

APPENDIX A – Court of Appeals Opinion (Sept. 18, 2017)

NOT FOR PUBLICATION**FILED**

UNITED STATES COURT OF APPEALS

SEP 18 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Nos. 16-30117

Appellee,

16-30158

v.

D.C. Nos. 1:14-CR-02074-WFN

1:14-CR-02058-WFN

CHARLES PETE EYLE,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, District Judge, Presiding

Argued and Submitted August 29, 2017
Seattle, Washington

Before: GOULD and McKEOWN, Circuit Judges, and ROTHSTEIN, ** District Judge.

Charles Eyle was convicted of two counts of attempted aggravated sexual abuse of a child and one count of aggravated sexual abuse of a child. In a separate trial, Eyle was convicted of being a felon in possession of ammunition. Eyle was sentenced in a consolidated hearing, and his appeals of both convictions are

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Barbara Jacobs Rothstein, United States District Judge for the Western District of Washington, sitting by designation.

consolidated in this Court.

With respect to his sex-abuse convictions, Eyle contends that the district court erred in allowing the child victim, D.E., to testify via two-way video without holding an evidentiary hearing on the Government's motion for video testimony. Eyle argues that the district court's ruling violated both the Confrontation Clause—as interpreted by the Supreme Court in *Maryland v. Craig*, 497 U.S. 836, 845 (1988)—and the statute prescribing alternative procedures for children testifying in sex-abuse cases, 18 U.S.C. § 3509(b)(1)(B). We review the Sixth Amendment and statutory-interpretation claims *de novo*. *United States v. Yazzie*, 743 F.3d 1278, 1288 (9th Cir. 2014). We review a district court's factual findings for clear error.

Neither the Confrontation Clause nor § 3509 require the district court to hold an evidentiary hearing prior to ruling on the Government's motion for video testimony. The district court's findings that D.E. was fearful of the defendant were appropriate and sufficient to allow were appropriate and sufficient to allow video testimony.

Eyle next contends that the district court erred in sentencing him as a “career offender” under United States Sentencing Guideline § 4B1.1(a) because his prior child-sex-abuse convictions under 18 U.S.C. §§ 2244(a)(1) and 2244(a)(3) are not “crimes of violence” within the meaning of the Guidelines. We review *de novo* a district court's determination that a prior conviction constitutes a crime of violence under the Guidelines. It is well-established in this circuit that child sex

abuse is *per se* a crime of violence. *United States v. Granbois*, 376 F.3d 993, 996 (9th Cir. 2004). Thus, the district court did not err in enhancing Eyle's sentence in this case.

AFFIRMED.

APPENDIX B – District Court Oral Ruling (Mar. 23, 2015)

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE DISTRICT OF WASHINGTON

3 UNITED STATES OF AMERICA,
4

Plaintiff,

-vs-

CHARLES PETE EYLE,
7

Defendant.

)
)
) NO. 1:14-CR-2058-WFN
) 1:14-CR-2074-WFN
) 1:15-CR-2003-WFN
)

) March 23, 2015
) Yakima, Washington
)

9
10 REDACTED VERBATIM REPORT OF PROCEEDINGS
11 PRETRIAL CONFERENCE

12 BEFORE THE HONORABLE WM. FREMMING NIELSEN
13 SENIOR UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE PLAINTIFF:

THOMAS J. HANLON
Assistant United States Attorney
402 E. Yakima Ave., #210
Yakima, WA 98901

16 FOR THE DEFENDANT:

REBECCA L. PENNELL
MATTHEW A. CAMPBELL
Attorneys at Law
306 E. Chestnut
Yakima, WA 98901

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20
21
22 REPORTED BY:

Lynette Walters, RPR, CRR, CCR
Official Court Reporter
P. O. Box 845
Yakima, WA 98907
(509) 573-6613

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24
25 Proceedings reported by mechanical stenography; transcript
produced by computer-aided transcription.

