

**U.S. District Court
Western District of Kentucky (Louisville)
CRIMINAL DOCKET FOR CASE #: 3:23-cr-00014-DJH-1**

Case title: USA v. Conley

Magistrate judge case number: 3:23-mj-00071-CHL

Date Filed: 02/07/2023

Assigned to: Judge David J. Hale

Defendant (1)

Bryan Douglas Conley

represented by **Joshua F. Barnette**

Stites & Harbison, PLLC – Louisville
400 W. Market Street, Suite 1800
Louisville, KY 40202-3352
859-226-2300

Email: jbarnette@stites.com

TERMINATED: 03/29/2023

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

Larry D. Simon

Larry D. Simon
471 West Main Street, Suite 200
Louisville, KY 40202
502-589-4566

Email: larrysimonlawoffice@gmail.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

Pending Counts

18:2421 INTERSTATE
TRANSPORTATION FOR
PROSTITUTION OR OTHER
CRIMINAL PURPOSES

(1)

18:2423 TRANSPORTATION OF
MINORS

(2)

18:1201 KIDNAPPING BY
INVEIGLE AND DECOY

(3)

Disposition

18:1344 BANK FRAUD

(4)

18:1028A AGGRAVATED

IDENTITY THEFT

(5)

18:875(c) INTERSTATE

THREATS

(6–15)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

18:875(c): Interstate Threatening
Communications; 18:1201:
Kidnapping; 18:1344: Bank Fraud;
18:1028A: Aggravated Identity
Theft

Disposition

Interested Party

Joshua Barnette

represented by **Joshua F. Barnette**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

USA

represented by **Joel King**
207 Grandview Drive, Suite 400
Ft. Mitchell, KY 41017–2762
859–652–7034
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LEAD ATTORNEY
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Date Filed	#	Docket Text
01/31/2023	<u>1</u>	CRIMINAL COMPLAINT signed by Magistrate Judge Colin H. Lindsay as to Bryan Douglas Conley (1). (Attachments: # <u>1</u> Affidavit in Support of a Criminal Complaint) (SRH) [3:23-mj-00071-CHL] (Entered: 01/31/2023)
01/31/2023	<u>2</u>	Sealed Document. (SRH) [3:23-mj-00071-CHL] (Entered: 01/31/2023)
02/02/2023		Arrest of Bryan Douglas Conley. (SRH) [3:23-mj-00071-CHL] (Entered: 02/02/2023)
02/02/2023	<u>3</u>	ORDER ON INITIAL APPEARANCE (EBOC) for proceedings held before Magistrate Judge Regina S. Edwards. Initial Appearance as to Bryan Douglas Conley held, via video, on 2/2/2023. The Court adopted the previous of appointment of counsel in 3:19-cr-19-DJH. Joshua F. Barnette from the Criminal Justice Act attorney panel accepted the appointment. Should the Grand Jury return a true bill, arraignment/detention hearing set for 2/8/2023 @ 10:00 AM, via video conference, before Magistrate Judge Regina S. Edwards. The defendant shall be remanded to the custody of the United States Marshal pending further order of the Court. (Digitally recorded proceeding) cc: counsel, QC, USP (SRH) [3:23-mj-00071-CHL] (Entered: 02/02/2023)
02/07/2023	<u>4</u>	INDICTMENT as to Bryan Douglas Conley (1) count(s) 1-15. (DJT) (Entered: 02/07/2023)
02/07/2023	<u>5</u>	Case Assignment (Random Selection): Case Assigned to Judge Claria Horn Boom. (DJT) (Entered: 02/07/2023)
02/07/2023	<u>6</u>	NOTICE OF ATTORNEY APPEARANCE Joshua D. Judd appearing for USA. (DJT) (Entered: 02/07/2023)
02/07/2023	<u>8</u>	Sealed Document (Attachments: # <u>1</u> Redacted Indictment) (DJT) (Entered: 02/07/2023)
02/07/2023	<u>9</u>	ORDER OF REASSIGNMENT by Judge Claria Horn Boom on 2/7/23: IT IS HEREBY ORDERED that this action is hereby REASSIGNED to the docket of the Honorable David J. Hale, United States District Judge, for all further proceedings. Counsel are requested to change the criminal action number to reflect the initials DJH on all further pleadings. cc: Counsel, CM-DJH (DJT) (Entered: 02/07/2023)
02/07/2023	<u>10</u>	SEALED UNREDACTED INDICTMENT re <u>4</u> Indictment. (DLW) (Entered: 02/08/2023)
02/08/2023	<u>11</u>	ORDER Pursuant to Due Process Protections Act by Magistrate Judge Regina S. Edwards on 2/8/2023 as to Bryan Douglas Conley. cc: Counsel (DLW) (Entered: 02/08/2023)
02/08/2023	<u>12</u>	

		ORDER FOLLOWING ARRAIGNMENT (EBOC) for proceedings held before Magistrate Judge Regina S. Edwards: Detention Hearing and Arraignment by video as to Bryan Douglas Conley (1) Counts 1, 2, 3, 4, 5, 6–15 held on 2/8/2023. Defendant entered a plea of NOT GUILTY. Jury Trial set for 4/17/2023 at 9:30 AM in Louisville Courtroom before Judge David J. Hale. Suppression/Daubert Motions due by 3/13/2023. Trial Memorandum (and pretrial filings) due by 3/27/2023. Motions in Limine due by 4/7/2023 (Responses due by 4/10/2023). Defendant is remanded to the custody of the United States Marshal pending further order of the Court. (Court Reporter: Digitally Recorded.) cc: Counsel, USP, Jury Administrator, DJH–CM (DLW) (Entered: 02/08/2023)
02/09/2023	<u>13</u>	Summons Returned Unexecuted in case as to Bryan Douglas Conley. (DLW) (Entered: 02/10/2023)
02/10/2023	14	TEXT ORDER by Judge David J. Hale on 2/10/2023; as to Bryan Douglas Conley. This matter is set for a telephonic status conference on 02/15/2023 at 2:00 PM before Judge David J. Hale. Counsel for the parties shall connect to the telephonic status conference by dialing the toll-free number 1–877–402–9753 and entering access code 9073187. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc:counsel (NWT) (Entered: 02/10/2023)
02/16/2023	<u>15</u>	MEMORANDUM OF CONFERENCE AND ORDER for proceedings held before Judge David J. Hale: Telephonic Status Conference as to Bryan Douglas Conley held on 2/15/2023. This matter is set for a final pretrial conference on 3/30/2023, at 9:30 a.m. at the Gene Snyder U.S. Courthouse in Louisville, Kentucky before David J. Hale. The deadline previously set for the filing of motions in limine (see Docket No. <u>12</u>) is VACATED. Any motions in limine shall be filed no later than 3/27/2023. (Court Reporter: Dena Legg.) cc: Counsel (DLW) (Entered: 02/16/2023)
02/21/2023	<u>16</u>	NOTICE OF ATTORNEY APPEARANCE Joel King appearing for USA. (King, Joel) (Entered: 02/21/2023)
03/08/2023	<u>17</u>	EX PARTE MOTION by Bryan Douglas Conley. (Attachments: # <u>1</u> Appendix, # <u>2</u> Appendix, # <u>3</u> Proposed Order) (Barnette, Joshua) (Entered: 03/08/2023)
03/09/2023	18	TEXT ORDER by Judge David J. Hale on 3/9/2023; Counsel for the defendant having filed an EX PARTE MOTION (Docket No. <u>17</u>). IT IS HEREBY ORDERED that pursuant to Title 28, Section 636(b)(1)(A)(B), U.S. Code, the EX PARTE MOTION is referred to Magistrate Judge Regina S. Edwards for a hearing, if necessary, and disposition. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc:counsel (NWT) (Entered: 03/09/2023)
03/13/2023	<u>19</u>	MOTION to Dismiss by Bryan Douglas Conley. (Attachments: # <u>1</u> Exhibit 1 – Investigative Report, # <u>2</u> Exhibit 2 – US v. Ewing, # <u>3</u> Proposed Order) (Ward, Ashley) (Entered: 03/13/2023)
03/17/2023	<u>20</u>	

		<i>EX PARTE MOTION</i> by Bryan Douglas Conley. (Attachments: # <u>1</u> Exhibit Letter, # <u>2</u> Proposed Order) (Barnette, Joshua) (Entered: 03/17/2023)
03/21/2023	<u>21</u>	ORDER by Judge David J. Hale on 3/21/2023 as to Bryan Douglas Conley: Defendant's <u>20</u> ex parte motion is REFERRED to U.S. Magistrate Judge Regina S. Edwards for resolution. cc: Counsel, RSE-CM (DLW) (Entered: 03/21/2023)
03/23/2023	<u>22</u>	TEXT ORDER by Magistrate Judge Regina S. Edwards on 3/23/2023 as to Bryan Douglas Conley. An ex parte hearing re <u>20</u> <i>EX PARTE MOTION</i> is scheduled for 4/10/2023 at 1:30 PM before Magistrate Judge Regina S. Edwards. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc: Counsel (AEH) (Entered: 03/23/2023)
03/23/2023	<u>23</u>	NOTICE of Intent to Use Evidence by USA (King, Joel) (Entered: 03/23/2023)
03/23/2023	<u>24</u>	NOTICE of Intent to Use Evidence by USA (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2) (Judd, Joshua) (Entered: 03/23/2023)
03/24/2023	<u>25</u>	<i>EX PARTE MOTION</i> by Bryan Douglas Conley. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Proposed Order) (Barnette, Joshua) (Entered: 03/24/2023)
03/27/2023	<u>26</u>	TEXT ORDER by Magistrate Judge Regina S. Edwards on 3/27/2023 as to Bryan Douglas Conley. The ex parte hearing scheduled for 4/10/2023 is RESCHEDULED to 3/29/2023 at 10:00 AM before Magistrate Judge Regina S. Edwards. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc: Counsel, USP (AEH) (Entered: 03/27/2023)
03/27/2023	<u>27</u>	MOTION in Limine to <i>Exclude Psychological Evaluations</i> by Bryan Douglas Conley. (Attachments: # <u>1</u> Proposed Order) (Barnette, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>28</u>	MOTION in Limine to <i>Exclude Text Messages</i> by Bryan Douglas Conley. (Attachments: # <u>1</u> Exhibit K.C. Messages, # <u>2</u> Exhibit Glass Messages, # <u>3</u> Proposed Order) (Barnette, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>29</u>	MOTION in Limine to <i>Exclude Evidence of Econo Lodge Theft</i> by Bryan Douglas Conley. (Attachments: # <u>1</u> Exhibit Police Report, # <u>2</u> Proposed Order) (Barnette, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>30</u>	PRETRIAL MEMORANDUM for Defendant Bryan Douglas Conley (Attachments: # <u>1</u> Exhibit Proposed Jury Instructions, # <u>2</u> Exhibit Proposed Voir Dire) (Barnette, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>31</u>	PRETRIAL MEMORANDUM by USA (Judd, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>32</u>	RESPONSE to Motion by USA as to Bryan Douglas Conley re <u>19</u> MOTION to Dismiss (Attachments: # <u>1</u> Proposed Order) (Judd, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>33</u>	EXHIBIT LIST by USA as to Bryan Douglas Conley (Judd, Joshua) (Entered: 03/27/2023)
03/27/2023	<u>34</u>	

		Amended EXHIBIT LIST by USA as to Bryan Douglas Conley (Judd, Joshua) Modified on 4/11/2023 to add "Amended" to docket text (DLW). (Entered: 03/27/2023)
03/28/2023	<u>35</u>	SEALED ORDER by Magistrate Judge Regina S. Edwards on 3/27/2023 as to Bryan Douglas Conley granting <u>17</u> EX PARTE MOTION filed by Bryan Douglas Conley. cc: Filing Attorney (via U.S. Mail) (DLW) (Entered: 03/28/2023)
03/29/2023	36	TEXT ORDER by Judge David J. Hale on 3/29/2023; as to Bryan Douglas Conley. On the Court's own motion, the final pretrial conference scheduled for March 30, 2023, is necessarily CANCELED and REMANDED. The Court anticipates setting a new final pretrial conference by subsequent Order. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc:counsel (NWT) (Entered: 03/29/2023)
03/29/2023	<u>37</u>	ORDER ON EX PARTE HEARING for proceedings held before Magistrate Judge Regina S. Edwards as to Bryan Douglas Conley: Ex Parte Hearing held on 3/29/2023. Joshua F. Barnette is WITHDRAWN as counsel of record for the defendant. Larry D. Simon from the Criminal Justice Act attorney panel is appointed to represent the defendant. (Court Reporter: Digitally Recorded.) cc: Counsel, QA (DLW) (Entered: 03/29/2023)
03/30/2023	38	TEXT ORDER by Judge David J. Hale on 3/30/2023; as to Bryan Douglas Conley. This matter is set for a telephonic status conference on 04/04/2023 at 10:00 AM before Judge David J. Hale. Counsel for the parties shall connect to the telephonic status conference by dialing the toll-free number 1-877-402-9753 and entering access code 9073187. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc:counsel (NWT) (Entered: 03/30/2023)
04/03/2023	<u>39</u>	MOTION to Continue <i>TRIAL DATE</i> by Bryan Douglas Conley. (Attachments: # <u>1</u> Proposed Order) (Simon, Larry) (Entered: 04/03/2023)
04/04/2023	<u>40</u>	MEMORANDUM OF CONFERENCE AND ORDER for Proceedings held before Judge David J. Hale as to Bryan Douglas Conley (1): Telephonic Status Conference held on 4/4/2023. Conley's <u>39</u> motion to continue the trial is GRANTED. The trial of this matter, currently set for 4/17/2023, is REMANDED and RESCHEDULED for 8/21/2023, at 9:00 a.m. at the U.S. Courthouse in Louisville, Kentucky before Judge David J. Hale. The expected length of trial is seven days. Conley's previous counsel filed four pretrial motions. (D.N. <u>25</u> ; D.N. <u>27</u> ; D.N. <u>28</u> ; D.N. <u>29</u>) These motions are DENIED as moot, without prejudice. On or before 4/28/2023, Conley SHALL FILE either a reply in support of the <u>19</u> motion to dismiss, or a notice withdrawing the motion. The Court finds that the period of delay from 4/3/2023, to 8/21/2023, is excludable in computing the time within which the trial must commence under the Speedy Trial Act. (Court Reporter: Dena Legg.) cc: Counsel, Jury Administrator (DLW) (Entered: 04/04/2023)
04/24/2023	<u>41</u>	

		MOTION for Transcript of <i>ex parte hearing held 3/29/23</i> by Joshua Barnette as to Bryan Douglas Conley. (Attachments: # <u>1</u> Proposed Order) (Barnette, Joshua) (Entered: 04/24/2023)
04/28/2023	<u>42</u>	REPLY TO RESPONSE to Motion by Bryan Douglas Conley re <u>19</u> MOTION to Dismiss <i>COUNT TWO OF THE INDICTMENT</i> (Simon, Larry) (Entered: 04/28/2023)
05/12/2023	43	<p>TEXT ORDER by Judge David J. Hale on 5/12/2023; Prior counsel for the defendant having filed a motion for transcript of ex parte hearing held 3/29/23 (Docket No. <u>41</u>). The Court being sufficiently advised, IT IS HEREBY ORDERED that pursuant to Title 28, Section 636(b)(1)(A)(B), U.S. Code, this motion is referred to Magistrate Judge Regina S. Edwards for a hearing, if necessary, and disposition.</p> <p>This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.</p> <p>cc:counsel (NWT) (Entered: 05/12/2023)</p>
05/12/2023	<u>44</u>	ORDER Signed by Magistrate Judge Regina S. Edwards on 5/12/2023 granting <u>41</u> Motion for Transcript as to Bryan Douglas Conley (1). The Clerk's Office is hereby directed to provide Mr. Conley's previous counsel, Joshua F. Barnette, with a copy of the transcript from the ex parte hearing held of 3/29/2023. The transcript of the ex parte hearing held on 3/29/2023, shall otherwise remain under seal and shall not be provided to any other person or entity without subsequent orders from the Court. cc: Counsel (DLW) (Entered: 05/12/2023)
05/16/2023	<u>45</u>	SEALED TRANSCRIPT (DL) (Entered: 05/16/2023)
05/22/2023	<u>46</u>	MEMORANDUM AND ORDER Signed by Judge David J. Hale on 5/22/2023 denying <u>19</u> Motion to Dismiss as to Bryan Douglas Conley (1). cc: Counsel (DLW) (Entered: 05/22/2023)
05/22/2023	47	<p>TEXT ORDER by Judge David J. Hale on 5/22/2023; as to Bryan Douglas Conley. In accordance with paragraph 11 of the Memorandum of Conference and Order (Docket No. <u>40</u>), this matter is hereby SCHEDULED for an in-person status hearing on 05/25/2023 at 10:30 AM in Louisville Courtroom before Judge David J. Hale.</p> <p>This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.</p> <p>cc:counsel (NWT) (Entered: 05/22/2023)</p>
06/09/2023	<u>48</u>	MEMORANDUM OF HEARING AND ORDER for proceedings held before Judge David J. Hale: Status Hearing as to Bryan Douglas Conley held on 5/25/2023. Final Pretrial Conference set for 8/9/2023 at 1:30 PM in Louisville Courtroom before Judge David J. Hale. (Court Reporter: Dena Legg.) cc: Counsel (DLW) (Entered: 06/09/2023)
06/12/2023	49	<p>TEXT ORDER by Judge David J. Hale on 6/12/2023; as to Bryan Douglas Conley. This matter is scheduled for an in-person status conference on 07/05/2023 at 10:30 AM in Louisville Courtroom before Judge David J. Hale.</p> <p>This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.</p>

		cc:counsel (NWT) (Entered: 06/12/2023)
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AO 91 (Rev. 11/11) Criminal Complaint

FILEDJAMES J. VILT JR.,
CLERK

1/31/2023

U.S. DISTRICT COURT
WESTERN DISTRICT OF KENTUCKYUNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA)

v.)

Case No. 3:23MJ-71

BRYAN DOUGLAS CONLEY)

*Defendant***CRIMINAL COMPLAINT**

I, the complainant in this case, state the following is true to the best of my knowledge and belief.

