott@eaton.com>, "RebeccaEGentle@eaton.com" <RebeccaEGentle@eaton.com>, "cynthiasburke@eaton.com" <cynthiasburke@eaton.com>, "AmirMMessih@eaton.com" <AmirMMessih@eaton.com>, "josephraulino@eaton.com" <josephraulino@eaton.com>, Ted Burwell <tburwell@co.marion.or.us>, "Erious.Johnson@doj.state.or.us" <Erious.Johnson@doj.state.or.us>, "Michael.C.Kron@doj.state.or.us" <Michael.C.Kron@doj.state.or.us>, "Fred.Boss@doj.state.or.us" <Fred.Boss@doj.state.or.us>

INFORMATION

Clackamas County Sheriff's Office
LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2016-14957

[<Fred.Boss@doj.state.or.us>](mailto:Fred.Boss@doj.state.or.us)

Subject: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON

AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO.

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APPENDIX O

Wikimedia Found. v NSA/Central Sec. Serv. 427 F. Supp. 3d 582, 593-595 (D. MD 2019)

1. The Internet is a global collection of networks, large and small, interconnected by a set of routers.¹⁸ Together, these large and small networks function as a single, large virtual network, on which any device connected to the network can communicate with any other connected device.
2. To communicate over the Internet, an individual user connects with the network of a local Internet Service Provider ("ISP"), either directly (typically for a monthly fee) or indirectly through an organization (e.g., a place of business, an Internet café). In turn, the local ISP's network connects to the networks of larger regional and national ISPs, the largest of which are called "Tier 1" telecommunication service providers (e.g., AT&T, CenturyLink, Cogent, Verizon).
3. Tier 1 providers and other large carriers maintain high-capacity terrestrial fiber-optic networks, known generally as Internet "backbone" networks, that use long-haul terrestrial cables to link large metropolitan areas across a nation or region. Data travel across these cables in the form of optical^{2019 U.S. Dist. LEXIS 15} signals, or pulses of light.
4. The Internet backbone also includes transoceanic cables linking North and South America with each other and with Europe, Asia, the Middle East, and Africa. These undersea cables reach shore at points known as cable landing stations, from which they are linked to the terrestrial telecommunications network.
5. Tier 1 providers and other large carriers typically connect separate legs of their own networks using high-capacity switches. To allow ^{427 F. Supp. 3d 594} users of different providers' networks to communicate with one another, Tier 1 providers and other large carriers typically interconnect their networks using high-capacity routers.¹⁹
6. Generally speaking, to send a communication on the Internet, the transmitting device (e.g., a personal computer, a cell phone) first converts the communication into one or more small bundles of data called "packets," configured according to globally accepted protocols.²⁰
7. When a communication is broken into separate packets, each packet includes (i) a "header," which consists of the routing, addressing, and other technical information required to facilitate the packets' travel from its source to its intended destination, and (ii) a "payload,"^{2019 U.S. Dist. LEXIS 16} which consists of a portion of the contents of the communication being transmitted.
8. A packet's header contains three relevant pieces of address and routing information: (i) the packet's source and destination Internet Protocol ("IP") addresses; (ii) the source and destination ports; and (iii) protocol numbers.
9. IP addresses, which are included in packet headers, are unique numeric identifiers assigned to particular computers, devices, or systems connected to the Internet.²¹ IP addresses are used to direct data back and forth between one computer (or other online device) and another online device. IP addresses may be analogized to the destination and return addresses on a mailing envelope.
10. The IP addresses of entities with a large, fixed presence on the Internet do not change and are publicly accessible.²²
- {427 F. Supp. 3d 595}** 11. Port numbers, which are also included in packet headers, are used to identify communications of different kinds (e.g., webpage requests, or email) so that servers hosting multiple communications services (e.g., a website and an email service) can distinguish packets destined for one service from those meant for another. Port numbers for common

Wikimedia Found. v NSA/Central Sec. Serv. 427 F. Supp. 3d 582, 595-596 (D. MD 2019)

applications, like web-browsing{2019 U.S. Dist. LEXIS 17} and email, are assigned in a common industry registry maintained by the IANA. Whereas IP addresses can be analogized to the street address on a letter, port numbers are roughly analogous to the apartment numbers at a multi-unit dwelling.

12. Protocol numbers, which are also included in packet headers, are used by receiving devices to determine the appropriate method of interpreting data (e.g., HTTP, TCP/IP). A protocol defines the actions taken upon the transmission and/or receipt of a message or other transmission. Protocols are also assigned numbers maintained in a common industry registry maintained by the IANA.