1 "child molestation", and that is a conviction for any offense
2 under Chapter 109A. Both the prior convictions and the current
3 offense, as charged, are violations of that chapter.

4 Thank you.

5 THE COURT: We will be getting out a written order,
6 because I think it's necessary that the parties have a heads-up
7 as to what the probable rulings are going to be.

8 The next motion I want to deal with is the
9 government's motion requesting sealed televised testimony
10 pursuant to 18 U.S.C. 3509(b)(1)(B). I read with some interest
11 the lengthy, detailed report of the psychologist from Seattle,
12 whose name slips me right now. I think that that procedure set
13 out in the statute is totally appropriate in this case, a very
14 young female, eight years old, frightened, concerned,
15 distressed, afraid of the defendant. Being with him in the same
16 room, testifying in this environment, would be an emotional
17 trauma for the young child. The procedure set forth in the
18 statute, I think, preserves all the constitutional rights that
19 the defendant has as to confrontation.

20 If I understand it, the child would testify live, but
21 in a room other than the courtroom. That testimony would be fed
22 by live video into the courtroom. In the room with the child
23 would be defense counsel, and U.S. Attorney, and, of course,
24 presumably the mother in this case, and a judicial officer.

25 I haven't spoken with anybody down here, but one of

1 the judicial officers in this building presumably would be in
2 attendance in that room. So cross-examination could be
3 conducted. So I feel all the constitutional safeguards,
4 particularly the Sixth Amendment to the Constitution ensuring
5 confrontation would be protected and preserved.

6 Mr. Campbell or Ms. Pennell.

7 MS. PENNELL: That one's mine, Your Honor.

8 Your Honor, in addressing the standard, the Supreme
9 Court has said the government has to show that it is the
10 defendant's presence that causes emotional distress, not just a
11 courtroom setting. And I don't see how that's been done.

12 Mr. Eyle was not present during the psychological
13 evaluation during which Dxxx Exxx, D.E., was unable to talk
14 about the allegations, so -- and she has been unable to talk
15 about the allegations to her mother. So the fact that she's
16 been -- had trouble in the past talking about the allegations
17 has absolutely nothing do with the defendant. There's been no
18 suggestion that his presence has particularly bothered her.

19 It was bothersome to me that the psychologist put
20 words in her mouth and said, were you afraid of the bad man who
21 hurt you. You know, especially when dealing with child
22 witnesses, for a government expert to put those words in a
23 child's mouth is troubling, because you plant the ideas that
24 could taint the witness's testimony. But that's -- she answered
25 yes to that, but apart from that, did not indicate any

1 particular fear, no bad dreams, no intrusive thoughts.

2 The Supreme Court has specifically said if the problem
3 with the child's ability to testify is the courtroom setting in
4 general, then it's the courtroom setting that needs to be
5 changed, not the presence of the defendant. And that is an
6 important Sixth Amendment right. There's just no information
7 suggesting that it's the defendant's presence that's the
8 problem.

9 You know, in terms of -- and I don't know if the court
10 watched the videos. During the videos, the child's main
11 concern, she wanted her mother in the room with her, which I
12 think is not uncommon for a child, in general, in any situation.
13 But once that issue was resolved, she didn't have trouble
14 talking with the interviewer. And I would say that the first
15 interview, to the extent that it was more difficult than the
16 second one, was while Mr. Eyle -- was shortly after the
17 incident, while Mr. Eyle was out of custody.

18 THE COURT: Why is it that you specifically object to
19 the procedure that's outlined?

20 MS. PENNELL: Because it's Mr. Eyle's right, and I
21 just don't think that this -- I think that we need to follow
22 procedures. It's a right under the Sixth Amendment. And I
23 think that it gives her undue sort of preferential treatment to
24 be in a private room. It treats her testimony different than
25 other witnesses.

1 So, initially, Mr. Eyle's right to confront. But it's
2 also -- it treats her in a different way, and it corroborates
3 her testimony simply by treating her in a different way.