On or about the date(s) of January 29, 2019 to January 31, 2019 in the county of Bullitt in the Western District of Kentucky, and elsewhere, the defendant violated:

Code Section
 18 U.S.C. 875(c)
 18 U.S.C. 1201
 18 U.S.C. 1344
 18 U.S.C. 1028A

Offense Description
 Interstate Threatening Communications
 Kidnapping
 Bank Fraud
 Aggravated Identity Theft

This criminal complaint is based on these facts:

☒ Continued on the attached sheet

 Complainant's signature


Daniel W. Nally, Special Agent, FBI

Printed name and title

Sworn to before via telephone.

Date: January 31, 2023

City and State: Louisville, Kentucky


 Colin H Lindsay, Magistrate Judge
 United States District Court

JDJ(AUSA initials)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Daniel W. Nally, being duly sworn, depose and state as follows:

1. I am a Special Agent (SA) with the United States Department of Justice, Federal Bureau of Investigation, (FBI) and have been so employed since January 2016. I am a graduate of the FBI Academy and a Federal Law Enforcement Officer.
2. I have specialized training in the enforcement of federal laws. I am authorized to conduct criminal investigations of violations of Title 18, United States Code, Sections 875(c), 1201(a), 1344, and 1028A.
3. The information contained in this affidavit is based upon my consultation with other FBI agents, my review of certain records and documents, interviews of witnesses, and information provided by other state and local law enforcement officers.
4. As a result of my training and experience as an FBI Special Agent, I am familiar with federal criminal laws including: Title 18, United States Code, Sections 875(c), 1201(a), 1344, and 1028A.
5. For the reasons discussed below, I respectfully submit that this Affidavit contains probable cause to believe **BRYAN DOUGLAS CONLEY** has violated Title 18, United States Code, Sections 1201(a), 1344, 1028A, and 875(c). I have set forth only the facts that I believe are necessary to establish probable cause to believe that violations of these statutes have been committed by CONLEY. The information contained herein is not all the information I possess with respect to the commission of the crimes referred to herein.

FACTS IN SUPPORT OF PROBABLE CAUSE

6. On January 29, 2019 at approximately 10:00 AM CST, R.W. left her residence located at 1008 Green Hill Cove, Brentwood, TN. R.W. left in her 2013 Toyota Prius, which was later recovered at a Kroger parking lot located at 185 Adam Shepherd Parkway, Shepherdsville, KY by personnel from the FBI Louisville Field Office.
7. On January 29, 2019 at approximately 1:45 PM CST, the Brentwood Police Department (BPD), located in Brentwood, Tennessee, received a call from M.W., who reported her daughter, R.W. had been kidnapped. Prior to calling BPD, M.W. received threatening iMessages on her phone (615-838-4651) from R.W.'s phone number (615-636-5512).
8. CONLEY, using R.W.'s cellular telephone, claimed to have R.W. In subsequent messages from CONLEY, he directed M.W. to pay a ransom of \$20,000 to ensure R.W.'s release. CONLEY told M.W. and another family member to start driving towards Toledo, OH, where M.W. would receive another call from CONLEY.
9. Furthermore, CONLEY told M.W. that R.W. was being held at a residence in Toledo, OH, but later changed the location to Cincinnati, OH. CONLEY refused to allow M.W. to talk with R.W., but sent M.W. a proof of life photograph at approximately 6:42 PM CST. The proof of life photograph depicted R.W. inside an unknown vehicle with what appeared to be binding material around her mouth. (see below)



10. BPD reviewed the proof of life photograph and determined that the interior of the vehicle was consistent with a 2013-2018 Ford Taurus SE.
11. The following are examples of iMessages CONLEY sent from 615-636-5512 to 615-838-4651 (R.W.'s mother's iPhone) or to 615-406-8175 (R.W.'s father's iPhone):
 - a. 615-636-5512 to 615-838-4651 on 1/29/2019 1:45 PM CST: Good I am actually the woman who has your daughter. No cops. Nothing stupid ok
 - b. 615-636-5512 to 615-838-4651 on 1/29/2019 1:46 PM CST: Or I sell her and you won't see her again
 - c. 615-636-5512 to 615-838-4651 on 1/29/2019 1:51 PM CST: Pack everything you have worth value and head towards 185 Adam Shepherd Pkwy
 - d. 615-636-5512 to 615-838-4651 on 1/29/2019 1:51 PM CST: You'll find her car at

the Kroger to show I'm for real.

- e. 615-636-5512 to 615-838-4651 on 1/29/2019 1:54 PM CST: One cop or police report she's done. Goal is close to 20,000 as you can
- f. 615-636-5512 to 615-838-4651 on 1/29/2019 3:18 PM CST: My contact will be here in 12 hours to buy thensex slaves
- g. 615-636-5512 to 615-838-4651 on 1/29/2019 3:19 PM CST: You got till then
- h. 615-636-5512 to 615-838-4651 on 1/29/2019 3:21 PM CST: No marked bills or anything over a 50
- i. 615-636-5512 to 615-838-4651 on 1/29/2019 3:29 PM CST: Remember to tell her kids that mommy is in Canada getting tricks run on her because of other family responsibilities
- j. 615-636-5512 to 615-838-4651 on 1/29/2019 6:51 PM CST: Hurry up or she will be sold soon
- k. 615-636-5512 to 615-838-4651 on 1/29/2019 7:22 PM CST: You have ten minutes to be on road or I sell her ass
- l. 615-636-5512 to 615-838-4651 on 1/29/2019 7:49 PM CST: She will be missing fingers and toes if you don't hurry le fuck up
- m. 615-636-5512 to 615-838-4651 1/29/2019 8:45 PM CST: Your daughter will be sold soon if your not on the fucking road
- n. 615-636-5512 to 615-838-4651 on 1/29/2019 8:46 PM CST: She's n Ohio at a safe house so hurry
- o. 615-636-5512 to 615-838-4651 on 1/29/2019 10:06 PM CST: Blitzen like reign deer
- p. 615-636-5512 to 615-838-4651 on 1/30/2019 12:39 AM CST: Ok I'm going to start removing toes if not answer
- q. 615-636-5512 to 615-838-4651 on 1/30:2019 12:45 AM CST: Alice
- r. 615-636-5512 to 615-838-4651 on 1/30/2019 1:04 AM CST: If you argue again I'll message in 3 hours after she's been raped a lot

- s. 615-636-5512 to 615-838-4651 on 1/30/2019 1:39 AM CST: Drop the money and go to exit 117 and I tell you where she is safe
- t. 615-636-5512 to 615-838-4651 on 1/30/2019 1:39 AM CST: If you don't then she's fucked
- u. 615-636-5512 to 615-838-4651 on 1/30/2019 1:39 AM CST: No more arguing
- v. 615-636-5512 to 615-838-4651 on 1/30/2019 1:40 AM CST: If you don't you just killed your daughter end of discussion
- w. 615-636-5512 to 615-406-8175 on 1/30/2019 1:42 AM CST: He has 5 minutes to do it or I send video of me gutting her like a fish
- x. 615-636-5512 to 615-406-8175 on 1/30/2019 1:42 AM CST: No more of his games
- y. 615-636-5512 to 615-406-8175 on 1/30/2019 2:00 AM CST: He just signed her death warrant if he doesn't stop
- a. 615-636-5512 to 615-406-8175 on 1/30/2019 3:24 AM CST: Your husbands going to get her killed playing his games
- b. 615-636-5512 to 615-406-8175 on 1/30/2019 3:25 AM CST: He's fucked around for 6 hours now
- c. 615-636-5512 to 615-406-8175 on 1/30/2019 3:26 AM CST: For every 30 he's late now I remove a body part
- d. 615-636-5512 to 615-406-8175 on 1/30/2019 3:27 AM CST: For every time I message you and no response same
- e. 615-636-5512 to 615-838-4651 on 1/30/2019 9:33 AM CST: She will be raped every hour aft
- f. 615-636-5512 to 615-838-4651 on 1/30/2019 10:21 AM CST: In 1 hour they will start raping her ass
- g. 615-636-5512 to 615-838-4651 on 1/30/2019 2:25 PM CST: One more lie she's dead

- h. 615-636-5512 to 615-838-4651 on 1/30/2019 3:29 PM CST: You listen or I send you pic of her body
 - i. 615-636-5512 to 615-838-4651 on 1/30/2019 3:45 PM CST: Go to mall and wait for me to get money confirmed
- 12. The ransom was ultimately negotiated down to \$400 and jewelry. CONLEY and the family of R.W. agreed the father of R.W. would start travelling towards Toledo, OH, to drop off the newly negotiated ransom.
- 13. The FBI, while conducting the kidnapping investigation, determined that on January 29, 2019 at approximately 12:02 AM CST, a witness at Walmart in Oak Grove, KY was aware of a white male attempted to use R.W.'s credit card. After having the credit card denied, the unidentified white male left in a grey Ford Taurus. A review of surveillance video by law enforcement confirmed that a white male left in a grey Ford Taurus.
- 14. Further investigative actions related to the kidnapping investigation determined that on January 29, 2019 at approximately 8:54 AM, an unidentified user attempted to log in to R.W.'s USAA bank account. The individual provided R.W.'s correct social security number but failed to correctly answer any of the security questions. At 11:31 AM there was a successful login to R.W.'s USAA bank account using R.W.'s telephone number.
- 15. USAA provided that the telephone number associated with the first attempted login which was 915-241-7423. An exigent request to Sprint Corporation revealed 915-241-7423 was registered to CONLEY's wife, Cynthia Conley, at 1362 Dover Road, Clarksville, TN 37042.
- 16. An NCIC query revealed Cynthia Conley had a gray 2014 Ford Taurus registered to her

at 31 E Bel Air Blvd, Clarksville, TN 37042. Open source searches revealed Cynthia

Conley and CONLEY had both resided at 31 E Bel Air Blvd, Clarksville, TN 37042.

17. As described in the iMessage section above, in initial iMessages messages between CONLEY and M.W., CONLEY offered as proof he had R.W. by providing an address where R. W.'s Toyota Prius was left. CONLEY told M.W. the Toyota Prius was parked at 185 Adam Shephard Parkway, Shepherdsville, KY. On January 30, 2019, R. W.'s Toyota Prius was located at the Kroger located at 185 Adam Shephard Parkway, Shepherdsville, KY.

18. Emergency ping orders were obtained for CONLEY's wife and R.W.'s cellular telephones. Using the emergency ping order, it was revealed that CONLEY's wife's telephone and R.W.'s telephones were in close proximity throughout the duration of the pings.

19. On January 30, 2019 at approximately 2:25 PM CST, while FBI Special Agents were located with the father of R.W., in the state of Tennessee, the father received a message from the phone of R.W. with the following text, "One more lie she's dead". Location information provided by the cellular carrier, Verizon Wireless, placed R.W.'s phone at the following coordinates in the state of Kentucky at 2:25 PM CST on 30 January 2019: 36.96229889 LAT/-87.454605 LONG. These coordinates plot in vicinity of Hopkinsville, Kentucky.

20. On January 30, 2019 at approximately 3:30 PM CST, the ransom payment was delivered to the Tri-State International Trucks Inc located at 200 JW Dickson Drive, Oak Grove,

KY 42262. An FBI agent placed the ransom drop in a McDonalds bag and then sent a screen shot of the location to CONLEY who was using R.W.'s phone . (see below)

Verizon LTE

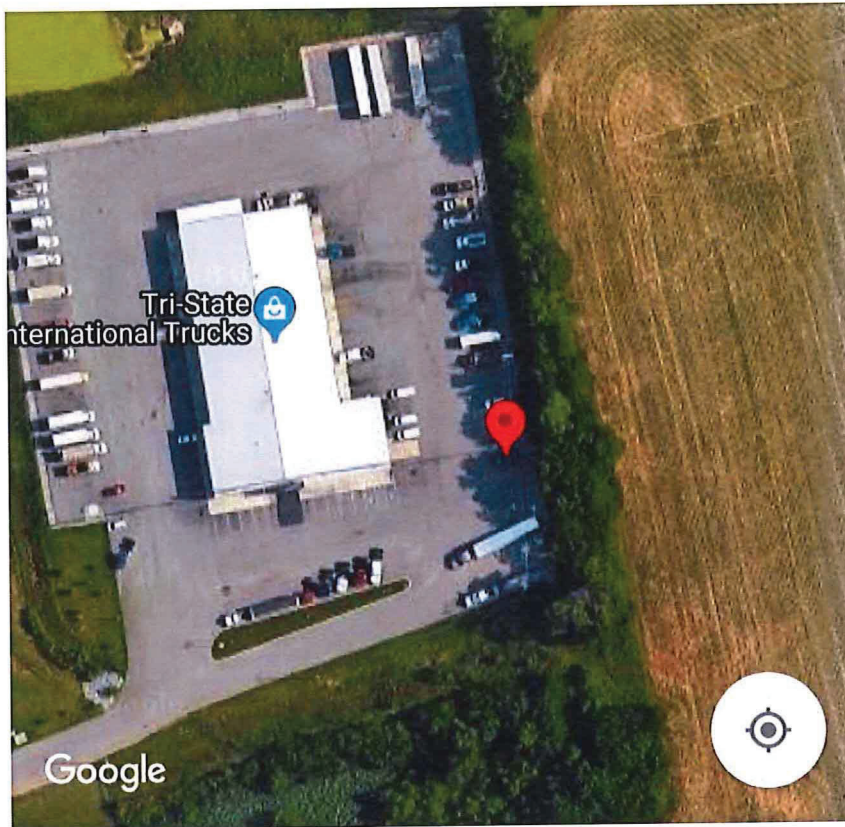
3:28 PM

47%

google.com



36.694149, -87.448078



36.694149, -87.448078



Near Oak Grove, Kentucky

DIRECTIONS



21. On January 30, 2019, at approximately 5:30 PM CST, FBI Louisville Division observed a grey four door sedan, with one person visible inside (the driver), drive toward the trash cans where the money ransom drop was located. FBI observed the vehicle license plate had the last three characters "9N0." The vehicle parked just out of view. About 30 seconds later, the vehicle left the area.
22. FBI Louisville Division followed CONLEY in the 2014 Ford Taurus to a Marathon Gas Station located at 802 South Main Street, Leitchfield, KY 42754. CONLEY was arrested at the Marathon Gas Station. Subsequent to the arrest of CONLEY, a search was performed. During the search of CONLEY's person, an Apple iPhone A1864, S/N DX3XH0XEJCLP, was found. This iPhone was later determined to belong to R.W. CONLEY repeatedly asked FBI personnel to retrieve his telephone, a Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502, from the center console of the Ford Taurus.
23. Subsequent to the arrest of CONLEY, R.W. was found in the rear passenger seat of Ford Taurus.
24. The Ford Taurus, VIN 1FAHP2D89EG147917 bearing Tennessee license plate 7J0 9N0, and contents therein; the Apple iPhone A1864, S/N DX3XH0XEJCLP; and the Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502 were all seized and transported FBI Headquarters, located at 12401 Sycamore Station Place, Louisville, KY 40299 for storage.
25. Review of documentation from Apple related to Apple's iMessaging service reveals that iMessages travel from the sender's Devices, in this case R.W.'s iPhone, to the receiver's

Devices, in this case M.W.'s iPhone, by way of the telecommunications provider. iMessages sent from R.W.'s iPhone with telephone number 615-636-5512 to M.W.'s iPhone with telephone number 615-838-4651 and R.W.'s father's iPhone with telephone number 615-406-8175, between 29 January 2019 through 30 January 2019, traversed through cellular networks located in Kentucky, Tennessee, and Ohio.

Interview of R.W. on January 30, 2019

26. On January 30, 2019, the FBI conducted an interview of R.W. R.W. advised she met a person named "Lance" on the dating service "PlentyofFish". R.W. matched with "Lance" and began communicating with "Lance" about modeling. R.W. was told by "Lance" that "Lance's" agent, CONLEY, could assist R.W. with a modeling career. "Lance" asked to meet R.W. in Dover, TN on January 26, 2019, but R.W. was told to meet CONLEY at McDonalds to drive to the location chosen by "Lance".
27. On January 27, 2019, R.W. and CONLEY met at a hotel in Brentwood, TN where R.W. and CONLEY had consensual sexual intercourse. While at the hotel, CONLEY took nude photographs of R.W. R.W. believed that the photographs were all related to being a model.
28. On January 29, 2019, at approximately 1:00 PM or 2:00 PM, R.W. met with CONLEY at a Kroger near Louisville, KY. R.W. left her car, a Toyota Prius, in the parking lot of Kroger and got into a car with CONLEY.
29. After arriving at a location with CONLEY, R.W. was bound and blindfolded for a

photography shoot. R.W. said she continued to believe the bondage photographs were taken in relation to modeling. The bondage photographs were taken inside of CONLEY's car. Shortly after entering CONLEY's car, CONLEY took R.W.'s telephone and she was not allowed to use it.

30. After being bound and photographed, R.W. was convinced to remain out of sight of the public. R.W. was bound with a rope for several hours and covered with a blanket. R.W. was told that the police needed photographs of her bound. R.W. recalled seeing an Elizabethtown sign while being driven around. R.W. was unbound after reaching Elizabethtown. R.W. and CONLEY slept in CONLEY's car the night of January 29, 2019. R.W. was led to believe she was still in danger of being targeted by the sex trafficking ring and CONLEY was waiting to hear from CONLEY's Chief of Police. R.W. advised she was encouraged into having sexual intercourse again with CONLEY.
31. During the course of meetings with CONLEY, R.W. and CONLEY discussed the modeling industry and CONLEY told R.W. that he was an undercover police officer. CONLEY further advised R.W. that "Lance" was also a police officer and they both discovered a plot that involved R.W. being targeted on PlentyOfFish to be kidnapped and sold into a sex trafficking ring.
32. When stopping to retrieve the ransom money, CONLEY told R.W. that he was stopping to retrieve R.W.'s wallet. R.W. advised she did not know CONLEY was retrieving ransom money. R.W. further advised she was unaware of the ransom demands made to her family.

33. FBI asked if R.W. had met or spoken to "Lance" in person. She said she had only ever texted him with her phone. She said the messages were green meaning that the messages were not sent to an iPhone but to another type of phone.

Interview of Conley on January 30, 2019

34. On January 30, 2019, CONLEY was interviewed by the FBI. CONLEY advised he met R.W. through his friend "Lance". CONLEY met "Lance" approximately one year ago while living in Clarksville, TN. CONLEY stated "Lance" was a police officer.