13. After a communication has been broken into packets by the transmitting device, specialized computers called routers and switches ensure that the packets travel an appropriate path across the Internet to their destination IP address.

14. Each router or switch through which a packet transits scans the packet's header information, including its destination IP address, and determines which direction (path) the packet should follow next in order to reach its intended destination. The router or switch operates somewhat similarly to Google Maps, updating the fastest route to take{2019 U.S. Dist. LEXIS 18} between a user's starting point and his or her destination.

15. When packets transmitting a communication arrive at the receiving computer, smartphone, or other online device, the receiving device reassembles the packets into the original communication, such as a webpage or email.

16. Traffic "mirroring" is a technical term for a process by which a router or switch, in addition to determining where on the Internet each packet should be forwarded next, can also identify certain packets to be copied ("mirrored") and divert the designated copies off-network for separate processing. In other words, traffic mirroring can create a copy of all communications, or a subset of all communications, passing through a router or switch without interrupting the flow of those communications.

17. Traffic mirroring is accomplished by programming routers and switches with access control lists ("ACLs") to determine whether packets will be copied and collected at a certain link (the "interface") between the router or switch and another device. The criteria used in the ACL can include a packet's source or destination IP address, the port number, the protocol numbers, {427 F. Supp. 3d 596} or other information contained in a packet{2019 U.S. Dist. LEXIS 19} header.

18. The router or switch examines the header information of each packet it processes, and compares it to the ACL for each interface, to determine which interfaces the packet may or may not pass through without mirroring (copying).

APPENDIX P

NTP, Inc. v Research in Motion Ltd. 418 F.3d 1282, 1287-1288 (Fed. Cir. 2005)

A. Overview of Electronic Mail Technology

Traditional email systems operate in the following manner: To send an email, a user begins by composing a message in his or her email client. An "email client" is a user interface, such as Microsoft Outlook TM, Eudora TM, or Hotmail TM, that organizes and displays a user's email messages and provides the user with a means of creating and sending email messages. The message begins with a specific destination address, *i.e.*, jdoe@***.com, that corresponds to the recipient's user identification, "jdoe," and his or her internet service provider ("ISP" or "host"), "***.com." See generally Andrew S. Tanenbaum, *Computer Networks* {2005 U.S. App. LEXIS 4} 592-611 (4th ed. 2003). When the message is sent, it is transferred first from the sender's machine to his or her ISP. *Id.* at 607. The sender's host then uses a domain name server to identify the recipient's ISP mail {418 F.3d 1288} server and its associated internet protocol ("IP") address. *Id.* A connection is then established by the sender's host with the recipient's ISP mail server, facilitating transfer of the message. *Id.* at 607-08. The message is next sorted by the recipient's ISP mail server into the recipient's particular "mailbox," where it is stored until the recipient initiates a connection with the server and downloads the message off the server onto his or her personal machine. This configuration is commonly referred to as a "pull" system because emails cannot be distributed to the user's machine without a connection being initiated by the user to "pull" the messages from the mail server.

APPENDIX Q

From: ronin62474@hotmail.com
To: [REDACTED]

Subject: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON
Date: Thursday, June 02, 2016 6:13:28 PM
Importance: High

b6 -8
b7C -

AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO.

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APPENDIX R

App R-01

TRANSCRIPT EXCERPTS FROM HEARING ON MOTION TO REPLACE COUNSEL

Case: 1:16-cr-00273-DCN Doc #: 131 Filed: 08/02/19 6 of 9. PageID #: 1259

6

1 MR. RIEDL: That's correct, Your Honor.

2 THE COURT: I would assume that you're
3 prepared to go forward if we were to start trial on Monday?

4 MR. RIEDL: Yes, Your Honor.

11:01:16 5 THE COURT: Well, this is what I'm going to
6 do. I will grant this request, and I'm going to appoint a
7 new lawyer. But this is it, right? I hope you get along
8 with this other lawyer. I'll look at the list of lawyers
9 that we have and people who are very experienced in this
11:01:34 10 type of case. But that will be it.

11 THE DEFENDANT: Okay.

12 THE COURT: If you don't like him or her, then
13 too bad.

14 THE DEFENDANT: Is it possible that I could
11:01:46 15 request from the law firm?

16 THE COURT: Say that again.

17 THE DEFENDANT: To request the attorney from a
18 certain law firm.

19 THE COURT: Who might that be?

11:01:56 20 THE DEFENDANT: I believe it's Burdon &
21 Merlitti.