4 I can tell you that, from reading about it, jurors
5 tend to give less credence to witnesses appearing over videos.
6 So to that extent --

7 THE COURT: Say that again.

8 MS. PENNELL: From what I've read of the literature,
9 jurors seem to give less credence to witnesses testifying over
10 videos. So, to a certainly extent, it may hurt the government
11 that this witness is testifying over video.

12 I also, quite frankly, from looking at the videos, and
13 reading about this young girl, think it's going to be very
14 difficult to hold her attention. I don't know who's going to be
15 the judge in the room to get her to get back on task. Or it
16 will be very difficult for Your Honor.

17 I would object to the mother being in the room. The
18 statute says an attendant should be in the room. It doesn't say
19 a witness. Mother is a witness. Mother is a witness to prior
20 statements. We do have concerns that we've set forth in our
21 expert witness's report regarding perhaps the mother's interview
22 of the child shaping her testimony.

23 I've also submitted there may be a motive in this case
24 regarding the allegations, that there were drugs being sold in
25 the home, drugs being pushed on her. The mother would be in

1 larger trouble based on that. And to have the mother be one of
2 the few people in the room, I think, would be highly
3 inappropriate. I think that the U.S. Attorney's Office has
4 attendants that normally are the victim/witness attendants, and
5 it should be a nonwitness attendant if the court goes that
6 route.

7 So I think, as a practical matter, it would be very
8 difficult. And I just don't think that the standard has been
9 met. All that's been met is that this witness may have
10 difficulty testifying in court, but no evidence that it's
11 because of Mr. Eyle that she would have difficulty testifying in
12 court. And the court must make that specific finding.

13 THE COURT: Assuming this is a traumatic event, it
14 only occurred last summer, in July, as I recall. And this is a
15 very young child, eight years old. I consider it to be quite
16 young. She's third grade. She's not any star academically,
17 but -- she has some shortcomings in that regard.

18 Common sense would indicate that being face-to-face
19 with somebody who allegedly abused her in this way is traumatic,
20 and that's why --

21 MS. PENNELL: I don't think it's --

22 THE COURT: Excuse me. That's why a special
23 consideration is appropriate.

24 MS. PENNELL: I don't think that the statute is
25 intended in presumptive, it's presumptive that it would be

1 disturbing. Otherwise, you know, every case of a violation of
2 child molestation would be presumptively, if true, upsetting to
3 the alleged victim. But the statute doesn't require that.

4 The statute contemplates that it's not always the
5 case, and that it often may be the case that it's the court
6 setting in general that is upsetting or disturbing to a child,
7 and not the defendant. And that's the showing that must be
8 made. And simply the fact that she's had trouble talking about
9 this matter when Mr. Eyle isn't even present suggests to me that
10 the problem doesn't have to do with him. There may be a
11 problem, but it doesn't have to do with Mr. Eyle's presence.

12 THE COURT: Mr. Hanlon.

13 MR. HANLON: Thank you, Your Honor.

14 It's the government's position that we have met our
15 burden here. First, there are two different ways that could
16 justify the government's request for the video monitoring. One
17 is that the victim is fearful of the defendant and would be
18 unable to testify in a courtroom. The government is not
19 required to provide expert testimony to support that basis.

20 And I would just note that ECF 40, I did attach a
21 declaration from Special Agent Peter Orth, who spoke with the
22 victim's mother. She stated the victim is very scared of the
23 defendant, and she would be unable to testify in a courtroom
24 because of her fear of the defendant.

25 In addition, Your Honor, the government has also

MOTION FOR SEALED TELEVIEWED TESTIMONY/RULING
MOTION IN LIMINE RE: PUNISHMENT/RULING

17

1 obtained expert testimony, or a report from Dr. Muscatel, and he
2 determined in his report that, with the alleged perpetrator, the
3 defendant, in her presence, the likelihood of emotional distress
4 and injury increases considerable. Therefore, we have
5 established, Your Honor, there is a likelihood of emotional harm
6 or psychological damage if the defendant -- if victim is forced
7 to testify in the same room as the defendant.