35. CONLEY stated that on January 28, 2019 R.W. and "Lance" were supposed to meet at Land Between the Lakes (LBL), but R.W. did not know how to find the meet location, therefore CONLEY agreed to help R.W. get to the meet location. CONLEY stated that "Lance" did not make it to the meet location during his first time with R.W. R.W. and CONLEY exchanged numbers and began communicating.

36. On January 29, 2019, R.W. and "Lance" were supposed to meet again, but "Lance" was arrested. R.W. met CONLEY at a Kroger in Shepherdsville, KY. CONLEY and R.W. stayed together in a hotel near Bowling Green, KY. After waking in the morning of January 30, 2019, CONLEY and R.W. drove around talking. CONLEY drove R.W. back to the Land Between the Lakes area where they hung out. CONLEY received a call from "Lance" while at Land Between the Lakes. "Lance" told CONLEY that he was not going to meet R.W., therefore CONLEY could take R.W. home. "Lance" asked CONLEY to pick up a bag for him at the Flying J on exit 41A. CONLEY stated that "Lance" told CONLEY to remove cash from the bag and give some of the cash to R.W.

CONLEY gave R.W. \$20 from the bag. CONLEY did not provide a last name of "Lance".

37. CONLEY stated that "Lance" informed him of a plot where R.W. may be kidnapped.

CONLEY was told to drive R.W. around because of the possible danger.

38. CONLEY stated that he and R.W. had consensual sexual intercourse during their time together. R.W. stayed in the back seat of CONLEY's car during her entire stay with CONLEY.

39. CONLEY stated "Lance" had "freelancing" photography shoots that R.W. could do to earn money. CONLEY took photographs of R.W. bound and gagged as part of the "freelancing" photography shoots. CONLEY also stated that R.W. consented to CONLEY taking nude photographs of her. CONLEY stated that he only had possession of R.W.'s telephone when CONLEY took pictures of R.W.

40. CONLEY stated that he accidentally used R.W.'s credit card when seen on surveillance footage at Walmart on January 29, 2019.

Arrest of Conley on January 30, 2019

41. When CONLEY was arrested by the FBI on January 30, 2019, agents retrieved \$344.66 in cash from his person. Included in the \$344.66 were (17) \$20.00 bills. Prior to the loading and placement of the ransom bag, agents made a record of the serial numbers of the currency placed inside. A comparison of the serial numbers of (17) \$20.00 bills in currency on CONLEY's person to serial numbers previously recorded was made. A

total of (15) of the \$20.00 bills were exact matches between the currency loaded into the ransom bag and the currency taken from CONLEY's person. The other two \$20.00 bills were a suspected match as the last digit of the serial number on the currency loaded into the ransom bag could not be clearly seen.

42. While CONLEY was being booked at the FBI office in Louisville, KY, early in the morning of January 31, 2019, he spontaneously stated in the presence of the agents "this is what I get for helping out a buddy", indicating towards his handcuffs.

Interview of R.W. on February 13, 2019

43. On February 13, 2019, R.W. was interviewed again by the FBI about her interaction with CONLEY between January 26, 2019 and January 30, 2019. R.W. advised that the "Lance" profile on Plenty of Fish stated that "Lance" was living in the Nashville area and having a famous family name. R.W. explained that the photo of "Lance" showed a clean shaven, white male, who was "good looking". R.W. has only communicated with "Lance" via messages sent over the Plenty of Fish application and through text messages on her phone. R.W. advised the first time she communicated with "Lance" was on January 26, 2019. R.W. has logged onto Plenty of Fish since the kidnapping but the "Lance" profile has been deleted.

44. R.W. stated that while talking to CONLEY, he told her that he was interested in assisting her in developing a modeling portfolio and that individuals could make money in the modeling business. CONLEY advised that modeling jobs including sexual

content and/or nudity paid more, up to thousands of dollars. After meeting CONLEY on January 26, 2019 at the Land Between the Lakes area, R.W. got into the back seat of CONLEY's vehicle and he took photos of her on his cell phone, including sexually suggestive photos. Afterwards, R.W. returned home.

45. The next day, January 27, 2019, R.W. continued to communicate with CONLEY.

CONLEY told R.W. that "Lance's" last name was Debeer or DeBeir. R.W. also sent CONLEY a photo of a coworker, "Missy", as "Missy" wanted to become involved in modeling with CONLEY as well. Later on January 27, 2019, CONLEY invited R.W. to the Extended Stay hotel where they discussed modeling and a modeling contract. While at the hotel, CONLEY took R.W.'s personal information to include her date of birth, address, phone numbers, and other personal details for the modeling contract.

46. CONLEY convinced R.W. to have sex with him that night for the purpose of developing her modeling portfolio. CONLEY also had R.W. drink an unknown substance from a red Yeti container. Afterwards, R.W. returned home.

47. On January 28, 2019, "Lance" contacted R.W. and asked to meet her at the Land Between the Lakes, with CONLEY being available to drive her to the location. R.W. advised that again "Lance" was a "no show". During this meeting with CONLEY, R.W. advised she had placed her purse and backpack in CONLEY's vehicle. Inside her backpack was her wallet, which contained various personal cards, including her USAA credit card, USAA debit card, social security card, and other affects. CONLEY advised R.W. that "Lance" had been arrested for a second time and could not make the meeting,

so R.W. drove home, however R.W. forgot to retrieve her purse and backpack from CONLEY's vehicle. While driving home, R.W. contacted CONLEY about her purse and backpack she left in his vehicle. CONLEY stated he had her purse and backpack and that she could come to a hotel near Fort Campbell to retrieve them. R.W. went home instead.

48. R.W. advised that on January 29, 2019, she had received a fraud alert from USAA regarding her USAA bank account. R.W. logged in to check on her account. R.W. advised she never gave CONLEY permission to use her identity or credit/bank cards. R.W. remembers that the alert stated there were two unauthorized transactions from Walmart and/or Mapco.
49. On January 29, 2019, CONLEY contacted R.W. advising there was a photo shoot in Kentucky and he instructed her to start driving towards Louisville. R.W. ran out of gas along the way and eventually met CONLEY at the Kroger in Shepherdsville around 1:30 pm. Upon meeting CONLEY at the Kroger, she entered his vehicle. CONLEY advised that the previously mentioned photo shoot was a bondage scene. Additionally, CONLEY gave R.W. a red Yeti container, the same as from the previous meeting, and directed her to drink the contents. After drinking the contents, R.W. became very sleepy. CONLEY stopped and tied R.W.'s hands, feet, and mid-section explaining it was for the bondage scene. CONLEY also gagged R.W. and put a hood over her head. R.W. then fell asleep for about two hours and when she woke up, she had no idea where she and CONLEY were located.

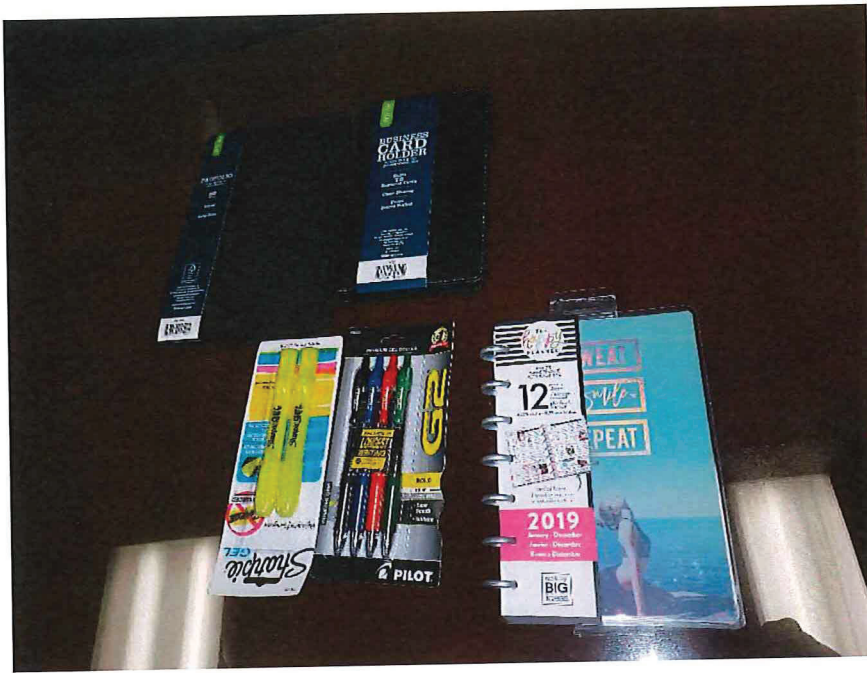
50. R.W. advised that shortly after getting into CONLEY's vehicle on January 29, 2019, he took her iPhone from her, saying he wanted to get some video's from it. R.W. gave CONLEY her password and never saw her iPhone again.

51. At some point on January 29, 2019, R.W. told CONLEY that she wanted to be cut loose and return home. CONLEY eventually cut R.W. loose but would not take her to her car or home saying that R.W. had been targeted by a sex trafficking ring and it was not safe for her to return that night. Eventually CONLEY parked the vehicle in a secluded parking lot and got into the back seat with R.W. where he pressured her into have sexual intercourse with him.

52. On January 30, 2019, CONLEY began driving again and R.W. told him she needed to return to her car to go to work. R.W. advised that CONLEY kept "blowing her off". All day on January 30, 2019, CONLEY did not stop to let R.W. get anything to eat and CONLEY told her that he had made plans for her to stay with him another night and that she still couldn't go home. Later CONLEY was arrested.

53. R.W. advised that she never would have had sexual intercourse with CONLEY if she knew he was lying about being a modeling agent or undercover cop.

54. At the conclusion of the interview, the FBI returned some of R.W.'s personal property which had been in CONLEY's Ford Taurus. R.W. advised that several of the items in her purse had been given to her by CONLEY. Those items were new sharpies, Pilot G2 ink pens, a 2019 calendar, a black portfolio, and a black business card holder. (see below)



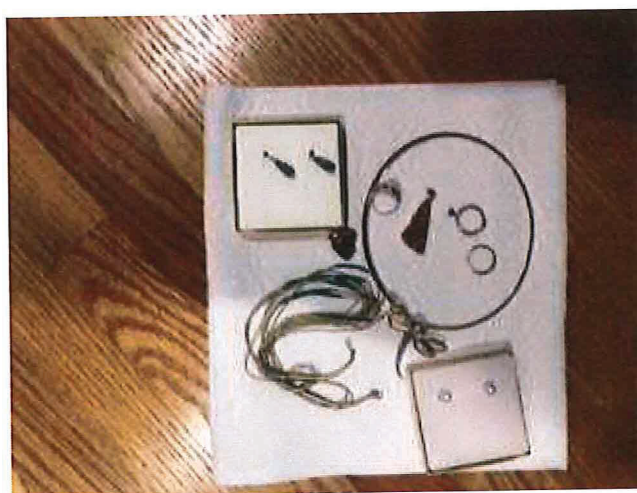
Search of Bryan Conley's Ford Taurus, VIN: 1FAHP2D89EG147917

55. The FBI executed a search warrant of CONLEY's Ford Taurus at the FBI Louisville Field Office. Search of the Ford Taurus revealed various items of evidentiary value as discussed below.

- A. The FBI recovered, from the rear driver's side passenger seat and floor, a multicolored blanket and a green and black bungee cord with duct tape on it. These items matched the items seen in a proof of life photo sent to R.W's mother. The proof of life photo showed R.W. bound and laying on a car's seat during her kidnapping. (see below)



B. The FBI recovered, from the front passenger seat, a small sandwich bag with various gold jewelry inside. These items matched items which were provided to CONLEY as part of the ransom demand placed inside a McDonalds bag. FBI agents, directing R.W.'s parents at the time of the kidnapping, took a photo of these items in the event that the image of the gold jewelry needed to be sent to CONLEY.



C. The FBI recovered, from under the front driver's seat, a black 1911 BB gun loaded with a magazine containing BBs. The FBI recovered, from the front passenger seat,

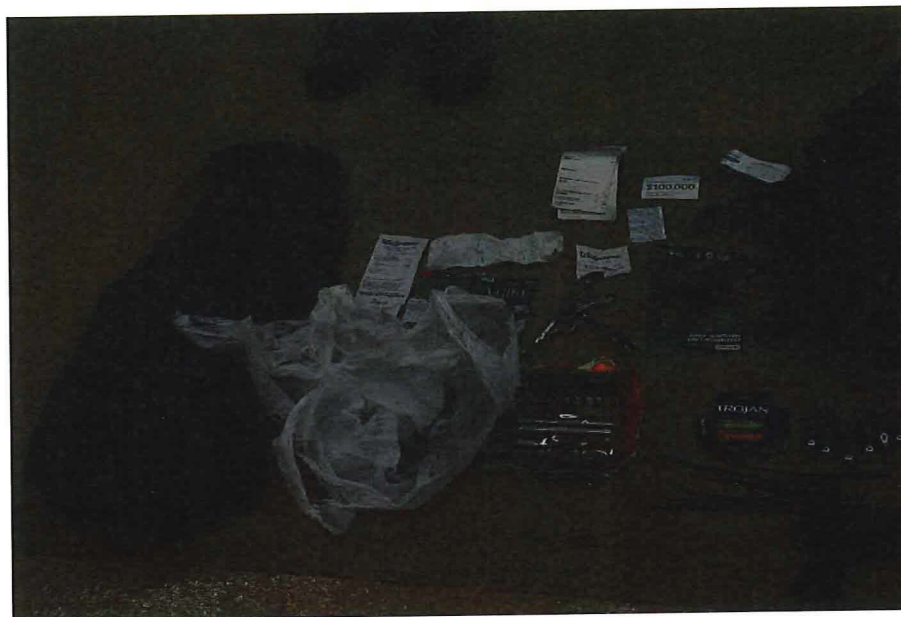
black zip ties.



D. The FBI recovered, from the front passenger seat, a purple bottle of NyQuil ZzzQuil and a 36 oz red Yeti container. This matches the description of the container that CONLEY gave to R.W. containing an unknown substance which after drinking, caused her to become extremely drowsy and eventually fall asleep.



E. The FBI recovered, from a back pack in the trunk, additional zip ties, a Trojan condom package, and a second black 1911 BB gun.



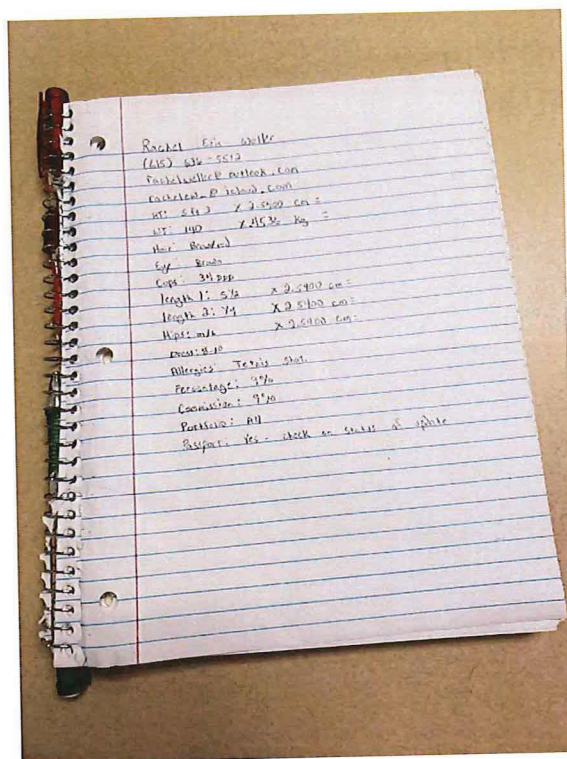
F. The FBI recovered a Walmart receipt dated 1/28/2019 at 5:02 PM showing the

purchase of rope, cable ties, tap measure, and spring binders from the location of 1680 Fort Campbell Blvd, Clarksville, TN. Legal process to Walmart confirmed this transaction and included still shots of CONLEY at the register purchasing these items. In CONLEY's hand appears to be the same rope that was used to bind R.W





G. The FBI recovered a notebook which contained R.W.'s phone number, email address, and physical dimensions.



H. The FBI recovered a McDonalds bag, containing coffee creamers and other condiment items, which is believed to be the ransom bag that CONLEY retrieved from the Tri-State International Trucks Inc. located at 200 J W Dickson Drive, Oak Grove, KY on January 30, 2019.

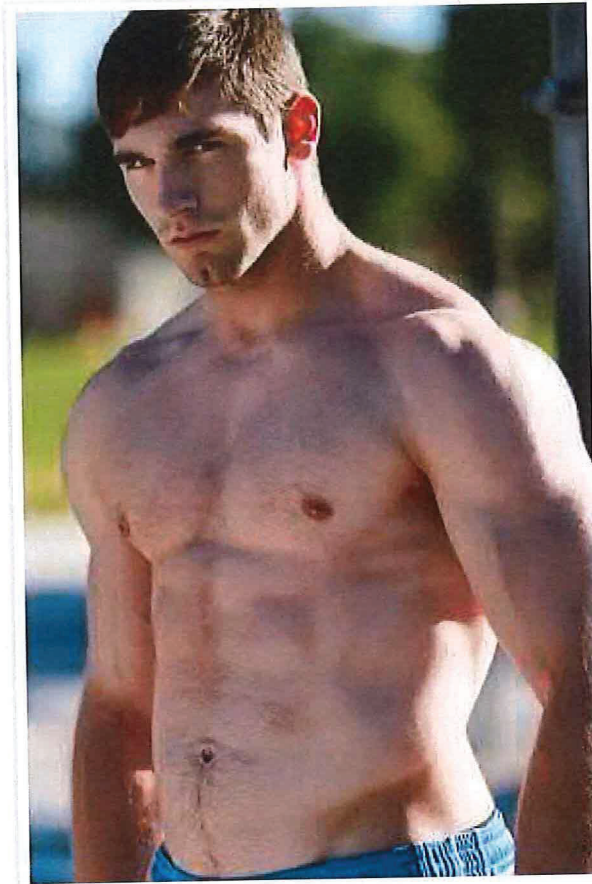


- I. The FBI recovered various Walgreens receipts for Vanilla Visa cards valued at \$200.00 each.
- J. The FBI recovered a note from the trunk of CONLEY's vehicle. The note stated the following:

Hello no cops
Things you need
Kalie + x husband + BBC 8+
10K – all \$20.00
Hotel
Your phone # on your car
Ill message soon
Next time its your kids
DP must nut
In all holes 2x
Each

Correspondence with R.W. on 19 February 2019

56. On February 19, 2019, R.W. sent an email advising that she had found some photos used for the Plenty of Fish “Lance” profile on the internet. One of those images is shown below.