22 THE COURT: Who?

23 THE DEFENDANT: I've got it written down. I'm
24 sorry.

11:02:10 25 Yeah. Burdon & Merlitti. They're out of Akron.

APPENDIX S

ASSISTANT US ATTORNEY RIEDL AT THE BEGINNING OF VOIR DIRE

Case: 1:16-cr-00273-DCN Doc #: 101 Filed: 03/13/19 3 of 99. PageID #: 362

3

1 TUESDAY, FEBRUARY 26, 2019, 8:59 A.M.

2 THE COURT: Go ahead.

3 MR. RIEDL: Thank you, Your Honor.

4 Pursuant to *Frye* and *Lafler*, the Government
09:00:18 5 would like to make a record of the fact that the
6 Government did attempt to make a good faith effort to
7 negotiate a plea agreement with Mr. Hagar with the
8 current counsel as well as his previous attorneys.

9 We heard back repeatedly that Mr. Hagar was
09:00:31 10 not interested in any plea agreement; that he only wished
11 to have a trial. Therefore, no formal offers were made.

12 However, the Government did attempt to
13 negotiate a plea agreement, and it's our understanding
14 that Mr. Hagar rejected any attempts to negotiate a plea
09:00:43 15 in this case then.

16 THE COURT: Is that correct, Mr. Hagar?

17 THE DEFENDANT: Yes, it is.

18 THE COURT: All right. Thanks.

19 MR. RIEDL: Thank you.

09:00:51 20 THE COURT: Now we are ready to begin.

21 THE CLERK: Are you ready?

22 THE COURT: Yes.

23 Now, you know, you have six potential
24 challenges and you have ten, so the Government will go
09:01:11 25 first and then the defense will go twice in a row.

APPENDIX T

JUDGE NUGENT'S STATEMENT AT THE SENTENCING HEARING

Case: 1:16-cr-00273-DCN Doc #: 135 Filed: 08/15/19 40 of 44. PageID #: 1315

40

1 circumstances of the offense.

2 And this offense goes beyond the pale, I
3 think. There's no -- there's been no physical injury,
4 but the mental stress and mental injury to the victims is
11:10:14 5 more than I've seen in my lifetime.

6 And if I have to reflect the seriousness of
7 the offense in the sentence and deter criminal conduct, I
8 think the maximum sentence is appropriate.

9 And the public has to be protected from
11:10:28 10 what you did, and I just heard here again, I heard your
11 testimony. Actually I couldn't believe your testimony
12 when I heard it, and then I hear it here. And I don't
13 see any remorse. I don't see any acceptance of
14 responsibility for acting badly and committing crimes.
11:10:43 15 Nothing. You're angry that somebody did some perceived
16 wrong to you, and then that's where it stands.

17 And so I don't see any assurance that if
18 you were on the street, that the public would be
19 protected at all. In fact, I see just the exact
11:11:00 20 opposite.

21 Now, you've had some mental health
22 allegations in your history. I don't know, but I think
23 that somebody should do an evaluation, an additional
24 evaluation and see whether there's some effect on that or
11:11:15 25 something's going on with that.

APPENDIX U

Case: 19-3591 Document: 60-2 Filed: 08/03/2020 Page: 16

No. 19-3591, *United States v. Hagar*

order and underlying petition before a court may issue a *final* protective order. 377 P.3d 692, 693 (Or. App. 2016).

Hagar does not otherwise argue sufficiency of the evidence, nor should he. The record established that (1) R.G. obtained a temporary stalking protective order on May 5, 2016; (2) the police served him with it on May 9; (3) the order directed Hagar to “stop any contact” and to not “attempt to make contact” with R.G.; (4) Hagar was ordered to appear on June 3 for a show cause hearing; and (5) the temporary order clearly stated that it “remained in effect” from May 5, 2016, pending the hearing on June 3, 2016. Hagar contacted R.G. many times after being served with the temporary protective order, including the June 2 SHOOT email. Because Hagar threatened R.G. after being served with the temporary protective order, his Rule 29 motion was properly denied.

E. Sentencing Issues

We review criminal sentences for procedural and substantive reasonableness. *Gall v. United States*, 552 U.S. 38, 51 (2007).