8 THE COURT: And the court took that into account.

9 MR. HANLON: Thank you.

10 THE COURT: I think it's appropriate.

11 The third motion is the motion to continue, and we'll
12 come back to that shortly.

13 Government has a motion prohibiting any reference to
14 potential punishment. I'll grant that. That's standard.

15 The fifth motion is regarding FBI 302s. I'm not sure
16 that, Ms. Pennell, that there was any indication that you
17 intended to try to use those to impeach witnesses. They -- I
18 will say it's the court's experience those are not witness
19 statements and can't be used to impeach, as if it were a signed
20 statement or a deposition.

21 MS. PENNELL: Generally not, Your Honor. I mean,
22 there could be a scenario where you're writing down exactly what
23 the witness has said. Or the rule would say if you show the 302
24 to a witness outside the court proceeding, and the witness
25 adopted it, the statute would apply.

MOTION FOR COMPETENCY HEARING

27

1 MS. PENNELL: Thank you, Your Honor.

2 THE COURT: All right. The competency hearing. I
3 reviewed some of those transcripts. I reviewed the briefing.

4 Ms. Pennell, you pointed out three or four incidents
5 where statements were made that -- I don't know how to describe
6 it, that would have been unlikely or impossible, coming from the
7 mouth of the child. You have to keep in mind she is an eight
8 year old, and there were pages and pages and pages of her
9 statements that seem to be appropriate. I haven't seen any
10 suggestion that a competency hearing is necessary. She's -- you
11 know, under the evidence rules, 601, every person is competent.
12 Children are presumed to be competent. And I haven't seen
13 anything that would suggest that this child should not be
14 allowed to testify. Now, without going through the agony of a
15 full-blown competency hearing.

16 MS. PENNELL: Your Honor, I should just say, also,
17 ruling on the video without having any live testimony either
18 from the victim or her mother is difficult. We're just relying
19 on mother's statement to agents, for example -- and I'm going to
20 the other issue -- that D.E. is scared, but then mother also
21 told an investigator she did quite well, and she's able to
22 recite these things during a medical exam. So we have
23 inconsistent statements and just deferring to what the
24 government wants instead of having an evidentiary hearing, which
25 I think would be critical as to the video issue and proving that

1 the problem is actually Mr. Eyle, as opposed to just a general
2 problem with the witness, in which case, a different solution,
3 not just the out-of-court solution, needs to be settled on.

4 THE COURT: Are you suggesting one?

5 MS. PENNELL: I'm suggesting we need an evidentiary
6 hearing, both as to competency, and then also to get to which
7 court setting is right for this witness. Is the problem
8 Mr. Eyle, or is the problem the court setting in general? I
9 mean, there can be the taking of testimony in a different, more
10 informal setting, if that's the issue with the witness.

11 But I think at this point in time there are a number
12 of issues with respect to competency as well. In terms of the
13 areas in which D.E. was questioned that we can know were true or
14 false, she, more often than not, was repeating things or
15 asserting things that were not true, or she would adopt
16 statements that were incorrect without correcting the
17 questioner. And she just did that over and over again, not just
18 once.

19 And I have a seven year old, Your Honor. I proposed
20 questions to the court for a competency hearing. I think the
21 court can see that it would not be an overly-intrusive hearing.
22 But my seven year old was able to answer those questions quite
23 well, I must say. But --

24 THE COURT: Naturally. She's your daughter.

25 MS. PENNELL: You know, but the troubles were

1 significant, to me, to just say she was an eight year old. She
2 readily would just agree with things that were incorrect, or she
3 would be told not to guess, told not to guess, and then guesses.
4 It really is concerning to me that when she's told to tell us
5 about things that happened where she's the only witness, to what
6 extent is she just parroting back information she's heard from
7 other places and not experienced herself? That issue has never
8 been delved into.