Search of R.W.’s Apple iPhone A1864, S/N DX3XH0XEJCLP, 615-636-5512

57. The FBI conducted a search of R.W.’s Apple iPhone at the FBI Louisville Field Office. Search of the Apple iPhone revealed various items of evidentiary value as discussed below:

- A. The outgoing call log showed (4) calls to phone number 915-777-3617 which had been deleted between 1/28/2019 and 1/29/2019.
- B. Safari search terms on 1/26/2019 for “mcdonald’s in dover tn”, on 1/27/2019 for “debate jewelry”, “des barres jewelry”, “famous jewelry brands”, and “famous”.
- C. Images on the iPhone which show four pictures of a white male that R.W. identified on February 19, 2019 as being “Lance” from the Plenty of Fish “Lance” profile. Of note, two were marked for deletion on January 29, 2019 at 1:32:55 PM (UTC-6) and 1:32:58 PM (UTC-6).
- D. Image on the iPhone which shows R.W. bound and gagged which was marked for deletion on January 29, 2019 at 6:43:11 PM (UTC-6).
- E. Image on the iPhone which shows R.W.’s coworker, Missy Cox, which was marked for deletion on January 29, 2019 at 6:43:11 PM (UTC-6).
- F. Images on the iPhone which show a nude buttocks and hands bound with tape behind a person’s back. [believed to be R.W.]
- G. Image of screen shot of a pin drop location of the ransom drop discovered on R.W.’s iPhone which was sent by the FBI to R.W.’s phone used by CONLEY to communicate the ransom drop location at Tri-State International Trucks.
- H. Image on the iPhone which was sent to CONLEY, at FBI direction, of the ransom drop bag, a McDonald’s carry out bag placed at the edge of a paved surface and grass.
- I. Two iMessage threads, one between R.W.’s phone and R.W.’s mother’s phone and

another between R.W.'s phone and R.W.'s father's phone. The discussion is related to the kidnapping and paying of a ransom. I should be noted that many of the iMessages do not appear on R.W.'s phone and are suspected of being deleted by CONLEY.

- J. One SMS thread between R.W.'s phone and R.W.'s mother's phone related to paying the kidnapping ransom.

Search of B. Conley's Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502

58. The FBI conducted a search of CONLEY's Samsung Galaxy. Search of the Samsung Galaxy revealed various items of evidentiary value as discussed below:

- A. Thousands of pornographic images and at least (2) images of child pornography.

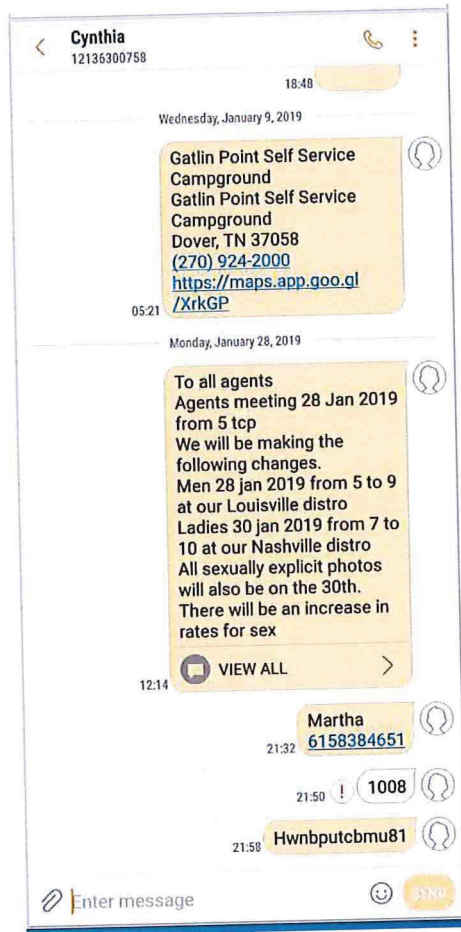
An FBI Special Agent who is an expert in violent crimes against children (VCAC) reviewed the (2) images of child pornography for confirmation.

- B. Screenshots of text messages which include photos of a light skinned black male with his shirt unbuttoned and the text messages identifying himself as Eric De Beer and being number 1 in the diamond business. Additional photos inside the screenshots show close ups of a black male penis. On some screenshots an image of a Chase checking account (...4417) with Available Balance (\$9,999,991.51) is included.

- C. Images of the same white male whom R.W. identified as "Lance".

- D. Hundreds of pornographic video clips.

- E. An unsent text message to CONLEY's wife with the number "1008". This number is the passcode to R.W.'s iPhone. Directly above the unsent message is R.W.'s mother's phone number.



- F. A contact in CONLEY's phone identified as "Lance" using phone number 915-777-3617.
- G. An active user account for TextMe, Inc. on CONLEY's phone with user name bhtown101b4414 and TextMe, Inc. phone number 213-630-0758.
- H. TextMe chat sessions between R.W. and the TextMe, Inc. user name

bhtown101b4414 in which R.W. identifies this user as "Lance". The user tells R.W. on January 26, 2019 at 11:18 PM that R.W. can contact CONLEY at phone number 915-777-3617 to meet at the McDonalds in Dover.

- I. Four text messages between CONLEY and the "Lance" contact on January 29, 2019.
- J. Photos of R.W. nude.
- K. Video of R.W. and CONLEY engaging in various forms of sexual intercourse.
- L. Video of a young black female, wearing pink under garments, dancing. This video is dated November 10, 2018.
- M. A contact in CONLEY's phone identified as "Eric" using telephone number 915-248-0746.

59. Legal processes was served on TextNow for the telephone number 915-777-3617.

TextNow provided records which contained two files related to phone number 915-777-3617 and Username: loveiseasy2862. The information TextNow provided is as follows:

- 1) Telephone number: 915-777-3617 is associated with email: loveiseasy2862@gmail.com for the period of: 1/2/2019 02:09:41 UTC - 1/31/2019 04:59:59 UTC.

Probable Cause – Bank Fraud and Aggravated Identity Theft

60. During the course of R.W.'s kidnapping on January 29, 2019 and January 30, 2019, the FBI sought financial records for R.W. which could identify her potential use of credit cards or debit cards in order to locate where she had been prior to, and during the time, that she had been kidnapped. Additionally, the FBI sought to identify any associates she may have been with prior to the kidnapping. The FBI became aware that on January 29, 2019, shortly after midnight, R.W.'s Visa credit card, with number 4270-8290-5352-2402, had been declined twice by her bank at the Walmart Supercenter located at 14800 Fort Campbell Blvd., Oak Grove, KY 42262.

61. Video files/clips provided by Walmart identified CONLEY as attempting to use R.W.'s Visa credit card, with number 4270-8290-5352-2402, at the Walmart register during the time in question. Walmart provided video of CONLEY at the register and they also provided electronic records from the register for the attempted purchase, which consisted of CONLEY attempting to purchase (2) Vanilla Prepaid Mastercard gift cards for \$200/each.

62. Walmart provided the below business records of the electronic transaction details:

ST# 03362 OP# 009044 TE# 44 TR# 07339
 VMC 200 079936640140 206.88 0
 VMC 200 079936640140 206.88 0
 SUBTOTAL 413.76
 TOTAL 413.76
 *****2402 I
 EXPIRATION DATE 02/21
 EMV TENDER DECLINED ONLINE
 EMV TENDER DECLINED OFFLINE
 CARD ISSUER DENIED THE CHARGE
 VOIDED BANKCARD TRANSACTION
 CAMT 000000041376
 Visa Credit
 AID A0000000031010

ICC 0840 en
 TVR 0080008000 CVMR 5E0300 ARC 51
 AAC E77259247BF69B10
 IAD D45CA965CD3A60903531
 ATC 0022 UP# 611270BF TSI F800
 TERMINAL # SC010024
 01/29/19 00:01:27
 *****2402 I
 EXPIRATION DATE 02/21
 EMV TENDER DECLINED ONLINE
 EMV TENDER DECLINED OFFLINE
 CARD ISSUER DENIED THE CHARGE
 VOIDED BANKCARD TRANSACTION
 CAMT 000000041376
 Visa Credit
 AID A0000000031010
 ICC 0840 en
 TVR 0080008000 CVMR 5E0300 ARC 05
 AAC D08E6C0C4EE1EF0B
 IAD 6DA254DA80C2BA223035
 ATC 0023 UP# 34AA648A TSI F800
 TERMINAL # SC010024
 01/29/19 00:02:23
 CSM 00006236 ASHLEY JON
 CSM 00009052 SELF CHECKOUT MGR#52 2
 ===== CSM ABORT TRANSACTION =====
 # VOIDS= 0 ** AMT VOIDS= 0.00
 ===== CSM APPROVED ABORT =====
 ***** TRANSACTION CANCELED *****

63. During interviews with R.W., the FBI became aware of R.W. leaving her purse and backpack in CONLEY's vehicle on January 28, 2019. Inside R.W.'s purse and backpack were various personal identification documents and bank/credit cards. CONLEY admitting to attempting to use R.W. credit card, explaining that it was an accident, however it seems unlikely that CONLEY would mistake R.W.'s card for his own considering R.W.'s personal and credit/bank cards were inside her purse.
64. The FBI also became aware of an unauthorized attempt to log into R.W.'s bank

account on January 29, 2019 at approximately 8:54 AM. The individual who attempted to log into R.W.'s bank account used an unregistered phone number of 915-241-7423. Bank records showed that R.W. regularly logged into her account profile via an iPhone. The bank reported that the correct social security number was provided but the authentication questions were answered incorrectly by the user of 915-241-7423.

65. As previously documented, subscriber records for 915-241-7423 returned to Cynthia Conley, CONLEY's wife. Additionally, when CONLEY was arrested on January 30, 2019 by the FBI, this phone was found inside his vehicle.

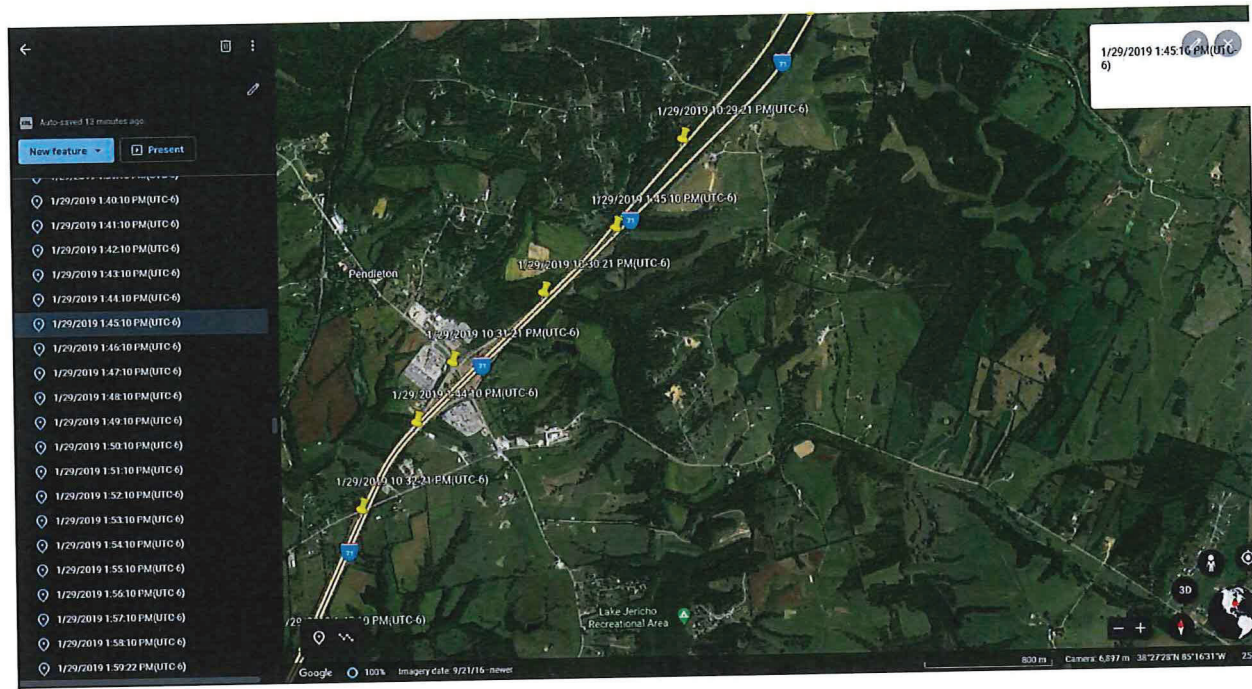
66. The credit union associated with R.W.'s USAA card is a federally insured financial institution.

Probable Cause – Interstate Threats

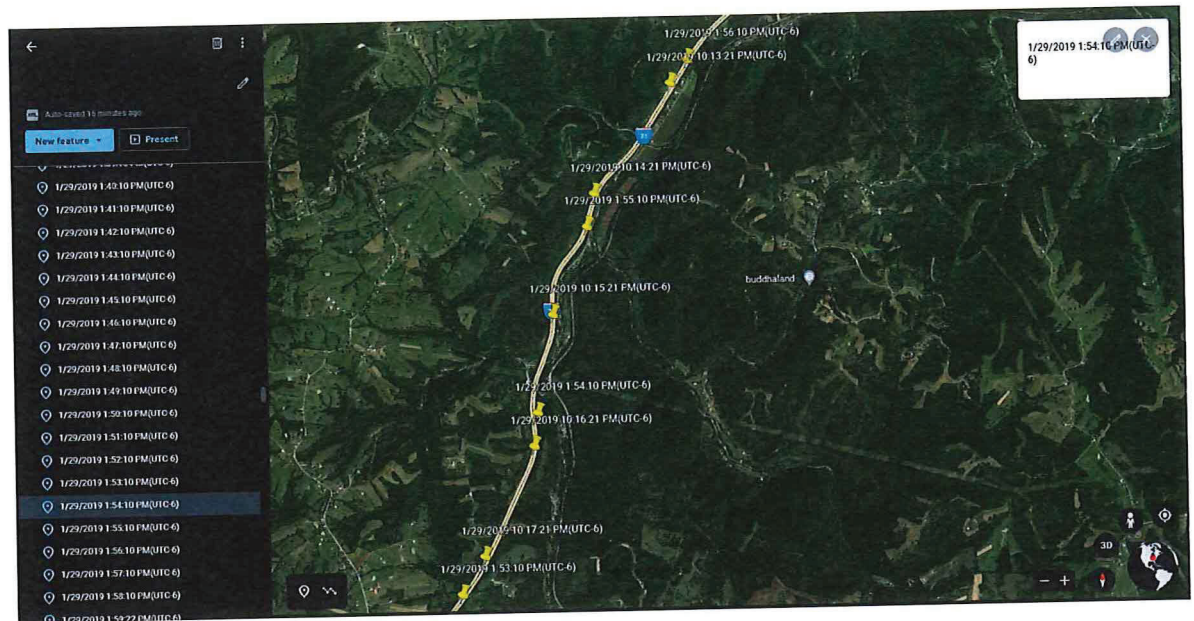
67. As noted previously in this affidavit, CONLEY sent multiple messages to both of R.W.'s parents containing threats about R.W.'s safety and well being. Those messages were transmitted utilizing telecommunications equipment and crossed state lines. During the times of the messages listed below, geolocational data taken from CONLEY's phone, was graphed showing him to be in the following locations while R.W.'s parents were located in and around Brentwood, TN. See the below analysis of CONLEY's location at or near the times the listed communications of interest were sent to R.W.'s parents:

- a. 615-636-5512 to 615-838-4651 on 1/29/2019 1:45 PM CST: Good I am actually the woman who has your daughter. No cops. Nothing stupid ok
- b. 615-636-5512 to 615-838-4651 on 1/29/2019 1:46 PM CST: Or I sell her and you won't see her again

Geolocational data from CONLEY's phone showed him in the vicinity of Pendleton, KY on 1/29/2019 at 1:44 PM CST.



- c. 615-636-5512 to 615-838-4651 on 1/29/2019 1:54 PM CST: One cop or police report she's done. Goal is close to 20,000 as you can
- Geolocational data from CONLEY's phone showed him in the vicinity of Carroll County KY on 1/29/2019 at 1:54 PM CST.