1. Procedural Reasonableness

Hagar claims that the district court erred in applying a six-level enhancement pursuant to U.S.S.G. § 2A6.1(b)(1) because he never intended to carry out any of the threats. In support he points to his trial testimony stating that he never intended to act on his threats and sent the messages simply to scare his victims because “[he] was frustrated by that time.” Hagar also argues that he should not have received a two-level enhancement under USSG § 2A6.1(b)(3) because he did not commit an offense in violation of a lawful court protection order. These are both procedural-reasonableness challenges. *See United States v. Rayyan*, 885 F.3d 436, 440–41 (6th Cir. 2018) (a claim that the district court improperly applied a sentencing enhancement is a claim that the court

1 A. Yes.

2 Q. And Government's Exhibit 129, you sent this one a
3 short time later, is that right?

4 A. Yes, I did.

13:58:19 5 Q. You sent it to the same people, is that right?

6 A. Yes, I did.

7 Q. And you sent that message and those messages
8 because you wanted to scare them, is that right?

9 A. No. I was frustrated by that time.

13:58:29 10 Q. You were frustrated, I understand that.

11 But if you say to someone "I only have to
12 soot your kneecap and you will never walk again," that's
13 not an expression of frustration, is it?

14 A. I guess it might depend on the person.

13:58:44 15 Q. It might depend on the person.

16 And if you send it to someone who you've
17 been sending unwanted e-mails for months and months, "I
18 only have to soot your kneecap and you will never walk
19 again," probably not a statement of frustration, it's
20 probably a threat to that person, isn't it?

21 A. Not in my perspective, no.

22 Q. Not in your perspective. You didn't think this
23 would be seen as a threat?

24 A. I really wasn't thinking of them at that point in
25 time.

APPENDIX V

RELEVANT PART OF STATUTES

18 U.S.C. § 115(a)(1)(A)

Whoever assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; with the intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with the intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection(b).

18 U.S.C. § 115(c)(2)

As used in this section, the term 'immediate family member' of individual means-

- (A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or
- (B) any other person living in his household and related to him by blood or marriage.

18 U.S.C. § 875(c)

Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years or both.

18 U.S.C. § 1503(a)

Whoever corruptly endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b).

18 U.S.C. 1512(c)(2)

Whoever corruptly otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 2261A(2)

Whoever with the intent to kill, injure, harass, intimidate, or place under surveillance with the intent to kill, harass or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic interactive computer service or electronic communication system of interstate commerce or any other facility of interstate or foreign commerce to engage in a course of conduct that-

(A) places that person in reasonable fear of death or serious bodily injury to that person; an immediate family member (as defined in section 115) of that person; or the spouse or intimate partner of that person; or
(B) causes, attempts to cause or would reasonably be expected to cause substantial emotional distress to a person; an immediate family member (as defined in section 115) of that person; or the spouse or intimate partner of that person.

18 U.S.C. § 3162(a)(2)

If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with exclusion of the time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense, the facts and circumstances of the case which led to dismissal; and the impact of a reprocsecution on the administration of justice. Failure of the defendant to move for a dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

28 U.S.C. § 2071(a)

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

28 U.S.C. § 2253(c)(2)

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2255(a)

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(b)

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the

United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

28 U.S.C. § 2255(e)

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

FEDERAL RULES OF CRIMINAL PROCEDURE 12(b)(3)

The following defenses, objections, and request must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:

- (A) a defect in instituting the prosecution, including:
 - (i) improper venue;
 - (ii) preindictment delay;
 - (iii) a violation of the constitutional right to a speedy trial;
 - (iv) selective or vindictive prosecution; and
 - (v) an error in the grand-jury proceeding or preliminary hearing;
- (B) a defect in the indictment or information, including:
 - (i) joining two or more offenses in the same count (duplicity);
 - (ii) charging the same offense in more than one count (multiplicity);
 - (iii) lack of specificity;
 - (iv) improper joinder; and
 - (v) failure to state an offense;
- (C) suppression of evidence;
- (D) severance of charges or defendants under Rule 14; and
- (E) discovery under Rule 16.

FEDERAL RULES OF CRIMINAL PROCEDURE 12(d)

The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer a ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

I, Michael Hagar, did place in the FCC Beaumont Low "inmate mail" system, the original PETITION FOR WRIT OF CERTIORARI, APPENDIX DOCUMENTS and the MOTION TO PROCEED IN FORMA PAUPERIS and the PROOF OF SERVICE ON December 7, 2022

In accordance with 28 U.S.C. § 1746:
I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2022

Michael A. Hagar
Michael A. Hagar