9 And it's just repeated. It's not one instance. It's
10 repeated instances of her reciting fantastical information.
11 It's not just three or four that I cited in my brief. I cited
12 in my opening briefs and my reply briefs numerous instances of
13 her adopting information that was incorrect, engaging in
14 fantastical talk.

15 I think it is appropriate for a competency hearing.
16 It's not a extensive hearing. The statute contemplates that
17 Mr. Eyle would not be present. The court could hammer down and
18 make a much better record as to whether or not the problem is
19 Mr. Eyle's presence or something else.

20 I would think -- the government, I know they want to
21 protect their witness. But having D.E. come into the courtroom
22 for a very simple, nonintrusive hearing would put her more at
23 ease prior to trial, and having it not be so confrontational. I
24 think the standard is met, and I don't think that there is harm
25 to the child by having a competency hearing.

MOTION FOR COMPETENCY HEARING/RULING
MOTION FOR SUPPLEMENTAL QUESTIONNAIRE/RULING

30

1 THE COURT: Mr. Hanlon?

2 MR. HANLON: Your Honor, the government's position is
3 that a competency hearing is not designed to be a test run to
4 make us at ease. Rather, the hearing is limited to whether or
5 not she has the ability to understand and answer simple
6 questions.

7 We provided the court with the information from the
8 forensic interviews. She clearly can answer simple questions.
9 She was able to identify her name, age, teacher, school, the
10 location of the school, the people that lived in the residence,
11 in addition to a number of other questions. We believe the
12 record is clear that she is competent as a witness.

13 THE COURT: I haven't seen anything to suggest that
14 she's not competent, and these inconsistencies can certainly be
15 explored. My inclination is to deny the motion for a competency
16 hearing.

17 Now, the next motion I have is for supplemental jury
18 questionnaire for the prospective jurors. I think that's
19 entirely appropriate.

20 We're going to deal with the continuance. So what I'm
21 going to suggest is that, some reasonable period of time before
22 the trial, the parties submit, each simultaneously, proposed
23 questions, and the court will put together a questionnaire.
24 We've done this in the past. I had a couple cases years ago
25 where we've done this, and it makes a whole lot of sense.

APPENDIX C – District Court Order (Mar. 31, 2015)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

CHARLES PETE EYLE,
Defendant.

Nos. 1:14-CR-2058-WFN-1
1:14-CR-2074-WFN-1
1:15-CR-2003-WFN-1

ORDER

A pretrial conference and motion hearing was held March 23, 2015. The Defendant, who is in custody, was present and represented by Rebecca Pennell; Assistant United States Attorney Thomas Hanlon represented the Government.

The Court addressed pending pretrial motions. The Court has reviewed the file and Defendant's Motions and is fully informed. This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1:14-CR-2058-WFN

1. The Government's Motion in Limine to Admit Evidence of Similar Crimes Pursuant to 414 and 404(b), filed November 18, 2014, **ECF No. 37**, is **GRANTED**. The Court reviewed the non-exhaustive list of factors established by the Ninth Circuit and concluded that both prior convictions are admissible pursuant to Fed. R. Evid. 414 and 404(b). Admission of the convictions would not cause unfair prejudice. Both prior convictions, while old, involved Defendant's young female family members. The underlying circumstances, especially in the 1997 conviction, closely resemble those in the current case.

2. The Government's Sealed Motion for Televised Testimony of Minor Victim, filed November 19, 2015, **ECF No. 40**, is **GRANTED**. The Court reviewed the records.

1 The victim's mother reports that the victim is fearful of Defendant. The expert who
2 questioned the victim corroborates the mother's statement. The expert notes that the victim
3 tends to shut down when addressing the events leading to Indictment. Additionally,
4 the victim is young and suffers from some cognitive delays. The victim's fearfulness of
5 the Defendant and a reluctance to discuss the events can be somewhat mollified by
6 allowing televised testimony. The Court will adhere to the measures described in
7 18 U.S.C. § 3509(b)(1). The victim will be permitted to request an adult attendant, but
8 the Court is cognizant of the Defendant's objection to the attendant being the
9 victim's mother. The Government should seek an attendant that will not be a witness at
10 trial, but will be able to attend to the welfare and well-being of the victim during
11 testimony.