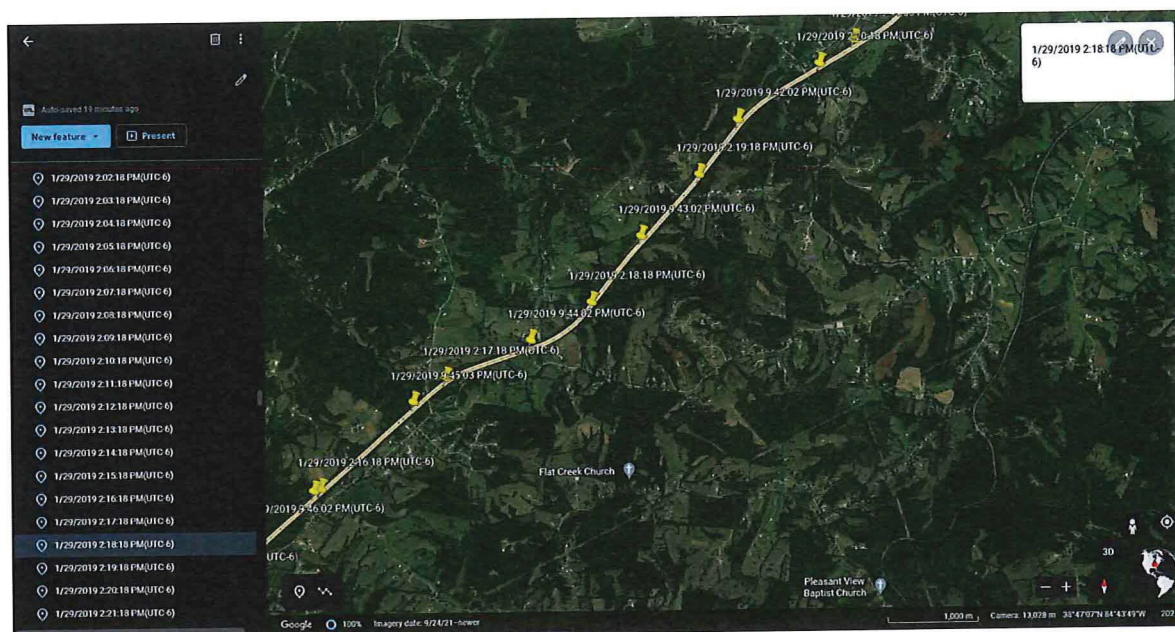


d. 615-636-5512 to 615-838-4651 on 1/29/2019 3:18 PM CST: My contact will be here in 12 hours to buy thensex slaves

e. 615-636-5512 to 615-838-4651 on 1/29/2019 3:19 PM CST: You got till then

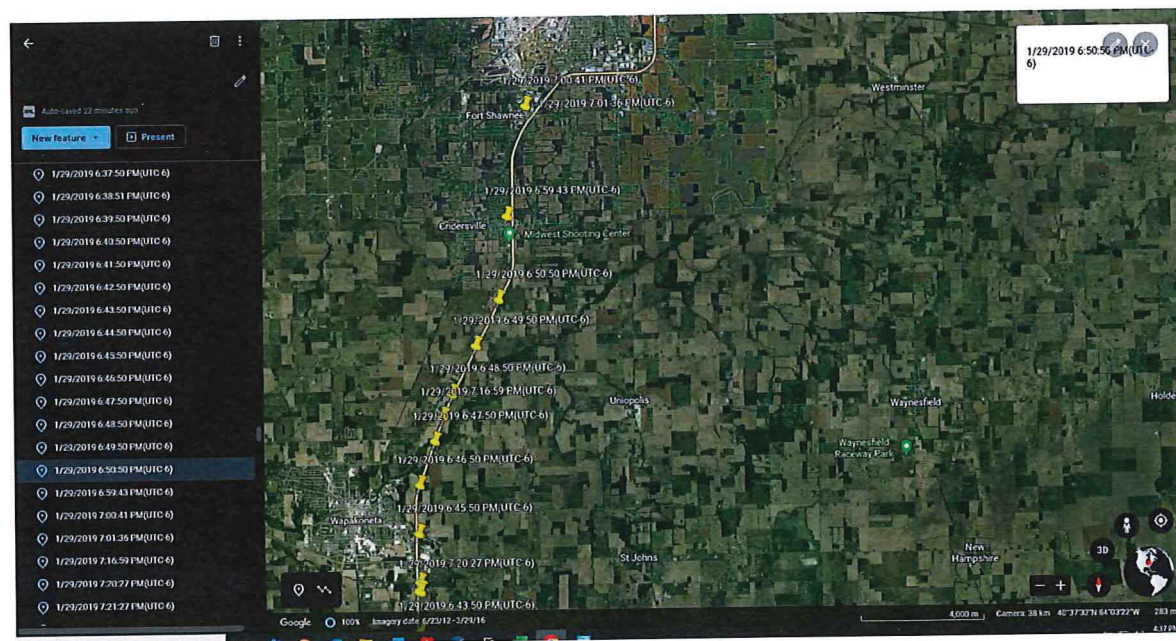
f. 615-636-5512 to 615-838-4651 on 1/29/2019 3:21 PM CST: No marked bills or anything over a 50

Geolocational data from CONLEY's phone showed him in the vicinity of Gallatin County, KY on 1/29/2019 at 3:18 PM CST.



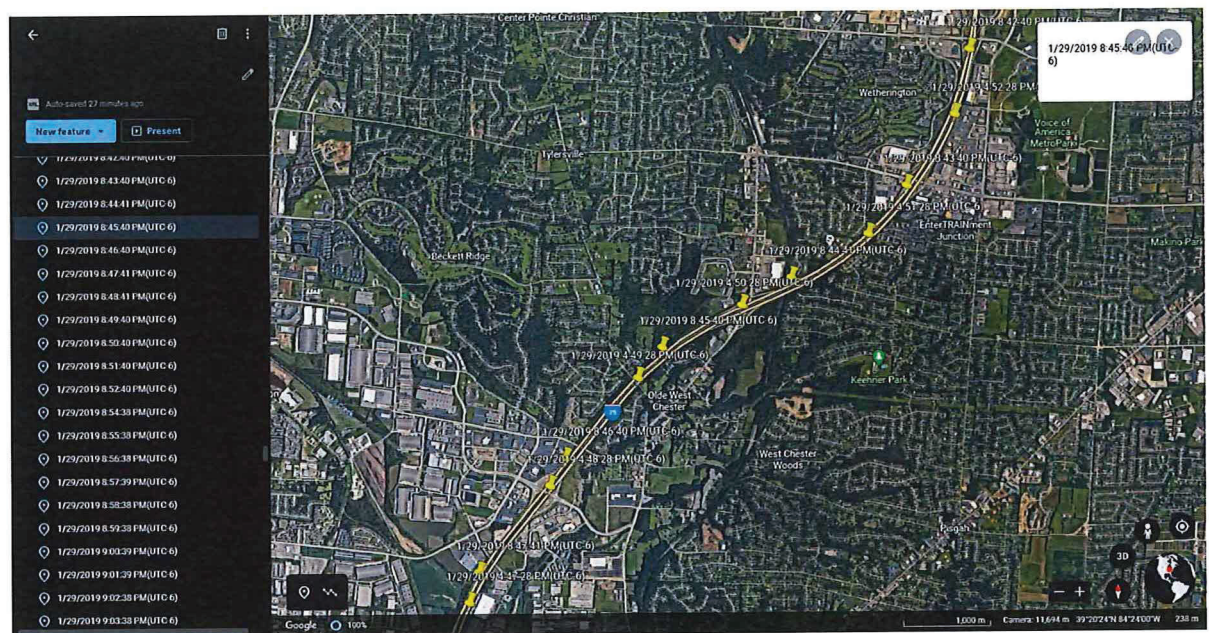
- g. 615-636-5512 to 615-838-4651 on 1/29/2019 6:51 PM CST: Hurry up or she will be sold soon

Geolocational data from CONLEY's phone showed him in the vicinity of Wapakoneta, OH on 1/29/2019 at 6:50 PM CST.



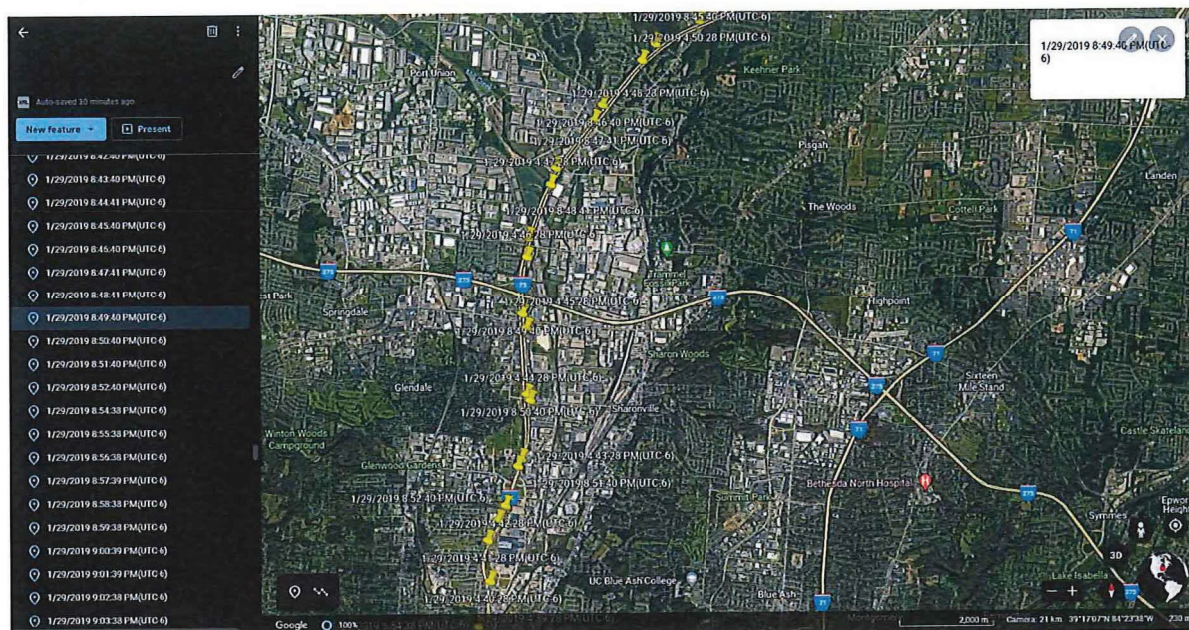
- h. 615-636-5512 1/29/2019 8:45 PM CST: Your daughter will be sold soon if your not on the fucking road
- i. 615-636-5512 to 615-838-4651 on 1/29/2019 8:46 PM CST: She's n Ohio at a safe house so hurry

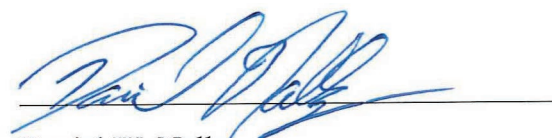
Geolocational data from CONLEY's phone showed him in the vicinity of Old West Chester, OH on 1/29/2019 at 8:45 PM CST.




- j. 615-636-5512 to 615-838-4651 on 1/29/2019 8:49 PM CST: She will be missing fingers and toes if you don't hurry le fuck up

Geolocational data from CONLEY's phone showed him in the vicinity of Glendale, OH on 1/29/2019 at 8:49 PM CST.




 Daniel W. Nally
 Special Agent
 Federal Bureau of Investigation

Subscribed and sworn to via telephone on January 31, 2023.


 Colin H Lindsay, Magistrate Judge
 United States District Court

**United States District Court
Western District of Kentucky
at Louisville**

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CRIMINAL ACTION NUMBER: 3:23-MJ-71

BRYAN DOUGLAS CONLEY

DEFENDANT

ORDER ON INITIAL APPEARANCE

The above-styled case came before the Honorable Regina S. Edwards, United States Magistrate Judge, by video, on February 2, 2023 to conduct an initial appearance.

APPEARANCES

For the United States:	Joshua D. Judd, Assistant United States Attorney
For the defendant:	Defendant Bryan Douglas Conley - Present and in custody
Court Reporter:	Digitally recorded

At the initial appearance, the defendant acknowledged his identity, was furnished with a copy of the Indictment, was advised of the nature of the charges contained therein and was advised of his rights. The Court adopted the previous of appointment of counsel in 3:19-cr-19-DJH. Joshua F. Barnette from the Criminal Justice Act attorney panel accepted the appointment.

The United States having moved for the detention of the defendant,

IT IS HEREBY ORDERED that should the Grand Jury return a true bill, this case is scheduled for arraignment proceedings and a detention hearing on **February 8, 2023 at 10:00 a.m. via video conference**, before the Honorable Regina S. Edwards, United States Magistrate Judge. The defendant shall be remanded to the custody of the United States Marshal pending further order of the Court.

This 2nd day of February, 2023

**ENTERED BY ORDER OF THE COURT:
REGINA S. EDWARDS
UNITED STATES MAGISTRATE JUDGE
JAMES J. VILT, JR., CLERK
BY: Ashley Henry - Deputy Clerk**

Copies: U.S. Attorney
U.S. Probation
Counsel for Defendant

FILED

JAMES J. VILT, JR. - CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FEB - 7 2023

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

UNITED STATES OF AMERICA

INDICTMENT

v.

BRYAN DOUGLAS CONLEY

NO. 3:23-cr-14-CHB

18 U.S.C. § 875(c)
18 U.S.C. § 981(a)(1)(C)
18 U.S.C. § 982
18 U.S.C. § 1028A
18 U.S.C. § 1201(a)
18 U.S.C. § 1344
18 U.S.C. § 2421(a)
18 U.S.C. § 2423(a)
18 U.S.C. § 2428
28 U.S.C. § 2461

The Grand Jury charges:

COUNT 1

(Interstate Transportation for Prostitution or other Criminal Purposes)

1. On or about November 8, 2018, using an online dating application, PlentyofFish.com ("POF"), **BRYAN DOUGLAS CONLEY**, used a fictitious online persona of "Bryant De Beers" ("Bryant") to inveigle and decoy a Minor Female 1 to meet with **BRYAN DOUGLAS CONLEY**.
2. **BRYAN DOUGLAS CONLEY** used a POF profile account with the username "loveiseasy1198". Using "loveiseasy1198," **BRYAN DOUGLAS CONLEY** then posed as "Bryant" and communicated with the POF account of Minor Female 1.
3. "Bryant's" POF profile contained a photograph of a person that was not **BRYAN DOUGLAS CONLEY**.
4. "Bryant" claimed to be a young man, a wealthy member of the "De Beer's family," and living in Nashville, Tennessee. In addition, the POF profile picture and pictures "Bryant" later sent to Minor Female showed "Bryant" to be tall and muscular.

5. “Bryant’s” POF profile contained a photograph of a person that was not **BRYAN DOUGLAS CONLEY**, but of a muscular man.
6. After briefly communicating on POF, **BRYAN DOUGLAS CONLEY**, posing as “Bryant,” began text messaging with Minor Female 1 via cellular device to cellular device.
7. Minor Female 1 told “Bryant” that she was 17 years old. Minor Female 1 was susceptible because of her age and family status.
8. Initially “Bryant” and Minor Female 1 discussed developing a romantic relationship. “Bryant” later offered to pay Minor Female 1 \$200,000 if she agreed to engage in sexual activity. “Bryant” offered Minor Female 1 additional money if she brought in a friend to engage in sexual activity. “Bryant” also promised to provide Minor Female 1 a new cell phone, a car, a new I.D., and cash, among other items.
9. On November 10, 2019, **BRYAN DOUGLAS CONLEY** solicited, received, and possessed, two videos of Minor Female 1. The second video is a sexually explicit video of Minor Female 1.
10. “Bryant” coordinated to pick up Minor Female 1 on Saturday, November 10, 2018, and bring her to his residence in Nashville, Tennessee in order to have sex in exchange for money. However, “Bryant” sent his friend, **BRYAN DOUGLAS CONLEY**, to pick up Minor Female 1. Sometime in the morning hours of November 10, 2018, **BRYAN DOUGLAS CONLEY**, while driving a grey Ford Taurus, met Minor Female 1 at a park near Minor Female 1’s family residence in Pataskala, Ohio.
11. **BRYAN DOUGLAS CONLEY** and Minor Female 1 departed towards Tennessee, drove for a few hours and eventually stopped at a Super 8 hotel in La Grange, Kentucky, where **BRYAN DOUGLAS CONLEY** rented a hotel room.

12. **BRYAN DOUGLAS CONLEY** transported Minor Female 1 to other locations in Kentucky and returned to the Super 8 Motel in La Grange, Kentucky. **BRYAN DOUGLAS CONLEY** told Minor Female 1 that he could not bring her to meet “Bryant” that day because “Bryant” had a vehicle accident. **BRYAN DOUGLAS CONLEY** communicated with Minor Female 1 over the next several days and did so while contemporaneously posing as “Bryant”.

13. **BRYAN DOUGLAS CONLEY** drove Minor Female 1 and provided her a drink that made her feel tired and sleepy. Minor Female 1 continued to communicate via text message with “Bryant.” “Bryant” told Minor Female 1 that he would pay her even more money if she had sex with **BRYAN DOUGLAS CONLEY**.

14. On Sunday, November 10 and 11, 2018, **BRYAN DOUGLAS CONLEY** stayed in a hotel room with Minor Female 1. **BRYAN DOUGLAS CONLEY** offered Minor Female 1 money to engage in sexual activity with him.

15. On November 10, 2018, **BRYAN DOUGLAS CONLEY** engaged in sexual activity after offering Minor Female 1 money.

16. On November 11, 2018, **BRYAN DOUGLAS CONLEY** transported Minor Female 1 in his car and began driving towards Tennessee.

17. **BRYAN DOUGLAS CONLEY** continued to use “Bryant,” to communicate via text message with Minor Female 1 while they were together. “Bryant” offered Minor Female 1 more money for Minor Female 1 to use POF, solicit sexual activity from another male and then to allow **BRYAN DOUGLAS CONLEY** to video record the sexual activity.

18. **BRYAN DOUGLAS CONLEY** transported Minor Female 1 to meet an adult male in Jackson, Tennessee, who agreed to have sexual intercourse with Minor Female 1 in the presence of **BRYAN DOUGLAS CONLEY**. **BRYAN DOUGLAS CONLEY** offered Minor Female 1

money for the sexual activity and watched Minor Female 1 and another adult male engage in sexual activity.

19. **BRYAN DOUGLAS CONLEY** continued to transport Minor Female 1 and offered Minor Female 1 money if he could tie her up with rope.

20. **BRYAN DOUGLAS CONLEY** drove Minor Female 1 towards a location in Texas. “Bryant” then told Minor Female 1 to travel to Texas to meet “Bryant” where “Bryant” had a property. Minor Female 1 requested to return home. **BRYAN DOUGLAS CONLEY** told Minor Female 1 that he would return her to home in Ohio. **BRYAN DOUGLAS CONLEY** did not return Minor Female 1 to her home and abandoned Minor Female 1 at a gas station in Texas. **BRYAN DOUGLAS CONLEY** took her purse and phone.

21. **BRYAN DOUGLAS CONLEY** communicated with Minor Female 1 to offer her money for sexual activity and to create the false impression that she was communicating with “Bryant”.

22. On or about November 8, 2018, through November 12, 2018, in the Western District of Kentucky, Oldham County, and elsewhere, the defendant **BRYAN DOUGLAS CONLEY**, knowingly transported, and attempted to transport, a person, Minor Female 1, in interstate commerce from Ohio to Kentucky, Tennessee, and Texas, with intent that Minor Female 1 engage in prostitution and in sexual activity for which any person can be charged with a criminal offense.

In violation of Title 18, United States Code, Section 2421.

The Grand Jury further charges:

COUNT 2
(*Transportation of Minors*)

23. The allegations in paragraphs 1 through 22 are incorporated by reference.

24. On or about November 8, 2018, through November 12, 2018, in the Western District of Kentucky, Oldham County, and elsewhere, the defendant **BRYAN DOUGLAS CONLEY**, did knowingly transport Minor Female 1, who had not attained the age of 18 years, in interstate and foreign commerce from Ohio to Kentucky, Tennessee, and Texas, with intent that Minor Female 1 engage in prostitution and in sexual activity for which any person can be charged with a criminal offense.

In violation of Title 18, United States Code, Section 2423.

The Grand Jury further charges:

COUNT 3

(Kidnapping By Inveigle and Decoy)

25. On or about January 26, 2019, using an online dating application, PlentyofFish.com (“POF”), **BRYAN DOUGLAS CONLEY**, used the fictitious online persona of “Lance De Beers” (“Lance”) to inveigle and decoy Adult Female 1 to meet with **BRYAN DOUGLAS CONLEY**.

26. **BRYAN DOUGLAS CONLEY** created a POF profile account with the username “loveiseasy2862.” Using “loveiseasy2862,” **BRYAN DOUGLAS CONLEY** then posed as “Lance” and communicated with the POF account of Adult Female 1.

27. “Lance’s” POF profile contained a photograph of a person that was not **BRYAN DOUGLAS CONLEY**, but of a muscular man.

28. “Lance” claimed to be a young man, a wealthy member of the “De Beer’s family,” and living in Nashville, Tennessee.

29. After briefly communicating on POF and on January 26, 2019, **BRYAN DOUGLAS CONLEY**, posing as “Lance,” began communicating with Adult Female 1 via cellular device to cellular device text messaging.

30. Initially “Lance” and Adult Female 1 discussed developing a relationship and the potential for Adult Female 1 to become a model.

31. On January 26, 2019, Adult Female 1 agreed to meet “Lance” at a location near Dover, Tennessee, located south of Fort Campbell, Kentucky. “Lance” told Adult Female 1 that she would also meet his agent, “Brian.” When Adult Female 1 arrived in Dover, Tennessee, she met “Brian” a/k/a **BRYAN DOUGLAS CONLEY**.

32. **BRYAN DOUGLAS CONLEY** communicated with Adult Female 1 using text messaging over the next several days and did so while contemporaneously posing as “Lance” and as “Brian.” Adult Female 1 was susceptible because of her cognitive ability.

33. **BRYAN DOUGLAS CONLEY**, claiming his name was “Brian,” falsely represented he was a modeling agent and the modeling agent for “Lance.” **BRYAN DOUGLAS CONLEY** told Adult Female 1 she could be a paid model and took photographs of and filmed Adult Female 1 for her modeling portfolio. **BYAN DOUGLAS CONLEY** told Adult Female 1 that “Lance” did not show up because he had been arrested.

34. On January 27, 2019, Adult Female 1 met **BRYAN DOUGLAS CONLEY** in a hotel in Brentwood, Tennessee, to take photographs for Adult Female 1’s modeling portfolio. **BRYAN DOUGLAS CONLEY** asked Adult Female 1 for her phone number, date of birth, address, and other information that he wrote down as notes. **BRYAN DOUGLAS CONLEY** showed Adult Female 1 a sample modeling contract. **BRYAN DOUGLAS CONLEY** provided Adult Female 1 with a red Yeti mug containing an unspecified sports drink, which he told her she was required to drink as part of the modeling contract. Conley offered her money to participate in sexual activity and clothed and nude photographs as part of the modeling contract. Adult Female 1 did not stay overnight at the hotel.

35. On January 28, 2019, **BRYAN DOUGLAS CONLEY** contacted Adult Female 1 and arranged for her to meet “Lance” again in Dover, Tennessee, and participate in a photography shoot. Adult Female 1 traveled to Dover, Tennessee, and instead again met **BRYAN DOUGLAS CONLEY**. **BRYAN DOUGLAS CONLEY** convinced Adult Female 1 to place her purse and an overnight bag in his car to travel to meet “Lance.” Adult Female 1 and **BRYAN DOUGLAS CONLEY** drove to a remote location in Dover, Tennessee. **BRYAN DOUGLAS CONLEY** told Adult Female 1 that “Lance” had been arrested again and could not make it. Adult Female 1 returned home. Her purse and wallet with her social security card and credit cards remained in **BRYAN DOUGLAS CONLEY**’s car.

36. On January 29, 2019, at approximately 12:02 a.m., **BRYAN DOUGLAS CONLEY**, attempted to purchase prepaid credit cards using Adult Female 1’s USAA debit/credit card without Adult Female 1’s authorization and permission at Walmart in Oak Grove, Kentucky.

37. On January 29, 2019, at approximately 8:54 a.m., **BRYAN DOUGLAS CONLEY** attempted to log in to Adult Female 1’s USAA online bank customer profile account without her authorization and permission.

38. On January 29, 2019, **BRYAN DOUGLAS CONLEY** communicated with Adult Female 1 to schedule a modeling photography shoot in Louisville, Kentucky. **BRYAN DOUGLAS CONLEY** met Adult Female 1 in the parking lot of Kroger, 185 Adam Shepherd Parkway, Shepherdsville, Kentucky.

39. On January 29, 2019, at approximately 1:30 p.m., Adult Female 1 gave **BRYAN DOUGLAS CONLEY** her cell phone because he wanted to transfer videos from her phone to his phone. Adult Female 1 gave **BRYAN DOUGLAS CONLEY** her phone and password.

40. On January 29 and 30, 2019, **BRYAN DOUGLAS CONLEY** drove Adult Female 1 to various locations throughout Kentucky. **BRYAN DOUGLAS CONLEY** drugged Adult Female 1's drinks with a sleeping aid making her feel tired and sleepy during the long drive. **BRYAN DOUGLAS CONLEY** provided Adult Female 1 what he described as a sports drink that he required Adult Female 1 to drink as part of the modeling contract so they would be paid \$500. **BRYAN DOUGLAS CONLEY** told Adult Female 1 he had to watch her drink it. Adult Female 1 fell asleep after consuming the drink.

41. On January 29, 2019, at approximately 1:37 p.m., **BRYAN DOUGLAS CONLEY** used Adult Female 1's phone to send kidnapping ransom demands and threats to physically harm Adult Female 1 to the parents of Adult Female 1. At or near the same time, **BRYAN DOUGLAS CONLEY** physically bound Adult Female 1 for approximately 3 to 4 hours with rope and duct tape.

42. **BRYAN DOUGLAS CONLEY** refused to allow Adult Female 1's parents to talk with Adult Female 1. **BRYAN DOUGLAS CONLEY** sent Adult Female 1's parents a proof of life photograph at approximately 10:00 p.m. on January 29, 2019. The photograph showed Adult Female 1 covered with a blanket in the back seat of a car and with a rope wrapped with duct tape binding her mouth.

43. Adult Female 1 had intended to return home the night of January 29, 2019, but **BRYAN DOUGLAS CONLEY** falsely claimed that he and "Lance" were law enforcement officers and Adult Female 1 was the target of a human trafficking ring and thus could not return home. **BRYAN DOUGLAS CONLEY** falsely claimed that it was unsafe for Adult Female 1 to return to work or home and he would not return her iPhone to her. **BRYAN DOUGLAS CONLEY** told Adult Female 1 to stay down in the back seat of the car out of view for her safety.

44. On January 30, 2019, at approximately 3:30 p.m., a ransom payment of \$400 and jewelry provided by Adult Female 1's parents was placed in paper bag and dropped at Tri-State international Trucks Inc., 200 J.W. Dickerson Dr., Oak Grove, Kentucky 42262 for **BRYAN DOUGLAS CONLEY** to retrieve.

45. On January 30, 2019, at approximately 5:00 p.m., **BRYAN DOUGLAS CONLEY** retrieved the ransom payment from behind a dumpster at the Tri-State international Trucks Inc. in Oak Grove, Kentucky. **BRYAN DOUGLAS CONLEY** falsely told Adult Female 1 that he was retrieving her wallet from "Lance" when he stopped to retrieve the ransom payment.

46. **BRYAN DOUGLAS CONLEY** told Adult Female 1 that she would not be able to return home and would have to stay with him at a hotel the night of January 30, 2019, because it was still not safe for her to return home.

47. On or about and between January 26 and 30, 2019, in Bullitt County, Kentucky, in the Western District of Kentucky, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, did unlawfully and willfully seize, confine, inveigle, decoy, kidnap, abduct, carry away and hold Adult Female 1 for ransom, reward, or otherwise, and, in committing or in furtherance of the commission of the offense, traveled in interstate commerce from Kentucky to Ohio and Tennessee and used cellular telephones and his car, a means, facility, and instrumentality of interstate or foreign commerce.

In violation of Title 18, United States Code, Section 1201(a)(1).

The Grand Jury further charges:

COUNT 4
(*Bank Fraud*)

48. The allegations in paragraphs 25 through 47 are incorporated by reference.

49. From on or about January 28, 2019, to January 29, 2019, in Christian County, in the Western District of Kentucky, and elsewhere, **BRYAN DOUGLAS CONLEY**, the defendant, did knowingly execute and attempt to execute a scheme and artifice to defraud a financial institution, USAA Bank, and to obtain money, funds, and other property owned by and under the custody and control of, a financial institution, by means of false and fraudulent pretenses, representations, and promises: to wit **BRYAN DOUGLAS CONLEY** executed and attempted to execute a scheme to defraud USAA Bank by attempting to purchase prepaid credit cards with Adult Female 1's credit card without her authorization at Walmart in Oak Grove, Kentucky, and attempting to access Adult Female 1's online USAA Bank customer profile account using Adult Female 1's social security number.

All in violation of Title 18, United States Code, Section 1344.

The Grand Jury further charges:

COUNT 5
(*Aggravated Identity Theft*)

50. The allegations in paragraphs 25 through 49 are incorporated by reference.

51. From on or about January 28, 2019, to January 29, 2019, in the Western District of Kentucky, Christian County, and elsewhere, **BRYAN DOUGLAS CONLEY**, the defendant, did knowingly transfer, possess, use, without lawful authority, a means of identification of another person, Adult Female 1's social security number and Adult Female 1's name and USAA credit and debit card number, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit: a violation of Title 18, United States Code Section 1344, as charged in Count 4, knowing that the means of identification belonged to another actual person.

All in violation of Title 18, United States Code, Section 1028A.

The Grand Jury further charges:

COUNT 6
(*Interstate Threats*)

52. The allegations in paragraphs 25 through 51 are incorporated by reference.

53. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “Good I am actually the woman who has your daughter. No cops. Nothing stupid ok Or I sell her and you won’t see her again”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 7
(*Interstate Threats*)

54. The allegations in paragraphs 25 through 53 are incorporated by reference.

55. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female

1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “One cop or police report she’s done. Goal is close to 20,000 as you can”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 8
(*Interstate Threats*)

56. The allegations in paragraphs 25 through 55 are incorporated by reference.

57. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “My contact will be here in 12 hours to buythensex slaves. You got till then. No marked bills or anything over a 50”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 9
(*Interstate Threats*)

58. The allegations in paragraphs 25 through 57 are incorporated by reference.

59. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from Ohio to Kentucky and Tennessee, and through Apple

data processing servers in interstate commerce, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, "'Hurry up or she will be sold soon".

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 10
(*Interstate Threats*)

60. The allegations in paragraphs 25 through 59 are incorporated by reference.

61. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from Ohio to the Commonwealth of Kentucky and Tennessee, and through Apple data processing servers in interstate commerce, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, "Your daughter will be sold soon if your not on the fucking road. She's n Ohio .at a safe house so hurry".

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 11
(*Interstate Threats*)

62. The allegations in paragraphs 25 through 61 are incorporated by reference.

63. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted

communications in interstate commerce from Ohio to the Commonwealth of Kentucky and Tennessee, and through Apple data processing servers in interstate commerce, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “She will be missing fingers and toes if you don’t hurry le fuck up”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 12
(*Interstate Threats*)

64. The allegations in paragraphs 25 through 63 are incorporated by reference.

65. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “Ok I’m going to start removing toes if not answer”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 13
(*Interstate Threats*)

66. The allegations in paragraphs 25 through 65 are incorporated by reference.

67. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “Drop the money and go to exit 117 and I tell you where she is safe. If you don’t then she’s fucked. No more arguing. If you don’t you just killed your daughter end of discussion”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 14
(*Interstate Threats*)

68. The allegations in paragraphs 25 through 67 are incorporated by reference.

69. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “He has 5 minutes to do it or I send video of me gutting her like a fish. No more of his games. He just signed her death warrant if he doesn’t stop”.

In violation of Title 18, United States Code, Section 875(c).

The Grand Jury further charges:

COUNT 15
(*Interstate Threats*)

70. The allegations in paragraphs 25 through 69 are incorporated by reference.

71. On or about January 29, 2019, in the Western District of Kentucky, Bullitt County, and elsewhere, the defendant, **BRYAN DOUGLAS CONLEY**, knowingly and willfully transmitted communications in interstate commerce from the Commonwealth of Kentucky to Tennessee, and through Apple data processing servers located outside of Kentucky, and the communication contained a threat to kidnap and injure Adult Female 1 that was sent to the parents of Adult Female 1, to wit: **BRYAN DOUGLAS CONLEY** sent the following iMessage, “Your husbands going to get her killed playing his games. He’s fucked around for 6 hours now. For every 30 he’s late now I remove a body part. Fore every time I message you and no response same”.

In violation of Title 18, United States Code, Section 875(c).

NOTICE OF FORFEITURE

72. As a result of committing offenses in violation of Title 18, United States Code, Sections 2421, 2423, 1201(a), 1344, 1028A, and 875(c), as alleged in Counts 1 through 15 of this Indictment, felonies punishable by imprisonment for more than one year, the defendant, **BRYAN DOUGLAS CONLEY**, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(2)(B), 1028(b), and 2428, and Title 28, United States Code, Section 2461, any and all property constituting, or derived from, proceeds defendant obtained, directly or

indirectly, as a result of the violations alleged in Counts 1 through 15 of this Indictment, and any property used or intended to be used to commit or to facilitate the commission of these violations, including but not limited to the following: A 2014 Ford Taurus, VIN 1FAHP2D89EG147917.

A TRUE BILL.

Redacted

FOREPERSON


MICHAEL A. BENNETT
UNITED STATES ATTORNEY

MAB:JDJ

UNITED STATES OF AMERICA v. **BRYAN DOUGLAS CONLEY**
PENALTIES

Count 1: NM 10 yrs/ \$250,000/both/ NL 5 yrs to Life Supervised Release.
 Count 2: NL 10 yrs to NM Life/\$250,000/NL 5 yrs to Life Supervised Release.
 Count 3: NM Life/ \$250,000/both/ NM 3 Supervised Release.
 Count 4: NM 30 yrs/\$1,000,000/both/NM 5 yrs Supervised Release.
 Count 5: 2 yrs consecutive/\$250,000/both/NM 1 yrs Supervised Release.
 Counts 6-15: NM 5 yrs./\$250,000/both/NM 3 yrs. Supervised Release
 Forfeiture

NOTICE

ANY PERSON CONVICTED OF AN OFFENSE AGAINST THE UNITED STATES SHALL BE SUBJECT TO SPECIAL ASSESSMENTS, FINES, RESTITUTION & COSTS.

SPECIAL ASSESSMENTS

18 U.S.C. § 3013 requires that a special assessment shall be imposed for each count of a conviction of offenses committed after November 11, 1984, as follows:

Misdemeanor:	\$ 25 per count/individual	Felony:	\$100 per count/individual
	\$125 per count/other		\$400 per count/other

FINES

In addition to any of the above assessments, you may also be sentenced to pay a fine. Such fine is due immediately unless the court issues an order requiring payment by a date certain or sets out an installment schedule. You shall provide the United States Attorney's Office with a current mailing address for the entire period that any part of the fine remains unpaid, or you may be held in contempt of court. 18 U.S.C. § 3571, 3572, 3611, 3612

Failure to pay fine as ordered may subject you to the following:

1. **INTEREST** and **PENALTIES** as applicable by law according to last date of offense.

For offenses occurring after December 12, 1987:

No **INTEREST** will accrue on fines under \$2,500.00.

INTEREST will accrue according to the Federal Civil Post-Judgment Interest Rate in effect at the time of sentencing. This rate changes monthly. Interest accrues from the first business day following the two week period after the date a fine is imposed.

PENALTIES of:

10% of fine balance if payment more than 30 days late.

15% of fine balance if payment more than 90 days late.

2. Recordation of a **LIEN** shall have the same force and effect as a tax lien.
3. Continuous **GARNISHMENT** may apply until your fine is paid.

18 U.S.C. §§ 3612, 3613

If you **WILLFULLY** refuse to pay your fine, you shall be subject to an **ADDITIONAL FINE** of not more than the greater of \$10,000 or twice the unpaid balance of the fine; or **IMPRISONMENT** for not more than 1 year or both. 18 U.S.C. § 3615

RESTITUTION

If you are convicted of an offense under Title 18, U.S.C., or under certain air piracy offenses, you may also be ordered to make restitution to any victim of the offense, in addition to, or in lieu of any other penalty authorized by law. 18 U.S.C. § 3663

APPEAL

If you appeal your conviction and the sentence to pay your fine is stayed pending appeal, the court shall require:

1. That you deposit the entire fine amount (or the amount due under an installment schedule during the time of your appeal) in an escrow account with the U.S. District Court Clerk, or
2. Give bond for payment thereof.

18 U.S.C. § 3572(g)

PAYMENTS

If you are ordered to make payments to the U.S. District Court Clerk's Office, certified checks or money orders should be made payable to the Clerk, U.S. District Court and delivered to the appropriate division office listed below:

LOUISVILLE: Clerk, U.S. District Court
106 Gene Snyder U.S. Courthouse
601 West Broadway
Louisville, KY 40202
502/625-3500

BOWLING GREEN: Clerk, U.S. District Court
120 Federal Building
241 East Main Street
Bowling Green, KY 42101
270/393-2500

OWENSBORO: Clerk, U.S. District Court
126 Federal Building
423 Frederica
Owensboro, KY 42301
270/689-4400

PADUCAH: Clerk, U.S. District Court
127 Federal Building
501 Broadway
Paducah, KY 42001
270/415-6400

If the court finds that you have the present ability to pay, an order may direct imprisonment until payment is made.