12 3. The Government's Motion in Limine Re: Punishment, filed March 5, 2015, **ECF**
13 **No. 64**, is **GRANTED**.

14 4. The Government's Motion in Limine Re: FBI 302s, filed March 5, 2015, **ECF**
15 **No. 65**, is **GRANTED**.

16 5. The Court **RESERVES RULING** on the Government's Motion in Limine Re:
17 Expert Testimony, filed March 5, 2015, **ECF No. 66**.

18 6. The Government's Motion in Limine Re: DSHS/CPS Investigations, filed on
19 March 5, 2015, **ECF No. 67**, is **DENIED**.

20 7. Defendant's Motion to Strike Expert Witnesses, filed March 6, 2015, **ECF**
21 **No. 76**, is **DENIED**.

22 The Government was in compliance with the Discovery Order which states, "An
23 initial early pretrial conference will be set by the presiding Judge to deal with discovery
24 and other issues. DO NOT FILE ANY MOTIONS PRIOR TO THAT PRETRIAL
25 CONFERENCE OR HIRE ANY EXPERTS." ECF No. 23 [Emphasis original].

26 8. Defendant's Motion for Competency Hearing of Child Witness, filed on
27 March 6, 2015, **ECF No. 69**, is **DENIED**. Children are presumed competent. 18 U.S.C.
28 § 3509(c)(2). Defendant has not presented compelling reasons to conduct a competency

1 hearing. All issues raised in support of his motion would be issues defense counsel may
2 choose to pursue during cross-examination.

3 9. Defendant's Motion for Supplemental Jury Questionnaire, filed March 6, 2015,
4 **ECF No. 72, is GRANTED.** The Court will provide a proposed supplemental question-
5 naire to counsel.

6 10. Defendant's Motion in Limine, filed March 6, 2015, **ECF No. 73, is**
7 **GRANTED.** However, the Court notes that there are instances that counsel may seek to
8 ask leading question during direct questioning of the victim which will be granted by the
9 Court in appropriate circumstances.

10 11. Defendant's *Ex Parte* Motions, **ECF Nos. 90 and 108, are DENIED AS**
11 **MOOT.**

12 12. Subpoenas shall be issued for all relevant fact witnesses proposed by defense
13 counsel. Defendant's *Ex Parte* Motion, **ECF No. 112, is GRANTED.**

14 13. The Government's Motion to Continue Trial, filed February 25, 2015, **ECF**
15 **No. 61, is GRANTED.**

16 The Court finds that the ends of justice served by the granting of a continuance
17 of the trial in this matter outweigh the best interests of the public and the Defendant in a
18 speedy trial. A trial date of April 20, 2015 would unreasonably deny Defendant the
19 opportunity to challenge proposed experts, file appropriate pretrial motions, and to benefit
20 from effective assistance of counsel, taking into account the exercise of due diligence. 18
21 U.S.C. § 3161(h)(7).

22 14. The trial date of April 20, 2015, is **STRICKEN and RESET to June 1, 2015,**
23 **at 10:00 a.m., in Yakima, Washington.**

24 15. All time from the trial date of April 20, 2015, to the new trial date of June 1,
25 2015, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7).
26 Defendant executed a waiver of speedy trial rights.

27 16. The April 20, 2015 final pretrial conference and motion hearing is **STRICKEN**
28 **and RESET to June 1, 2015, at 9:00 a.m., in Yakima, Washington.**

1 Defendant the opportunity to review discovery, file appropriate pretrial motions,
2 investigate the charges against him including expert review, and to benefit from effective
3 assistance of counsel, taking into account the exercise of due diligence. 18 U.S.C.
4 § 3161(h)(7).