FILED
JAMES J. VILT, JR. - CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FEB - 7 2023
U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

UNITED STATES OF AMERICA

PLAINTIFF

v.

Criminal Action No.: 3:23-cr-14-CHB

BRYAN D. CONLEY

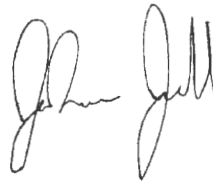
DEFENDANT

NOTICE OF ENTRY OF APPEARANCE

Assistant United States Attorney Joshua D. Judd hereby enters his appearance of record
on behalf of the United States of America.

Respectfully submitted,

MICHAEL A. BENNETT
United States Attorney



Joshua D. Judd
Assistant United States Attorneys
717 West Broadway
Louisville, Kentucky 40202
(502) 582-5911

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRYAN DOUGLAS CONLEY,

Defendant.

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)

Criminal Action No. 3:23-CR-014-CHB

ORDER OF REASSIGNMENT

*** **

The Court, on its own motion and in the interest of justice and judicial efficiency, finds that reassignment of this case is appropriate. The receiving judge concurs in the reassignment. Accordingly,

IT IS HEREBY ORDERED that this action is hereby **REASSIGNED** to the docket of the Honorable David J. Hale, United States District Judge, for all further proceedings. Counsel are requested to change the criminal action number to reflect the initials “DJH” on all further pleadings.

This the 7th day of February, 2023.



Claria Horn Boom

CLARIA HORN BOOM,
UNITED STATES DISTRICT COURT JUDGE
EASTERN AND WESTERN DISTRICTS OF
KENTUCKY

cc: Counsel of Record
Judge Hale's Case Manager

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CRIMINAL ACTION NO. 3:23-CR-0014-DJH**

UNITED STATES OF AMERICA,

PLAINTIFF

v.

BRYAN DOUGLAS CONLEY,

DEFENDANT

ORDER

Pursuant to the Due Process Protections Act, the Court confirms the United States' obligation to produce all exculpatory evidence to the defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and orders it to do so. Failing to do so in a timely manner may result in consequences, including, but not limited to, exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, or sanctions by the Court.

cc: Counsel of record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v. Criminal Action No. 3:23-CR-14-DJH

BRYAN DOUGLAS CONLEY Defendant.

* * * * *

ORDER FOLLOWING ARRAIGNMENT

The Court conducted a proceeding, by video, on February 8, 2023, for the purposes of arraignment and a detention hearing. The defendant, Bryan Douglas Conley, was present, in custody, with Joshua F. Barnette, appointed counsel. Assistant United States Joshua D. Judd was present on behalf of the United States of America. The proceeding was digitally recorded.

As to the matter of arraignment, Defendant, by counsel, acknowledged his identity and was advised of the nature of the charges contained therein.

The Court orally reminded the United States of its prosecutorial obligation under *Brady v. Maryland*, 373 U.S. 83 (1963), and the consequences of violating the same.

Counsel, on behalf of Defendant, waived formal reading of the Indictment and entered a plea of **NOT GUILTY** to the charges contained therein. Accordingly, it is hereby

ORDERED as follows:

(1) This matter is assigned for **trial by jury at Louisville, Kentucky, on April 17, 2023, at 9:30 a.m.**, before the Honorable David J. Hale, United States District Judge. Counsel shall be in court thirty minutes before trial.

(2) Pretrial discovery and inspection.

(a) **No later than February 15, 2023**, the Assistant United States Attorney and defense counsel shall confer and, upon request, permit inspection and copying or photographing of all matter subject to disclosure under Federal Rule of Criminal Procedure 16.

(b) If additional discovery or inspection is sought, Defendant's attorney shall confer with the Assistant United States Attorney with a view to satisfying these requests in a cooperative atmosphere without recourse to the Court. The request may be oral or written, and the Assistant United States Attorney shall respond in like manner.

- (i) Jencks Act material. Jencks Act material pursuant to 18 U.S.C. § 3500 is not required to be furnished to Defendant by the United States prior to trial.
- (ii) Brady (Giglio) material. The United States shall disclose any *Brady* material of which it has knowledge in the following manner:
 - (A) pretrial disclosure of any *Brady* material discoverable under Rule 16(a)(1);
 - (B) disclosure of all other *Brady* material in time for effective use at trial.

If the United States has knowledge of *Brady* evidence and is unsure as to the nature of the evidence and the proper time for disclosure, then it may request an *in camera* hearing for the purpose of resolving this issue; failure to disclose *Brady* material at a time when it can be effectively used at trial may result in a recess or a continuance so that Defendant may properly utilize such evidence.

- (C) Rule 404(b) evidence. Upon service of a request from Defendant for notice of Rule 404(b) evidence of other crimes, wrongs, or acts, the United States shall provide notice **within fourteen (14) days of trial** of the general nature of any such evidence it intends to introduce at trial unless the Court excuses pretrial notice upon motion by the United States showing good cause.

Any motion for additional discovery or inspection shall be made **on or before February 22, 2023**, after compliance by the parties with Federal Rule of Criminal Procedure 16.

Any such motion shall contain a certification from counsel that informal, extrajudicial efforts to resolve the discovery dispute have taken place and been unsuccessful.

(c) If required to be disclosed pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G) or 16(b)(1)(C), **any expert testimony** the United States or Defendant intends to use under Rule 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief, including a summary of the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications, shall be disclosed **on or before February 27, 2023**.

Any expert testimony either the United States or Defendant intends to use to rebut an expert under Rule 702, 703, or 705 of the Federal Rules of Evidence shall be disclosed **on or before March 6, 2023**.

(d) The parties are reminded of the continuing duty under Federal Rule of Criminal Procedure 16(c) to disclose additional discoverable evidence or material previously requested or ordered.

(3) **All motions to suppress evidence** and any other motion requiring a pretrial hearing, including any motion to exclude the testimony of an expert witness pursuant to *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), shall be filed **no later than March 13, 2023**.

(4) **No later than March 27, 2023**, each party shall file a trial memorandum containing the following:

- (a) The statute(s) involved and elements of the offense(s) (with discussion of authorities, if disputed).
- (b) A statement of undisputed and disputed facts.
- (c) A separate statement of each unresolved substantive issue of law, with discussion and citations to authorities.

- (d) A statement of evidentiary issues it is reasonably believed will be raised at trial, together with citations to the appropriate Federal Rules of Evidence and authorities in support of the position taken.
- (e) A statement of any known or reasonably anticipated potential trial problems, or other issues that may assist the Court in trying the case.
- (f) Proposed substantive and special jury instructions with citations to authorities. It is not necessary to submit standard general instructions. Additional requests at trial are to be kept to a minimum.
- (g) Proposed voir dire questions.
- (h) Counsel shall file an exhibit list and premark for identification purposes all exhibits intended to be used at trial. Counsel shall file a stipulation as to the authenticity of the exhibits. Any objections to the authenticity of the exhibits shall be heard prior to trial at a time and place to be set by the Court.
- (i) The United States shall submit, for the Court's *in camera* review, a proposed witness list with a brief summary of the expected testimony of each witness and an estimate as to the amount of time that will be required to present the testimony in chief of each witness.
- (j) At the commencement of trial, the United States shall furnish the official court reporter a list of premarked exhibits intended to be used at trial.
- (k) The United States shall retain possession of physical exhibits (e.g., weapons, ammunition, drugs, etc.) during and after the trial, pending further orders of the Court.

(5) Any **motions in limine** shall be filed **on or before April 7, 2023**. **Responses** shall be filed **on or before April 10, 2023**. There shall be **no replies**.

(6) All motions, responses, and replies made pursuant to this Order shall be accompanied by a memorandum and shall conform to and are subject to the requirements and time limitations contained in Local Criminal Rule 12.1, except as otherwise provided herein.

(7) The defendant, through counsel, having waived his right to a detention hearing at this time, however, reserved the right to request one at a later date, it is hereby

ORDERED that the defendant is remanded to the custody of the United States Marshal pending further order of the Court.

Date: February 8, 2023

ENTERED BY ORDER OF THE COURT:
REGINA S. EDWARDS
UNITED STATES MAGISTRATE JUDGE
JAMES J. VILT, JR., CLERK
BY: /s/ *Ashley Henry*, Deputy Clerk

Copies to: Counsel of record
U.S. Probation
Natalie Thompson, Case Manager

05

MIME-Version:1.0
From:kywd-ecf-notice@kywd.uscourts.gov
To:kywd-ecf-notice@kywd.uscourts.gov
Bcc:
--Case Participants: Joshua F. Barnette (bcampbell@stites.com, cbrown@stites.com, jbarnette@stites.com), Joshua D. Judd (caseview.ecf@usdoj.gov, joshua.judd@usdoj.gov, lasonya.brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Judge David J. Hale (jaylen_amaker@kywd.uscourts.gov, megan_renwick@kywd.uscourts.gov, nthompson@kywd.uscourts.gov, victoria_clark@kywd.uscourts.gov)
--Non Case Participants: US Probation - LOU (duty-kywp-louisville@kywp.uscourts.gov)
--No Notice Sent:

Message-Id:4300752@kywd.uscourts.gov
Subject:Activity in Case 3:23-cr-00014-DJH USA v. Conley Order
Content-Type: text/html

U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was entered on 2/10/2023 at 4:17 PM EST and filed on 2/10/2023

Case Name: USA v. Conley
Case Number: 3:23-cr-00014-DJH
Filer:
Document Number: 14(No document attached)

Docket Text:

TEXT ORDER by Judge David J. Hale on 2/10/2023; as to Bryan Douglas Conley. This matter is set for a telephonic status conference on 02/15/2023 at 2:00 PM before Judge David J. Hale. Counsel for the parties shall connect to the telephonic status conference by dialing the toll-free number 1-877-402-9753 and entering access code 9073187.

This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

cc:counsel (NWT)

3:23-cr-00014-DJH-1 Notice has been electronically mailed to:

Joshua D. Judd joshua.judd@usdoj.gov, CaseView.ECF@usdoj.gov, LaSonya.Brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

Joshua F. Barnette jbarnette@stites.com, bcampbell@stites.com, cbrown@stites.com

3:23-cr-00014-DJH-1 Notice will not be electronically mailed to.:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 3:23-cr-14-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

* * * * *

MEMORANDUM OF CONFERENCE AND ORDER

A telephonic status conference was held in this matter on February 15, 2023, with the following counsel participating:

For the United States: Joshua Judd
Joel King

For Defendant: Joshua Barnette

The Court and counsel discussed the procedural posture of the case, which is set for trial on April 17, 2023. Based on the discussion during the conference, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) This matter is set for a final pretrial conference on **March 30, 2023, at 9:30 a.m.** at the Gene Snyder U.S. Courthouse in Louisville, Kentucky. All counsel who plan to participate at trial shall attend the conference.

(2) The deadline previously set for the filing of motions in limine (*see* Docket No. 12) is **VACATED**. Any **motions in limine** shall be filed **no later than March 27, 2023**. **Responses** shall be filed **within seven (7) days thereafter**. There shall be **no replies**. All other deadlines set in the Order Following Arraignment shall remain in place.

A status hearing will be set by subsequent order.

February 15, 2023

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular official seal of the United States District Court for the Western District of Kentucky.

David J. Hale, Judge
United States District Court

Court Time: 00/05

Court Reporter: Dena Legg

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

Criminal Action No.: 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY

DEFENDANT

NOTICE OF ENTRY OF APPEARANCE

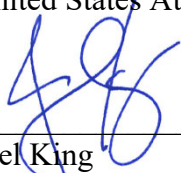
Assistant United States Attorney Joel King hereby enters his appearance of record on behalf of the United States of America.

Respectfully submitted,

MICHAEL A. BENNETT
United States Attorney

Respectfully submitted,

MICHAEL BENNETT
United States Attorney



Joel King
Special Assistant U.S. Attorney
207 Grandview Drive, Suite 400
Ft. Mitchell, Kentucky 41017
(859) 652-7034
joel.king@usdoj.gov

MIME-Version:1.0
From:kywd-ecf-notice@kywd.uscourts.gov
To:kywd-ecf-notice@kywd.uscourts.gov
Bcc:
--Case Participants: Joel King (caseview.ecf@usdoj.gov, joel.king@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Joshua D. Judd (caseview.ecf@usdoj.gov, joshua.judd@usdoj.gov, lasonya.brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Joshua F. Barnette (bcampbell@stites.com, cbrown@stites.com, jbarnette@stites.com), Judge David J. Hale (jaylen_amaker@kywd.uscourts.gov, megan_renwick@kywd.uscourts.gov, nthompson@kywd.uscourts.gov, victoria_clark@kywd.uscourts.gov)
--Non Case Participants: Case Manager - Edwards (ashley_powell@kywd.uscourts.gov)
--No Notice Sent:

Message-Id:4317722@kywd.uscourts.gov
Subject:Activity in Case 3:23-cr-00014-DJH USA v. Conley Order Referring Motion
Content-Type: text/html

U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was entered on 3/9/2023 at 1:42 PM EST and filed on 3/9/2023

Case Name: USA v. Conley
Case Number: 3:23-cr-00014-DJH
Filer:
Document Number: 18(No document attached)

Docket Text:

TEXT ORDER by Judge David J. Hale on 3/9/2023; Counsel for the defendant having filed an *EX PARTE MOTION* (Docket No. [17]). IT IS HEREBY ORDERED that pursuant to Title 28, Section 636(b)(1)(A)(B), U.S. Code, the *EX PARTE MOTION* is referred to Magistrate Judge Regina S. Edwards for a hearing, if necessary, and disposition.

This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

cc:counsel (NWT)

3:23-cr-00014-DJH-1 Notice has been electronically mailed to:

Joshua D. Judd joshua.judd@usdoj.gov, CaseView.ECF@usdoj.gov, LaSonya.Brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

Joshua F. Barnette jbarnette@stites.com, bcampbell@stites.com, cbrown@stites.com

Joel King joel.king@usdoj.gov, CaseView.ECF@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

3:23-cr-00014-DJH-1 Notice will not be electronically mailed to.:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

MOTION TO DISMISS COUNT 2

The United States Supreme Court has long held that, while broad, prosecutorial discretion is not unfettered. *Wayte v. United States*, 470 U.S. 598, 608 (1985). “For an agent of the State to pursue a course of action whose objective is to penalize a person’s reliance on his protected statutory or constitutional rights is ‘patently unconstitutional.’” *Bragan v. Poindexter*, 249 F.3d 476, 481 (6th Cir. 2001) (*quoting United States v. Goodwin*, 457 U.S. 368, 372 n.4 (1982)); *see also Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). The government has ignored those principles here in charging Mr. Conley with interstate transportation of a minor, an offense which carries a ten-year statutory mandatory minimum and an offense for which he did not face prior to asserting his statutory and constitutional right to a speedy trial.

For four years, Mr. Conley previously faced charges for conduct now alleged in the instant case. The government superseded twice in the previous case, last superseding more than three years ago. Mr. Conley was on the eve of trial when the previous case was dismissed on speedy trial grounds. Only after that dismissal did the government add a new charge – a charge based on information the government has had for at least three years and a charge that carries a

much more significant mandatory minimum penalty than any Mr. Conley previously faced. Consequently, pursuant to Federal Rule of Criminal Procedure 12(b)(3)(A)(iv), Mr. Conley respectfully moves the Court to dismiss with prejudice Count 2 of the Indictment.

BACKGROUND & CHARGES

In February 2019, a federal grand jury indicted Mr. Conley on ten counts of sending interstate threatening communications. (Docket Entry #11 in Western District of Kentucky Case #3:19-CR-19 (hereafter, “Underlying Case”).) In June 2019, the government sought, and obtained, a superseding indictment, which added charges of kidnapping, bank fraud, and aggravated identity theft. (Docket Entry #22 in Underlying Case.) The entirety of the charges contained in these two indictments related to an incident that occurred in January 2019, wherein Mr. Conley is alleged to have kidnapped a Tennessee woman, attempted to use her debit/credit card, used her information in an attempt to gain access to her bank account, and sent threatening text messages to her parents. (*See id.*)

In September 2019, the government sought, and obtained, a second superseding indictment in the Underlying Case. (Docket Entry #45 in Underlying Case.) The second superseding indictment added one count of interstate transportation for prostitution, in violation of 18 U.S.C. § 2421(a). (*See id.*) Though the details underlying this charge are not fully articulated in the second superseding indictment, Mr. Conley is alleged to have transported, or attempted to transport, a minor female from Ohio to Kentucky, Tennessee, and elsewhere with the intent that the minor female engage in prostitution and in sexual activity for which any person can be charged with a criminal offense. (*See id.*; *see also* Docket Entry #111 in Underlying Case.) Undeniably, the government knew the minor female’s date of birth at the time the second superseding indictment was obtained. (Exhibit 1, Texas Department of Public

Safety Criminal Investigations Division Supplemental Report.) Importantly, transportation for prostitution, a violation of 18 U.S.C. § 2421(a), carries a potential punishment of no more than ten years; the statute does not carry a mandatory minimum sentence.

Litigation in the Underlying Case continued for more than three years. Trial was ultimately scheduled for February 6, 2023. (Docket Entry #122 in Underlying Case.) On January 17, 2023, Mr. Conley, then on his fifth attorney, filed a motion to dismiss arguing that his statutory and constitutional rights to a speedy trial had been violated. (Docket Entry #157 in Underlying Case.) On February 1, 2023, the Court ordered the Underlying Case dismissed without prejudice after finding Mr. Conley's statutory right to a speedy trial had been violated. (Docket Entry #172 in Underlying Case.)

In anticipation of the dismissal of the Underlying Case, on January 31, 2023, the government filed a new criminal complaint charging Mr. Conley with the same kidnapping, bank fraud, aggravated identity theft, and interstate threatening communications charges asserted in the Underlying Case. (*See* R. 1.) On February 7, 2023, the government returned to a federal grand jury and indicted Mr. Conley on all of the same charges that were contained in the Underlying Case's second superseding indictment, but also charging Mr. Conley with transportation of a minor, in violation of 18 U.S.C. § 2423(a), a charge that was not pursued in the Underlying Case. (R. 4.) Importantly, this new offense carries a statutory mandatory minimum sentence of ten years, a mandatory minimum penalty Mr. Conley did not face prior to asserting his statutory and constitutional right to a speedy trial in the Underlying Case.