5 21. The trial date of June 22, 2015, is **STRICKEN and RESET to July 6, 2015, at**
6 **10:00 a.m., in Yakima, Washington.**

7 22. All time from the trial date of June 22, 2015, to the new trial date of July 6,
8 2015, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7).
9 Defendant executed a waiver of speedy trial rights.

10 23. The June 22, 2015 final pretrial conference and motion hearing is **STRICKEN**
11 **and RESET to July 6, 2015, at 9:00 a.m., in Yakima, Washington.**

12 24. Trial briefs, motions in limine, requested voir dire and a set of proposed
13 **JOINT JURY INSTRUCTIONS** shall be filed and served on or before **June 22,**
14 **2015.**

15 **1:15-CR-2003-WFN**

16 25. Defendant's oral motion to continue is **GRANTED.**

17 The Court finds that the ends of justice served by the granting of a continuance
18 of the trial in this matter outweigh the best interests of the public, victim, and the
19 Defendant in a speedy trial. A trial date of March 9, 2015 would unreasonably deny
20 Defendant the opportunity to review discovery, file appropriate pretrial motions,
21 investigate the charges against him including expert review, and to benefit from effective
22 assistance of counsel, taking into account the exercise of due diligence. 18 U.S.C.
23 § 3161(h)(7).

24 26. The trial date of June 1, 2015, is **STRICKEN and RESET to June 29, 2015, at**
25 **10:00 a.m., in Yakima, Washington.**

26 27. All time from the trial date of June 1, 2015, to the new trial date of June 29,
27 2015, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7).
28 Defendant executed a waiver of speedy trial rights.

1 28. The June 1, 2015 final pretrial conference and motion hearing is **STRICKEN**
2 **and RESET to June 29, 2015, at 9:00 a.m., in Yakima**, Washington.

3 29. Trial briefs, motions in limine, requested voir dire and a set of proposed
4 **JOINT JURY INSTRUCTIONS** shall be filed and served on or before **June 15,**
5 **2015.**

6 30. An additional pretrial conference, motion, and *Daubert* hearing **in all three**
7 **cases** shall be held **May 18, 2015, at 1:30 p.m., in Yakima**, Washington. The hearing in
8 15-CR-2003-WFN and 14-CR-2074-WFN is **RESET in time only**, to **1:30 p.m.** The
9 Court anticipates a *Daubert* hearing on the Government's proposed expert testimony
10 regarding physical injury.

11 (a) All additional motions shall be filed and served no later than **April 24,**
12 **2015.**

13 (b) Responses shall be filed and served no later than **May 8, 2015.**

14 31. Indigent Defendant's requests for issuance of subpoenas and payment of costs
15 and fees for trial witnesses shall be filed no later than ten days before trial, excluding
16 weekends and holidays.

17 The District Court Executive is directed to file this Order and provide copies to
18 counsel.

19 **DATED** this 31st day of March, 2015.

20
21 s/ Wm. Fremming Nielsen

22 WM. FREMMING NIELSEN
23 SENIOR UNITED STATES DISTRICT JUDGE

24
25
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27
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03-31-15

**APPENDIX D – Order of Court of Appeals Denying Rehearing En Banc
(Dec. 1, 2017)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 1 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES PETE EYLE,

Defendant-Appellant.

Nos. 16-30117, 16-30158

D.C. Nos.

1:14-cr-02074-WFN-1

1:14-cr-02058-WFN-1

Eastern District of Washington,
Yakima

ORDER

Before: McKEOWN and GOULD, Circuit Judges, and ROTHSTEIN,* District Judge.

The full court has been advised of the Petition for Rehearing En Banc and no judge of the court has requested a vote on the Petition for Rehearing En Banc.

Fed. R. App. P. 35. Appellant's Petition for Rehearing En Banc is DENIED.

* The Honorable Barbara Jacobs Rothstein, United States District Judge for the Western District of Washington, sitting by designation.