Mr. Conley exercised his statutory and constitutional right in seeking dismissal of the Underlying Case on speedy trial grounds. In response to Mr. Conley successfully obtaining dismissal of the Underlying Case, the government re-indicted and included a charge carrying a

mandatory minimum sentence Mr. Conley did not face prior to asserting his constitutional and statutory rights. While the dismissal of the Underlying Case was without prejudice, leaving the government with the discretion to re-indict Mr. Conley, that discretion is not unfettered, and the vindictive prosecution exhibited in this case requires dismissal of Count 2, the new transportation of a minor charge.

LEGAL STANDARDS

The Sixth Circuit has acknowledged that “due process prohibits an individual from being punished for exercising a protected statutory or constitutional right.” *United States v. Poole*, 407 F.3d 767, 774 (6th Cir. 2005) (citing *United States v. Goodwin*, 457 U.S. 368, 372 (1982)). That said, “the Due Process Clause is not offended by all possibilities of increased punishment . . . but only by those that pose a realistic likelihood of ‘vindictiveness.’” *Id.* (quoting *Blackledge v. Perry*, 417 U.S. 21, 27 (1974)). “To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort. . . .” *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978).

Prosecutorial vindictiveness can be shown through one of two ways. *Bragan v. Poindexter*, 249 F.3d 476, 481 (6th Cir. 2001). “First, a defendant may demonstrate ‘actual vindictiveness,’ *i.e.*, he may establish through objective evidence that a prosecutor acted in order to punish the defendant for standing on his legal rights.” *Id.* (internal citations omitted). “Second, a defendant may establish that, in the particular factual situation presented, there existed a ‘realistic likelihood of vindictiveness’ for the prosecutor’s action.” *Id.* “[A] criminal prosecution that would not have been initiated but for vindictiveness is constitutionally prohibited. *Id.* The ordinary remedy for prosecutorial vindictiveness is dismissal of the augmented charge. *See Blackledge v. Perry*, 417 U.S. 21, 24-29 (1974); *see also United States*

v. Andrews, 633 F.2d 449, 455 (6th Cir. 1980). That the Underlying Case was in a pretrial posture at the time Mr. Conley sought dismissal on speedy trial grounds does not preclude his claim of prosecutorial vindictiveness. *See United States v. LaDeau*, 734 F.3d 561, 567 (6th Cir. 2013) (reaffirming that prosecutorial vindictiveness can potentially be found in the pre-trial addition of charges following pre-trial assertions of protected rights). Here, prosecutorial vindictiveness can be established through either recognized prong. Consequently, Count 2 must be dismissed with prejudice.

A. Actual Vindictiveness

Actual vindictiveness, though exceedingly rare, can be established through objective evidence that a prosecutor acted in order to punish the defendant for standing on his legal rights. *Bragan*, 249 F.3d at 481.

In 2019, the government brought a second superseding indictment in the Underlying Case charging Mr. Conley with interstate transportation for prostitution, in violation of 18 U.S.C. §2421(a), alleging that Mr. Conley “knowingly transported, and attempted to transport, a person, female 1, in interstate commerce with the intent that the individual engage in prostitution and in sexual activity for which any person can be charged with a criminal offense.” (Docket Entry #45 in Underlying Case, Count 1.) The government knew, prior to seeking the second superseding indictment in the Underlying Case, that “female 1” was a minor. (*See* Exh. 1.) Indeed, there is absolutely no difference in Mr. Conley’s alleged conduct with regard to the interstate transportation charge in the Underlying Case and the interstate transportation of a minor charge in this case. Yet, for over three years, the government never sought to amend this charge. Importantly, a violation of 18 U.S.C. §2421(a) carries a statutory maximum potential penalty of ten years imprisonment.

On January 17, 2023, after the second superseding indictment had been pending for over three years and just weeks before the February 2023 trial, Mr. Conley filed a motion to dismiss the Underlying Case due to violations of his constitutional and statutory rights to a speedy trial. (Docket Entry #157 in Underlying Case.) On February 1, 2023, just days before trial, the Court found that Mr. Conley's statutory right to a speedy trial had been violated and dismissed the Underlying Case without prejudice. (Docket Entry #172 in Underlying Case.) Within a week, and less than one month after Mr. Conley stood on his constitutional and statutory rights to a speedy trial, the government re-indicted Mr. Conley. (R. 4.) In doing so, the government inappropriately retaliated against Mr. Conley by charging him with the more severe offense of transportation of a minor (Count 2), in violation of 18 U.S.C. §2423(a), in addition to the original charge of transportation for prostitution (Count 1), in violation of 18 U.S.C. §2421(a). This new offense (Count 2) carries a statutory mandatory minimum sentence (ten years imprisonment) that equals the statutory maximum sentence he previously faced in the Underlying Case for the same alleged conduct. Moreover, Mr. Conley now faces a potential maximum sentence of life imprisonment for the conduct allegedly underlying this specific charge, which previously was capped, by statute, at ten years.

Objectively, the series of events leading to the government charging Mr. Conley with interstate transportation of a minor evidences actual vindictiveness in the prosecutorial decision to pursue that charge. Consequently, the Court should dismiss, with prejudice, Count 2 of the indictment.

B. Presumptive Vindictiveness / Realistic Likelihood of Vindictiveness

Even if the Court does not find actual vindictiveness in the government's decision to charge Mr. Conley with interstate transportation of a minor, the Court should still dismiss Count

2 because of the realistic likelihood of vindictiveness underpinning the government's action to pursue this charge.

“If a defendant establishes that ‘(1) the prosecutor has some stake in deterring the defendant's exercise of his rights and (2) the prosecutor's conduct was somehow unreasonable, then the district court may presume an improper vindictive motive.’ *LaDeau*, 734 F.3d at 566 (quoting *Bragan*, 249 F.3d at 482). “The government bears the burden of rebutting the presumption with ‘objective, on-the-record explanations’ such as ‘governmental discovery or previously unknown evidence’ or ‘previous legal impossibility.’” *Id.* Each claim of presumptive vindictiveness will necessarily turn on the facts of the case, which the Court must assess when determining if the vindictiveness standard has been met. *Id.*

1. The government had a significant stake in deterring Mr. Conley's exercise of his rights.

Here, the government had a significant stake in deterring Mr. Conley's exercise of his right to seek dismissal of his prior case on speedy trial grounds. The only substantive occurrence between the second superseding indictment in the Underlying Case and the indictment in this case is Mr. Conley succeeding in obtaining dismissal of the Underlying Case due to a violation of his statutory right to a speedy trial. The government cannot argue that discovery of new evidence prompted the new charge (Count 2 – interstate transportation of a minor) because the only evidence needed for that charge – in addition to the evidence for the Underlying Case's charge of interstate transportation for prostitution – was the alleged victim's date of birth, which the government had in its possession. *See* Exh. 1. Consequently, the government's view of Mr. Conley's case could not have changed due to this information.

Additionally, the government's stake in deterring Mr. Conley's dismissal request resulted in the government having to return to the grand jury to re-indict Mr. Conley. Mr. Conley's

Underlying Case was dismissed in its entirety. The government spent resources in preparing a criminal complaint in preparation of dismissal so that Mr. Conley would not be released from detention before the government could re-indict. (*See* R. 1.) Subsequently, the government returned to the grand jury and re-presented its case in order to obtain a new indictment, which it obtained. (R. 11.) This imposed upon the government some burden, which is only magnified by the timing of Mr. Conley's exertion of a statutory right.

Courts have previously held that "some repetition of prosecutorial efforts," such as seeking re-indictment following dismissal on speedy trial grounds, does not create a "sufficient burden to trigger a realistic likelihood of vindictiveness in the pretrial context." *United States v. Moon*, 513 F.3d 527, 535-36 (6th Cir. 2008) (citing *United States v. Ewing*, No. 94-3010, 1994 WL 577055, 38 F.3d 1217 (Table) (6th Cir. 1994)¹). In *Moon*, the defendant sought dismissal of the indictment early in the litigation due to lack of an interstate nexus. *Moon*, 513 F.3d at 533. The government returned to the grand jury, albeit twice, in order to fix the indictment on the original charge and ultimately charge an additional offense no more serious than the initial charged offense. *Id.* In *Ewing*, the trial court dismissed the case because the government did not obtain an indictment within 30 days of the defendant's arrest. *Ewing*, 1994 WL 577055, at *1. The defendant was arrested, and detained solely on federal charges, on November 13, 1992; the government obtained an indictment on December 17, 1992; and the defendant filed his motion to dismiss on December 31, 1992. *Id.* Thus, in both *Moon* and *Ewing*, the government's only repetition of efforts was to return to the grand jury within a short time of having already obtained the initial indictments.

¹ *Ewing* is being attached as Exhibit 2 because of its unpublished classification. Mr. Conley does not rely on *Ewing* for any precedential value, but cites to *Ewing* only to distinguish its facts from the facts of the case at bar.

Conversely, in Mr. Conley's case, the dismissal on speedy trial grounds came on the eve of trial after four years of litigation. Unlike in *Moon* and *Ewing*, Mr. Conley's motion to dismiss came after years of litigating the Underlying Case. Mr. Conley's second superseding indictment came on September 18, 2019. (Docket Entry #45 in Underlying Case.) Trial was ultimately scheduled for February 6, 2023. (Docket Entry #122 in Underlying Case.) On January 17, 2023, Mr. Conley filed his motion to dismiss. (Docket Entry #157.) On February 1, 2023, just five calendar days before trial, the Court dismissed the Underlying Case. (Docket Entry #172 in Underlying Case.) The case had previously been declared complex (Docket Entry #52 in Underlying Case), the final pretrial conference had already taken place (Docket Entry #160), and both parties were in the depths of trial preparation when Mr. Conley filed his motion to dismiss.

Additionally, the nature of the charges, the number of witness, including several out-of-state witness, and the amount and volume of discovery in this case (*see, e.g.*, Docket Entry #113 in Underlying Case) indicates that the trial in this matter would likely continue for more than a week. Thus, unlike in *Moon* and *Ewing*, the government was significantly burdened when Mr. Conley exercised his statutory right to seek dismissal on speedy trial grounds. Not only did the government have to repeat going back to the grand jury, but the government, in the midst of trial prep, had to make contact with its numerous witnesses to cancel their arrangements for trial on the eve of trial, and, again in the future, will incur the burden of trial prep in this serious case. The Court is well aware of the efforts that are involved with preparing for trial, and undoubtedly having to repeat those efforts in the future will be a significant time, cost, and resource burden on the government, a burden it has already incurred once. These additional repetitive burdens were not at play in *Moon* and *Ewing*. Consequently, here, the government had a significant stake in

detering Mr. Conley, and other defendants similarly situated, in standing on their constitutional and statutory rights at such a late stage of litigation.

2. *The government's conduct in charging an additional offense with severely increased penalties was unreasonable.*

Upon dismissal of the Underlying Case, the government was well within its right to re-indict Mr. Conley. However, that right is not unfettered. The government could have re-indicted Mr. Conley on the same charges that were included in the second superseding indictment that had been pending for more than three years, but it choose to also seek a new charge that carries more significant penalties. Above, Mr. Conley has already set forth the factual series of events that transpired before the government obtained the indictment in this case, and incorporates that recitation of events in this section of the memorandum.

The government had all of the information it needed to charge interstate transportation of a minor years before seeking the current indictment. (*See* Exh. 1.) The government had the minor's date of birth at the time it obtained the second superseding indictment. (*Id.*) The parties continued to litigate the Underlying Case, up to the point of trial, without the government ever indicating that it would seek additional charges. Had the government indicated to Mr. Conley that it would seek additional, more severe charges if Mr. Conley did not plea, Mr. Conley would have been free to accept or reject that offer. *See Bordenkircher*, 434 U.S. at 363-65. However, that was not the case here. Legal impossibility did not prevent the government from seeking the more severe charge as the government was always free to supersede the indictment in the Underlying Case in order to add the more severe charge; it chose not to.

Only upon Mr. Conley's assertion of his right to a speedy trial, during the rigors of trial preparation and on the eve of trial, did the government decide to seek a more severe charge and subject Mr. Conley to significantly greater penalty to which he was not previously subjected.

Such conduct is unreasonable. Such conduct also has created a realistic likelihood that vindictiveness played a role in the government's decision to charge Mr. Conley with interstate transportation of a minor, an offense that carries a statutory mandatory minimum penalty of ten years and a potential maximum penalty of life, neither of which Mr. Conley faced with regard to the alleged conduct for this specific offense in the Underlying Case.

3. *The government cannot present objective, on-the-record explanations to justify its conduct.*

Neither legal impossibility nor the discovery of new evidence led to the government charging Mr. Conley with the new interstate transportation of a minor charge (Count 2). The government could have charged Mr. Conley with this offense at any point in the four years that the Underlying Case was pending. Any attempt to justify its conduct should be met with scrutiny, especially considering that the same individual prosecutor, who endured the previous four years of litigating the Underlying Case, is the same prosecutor who made the charging decision in the instant matter. *See Thigpen v. Roberts*, 468 U.S. 27, 31 (1984); *see also Bragan*, 249 F.3d at 482 (recognizing that an argument could be made that presumptive vindictiveness does not arise where separate prosecutors are involved). Put another way, the government cannot objectively rebut the presumption that a realistic likelihood of vindictiveness affected its decision to charge Mr. Conley with interstate transportation of a minor given the timing and severity of the additional charge.

CONCLUSION

The arguments set forth above support an objective finding that the government acted with actual vindictiveness when it charged Mr. Conley with the more severe offense of interstate transportation of a minor (Count 2) after Mr. Conley succeeded in asserting his statutory right to a speedy trial in the Underlying Case. Even if the Court does not find actual vindictiveness, the

factual series of events evidence a realistic likelihood that vindictiveness played a role in the government charging Mr. Conley with the interstate transportation of a minor offense at issue in this Motion. Either way, the Court should dismiss with prejudice Count 2 – Interstate Transportation of a Minor.

Respectfully submitted,

/s/ Ashley W Ward for Joshua F. Barnette

Joshua F. Barnette

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*(Attorney Ashley Ward is filing this motion
for Attorney Joshua Barnette for this filing
and this case only.)*

CERTIFICATE OF SERVICE

I hereby certify that on 13th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Joshua F. Barnette

Joshua F. Barnette

SUPPLEMENTAL REPORT

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TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIMINAL INVESTIGATIONS DIVISION

THIS REPORT IS THE PROPERTY OF THE CRIMINAL INVESTIGATIONS DIVISION. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE AGENCY TO WHICH LOANED.			
PREPARED BY:	JIMMY BURKETT	INVEST#:	20181-CID1-50031018
LEVEL 1 SUPERVISOR:	KEITH DERAMUS	REPORT#:	S1
LEVEL 2 SUPERVISOR:	KEITH DERAMUS	ACTIVITY DATE:	11/14/2018
LEAD INVESTIGATOR:	JIMMY BURKETT	DATE WRITTEN:	12/06/2018
SUPERVISOR:	RODNEY TANDY	DATE APPROVED:	01/22/2019
REPORT TYPE:	INITIAL	REPORT STATUS:	APPROVED
ACTIVITY TYPE:	INVESTIGATIVE	SPURS URN:	CMRE50101353
OTHER ACTIVITY:		LEGACY REF:	
TITLE:	INTERVIEW OF CHILD VICTIM #1 REFERENCE BRYAN DOUGLAS CONLEY	CASE:	
DIVISION:	CRIMINAL INVESTIGATIONS DIVISION	SERVICE:	
REGION:	1	DISTRICT:	C
ACTIVITY LOCATION:	TEXAS US - UNITED STATES OF AMERICA (USA)	AREA:	01-TYLER

SYNOPSIS

On 11/14/2018, Texas Department of Public Safety Criminal Investigations Division Special Agent Jim Burkett interviewed a child who was possibly a Human Trafficking victim of BRYAN DOUGLAS CONLEY.

DETAILS

1. On 11/14/2018, Special Agent (S/A) Jim Burkett, Department of Public Safety Criminal Investigations Division, Tyler was contacted and advised that a possible Human Trafficking victim was at a juvenile facility in Grand Saline, Texas.

2. At approximately 2:25 PM, S/A Burkett arrived and made contact with a black female, 17 years of age, who will be identified in this report as Child Victim #1. The interview was conducted inside of the secure juvenile facility.

3. S/A Burkett recorded the interview with a digital audio recording device and a digital audio/video recording device.

4. S/A Burkett learned the following from Child Victim #1:

- Child Victim #1 lives in Pataskola, Ohio with Child Victim #1's mother. Child Victim #1 did not want to be at home anymore and wanted to find a "Sugar Daddy" to help get Child Victim #1 away from home.

- On approximately 11/08/2018, Child Victim #1 went onto a dating website called "PlentyofFish.com," created a profile under the screen name "prettybaby693" and began searching for a "Sugar Daddy." Child Victim #1 utilized email account elmobby119@gmail.com to sign up for the account.

- Child Victim #1 quickly made contact with an individual named "Bryant," who claimed to be a mixed race male in his 20's from Memphis, Tennessee. "Bryant" utilized a profile name of "loveiseasy" with some numbers after it.

- After a while of texting on "PlentyofFish.com" (PoF), Child Victim #1 began texting with "Bryant" through Child Victim #1's cell phone which is assigned #614-822-7707. Child Victim #1 stated that pictures later exchanged through text showed "Bryant" to be tall and muscular

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with caramel colored skin and a tattoo on the left side of "Bryant's" chest.

- The conversation began as relationship talk and once sexual activity was mentioned by "Bryant," the conversation quickly turned into "Bryant" saying that "Bryant" would pay for different sex acts, including \$200,000.00 for anal sex and even more money if Child Victim #1 brought a friend. "Bryant" also promised a new cell phone, a car, a new I.D., cash, etc.

- The conversation continued via cell phone through 11/09/18.

- On Saturday, 11/10/2018, "Bryant" claimed to have been in a vehicle accident, so "Bryant" coordinated sending a friend to pick up Child Victim #1 and bring Child Victim #1 to Tennessee for the weekend.

- Somewhere between 10:00 AM and 11:00 AM, a white male driving a grey Ford Taurus arrived at a park near Child Victim #1's house, where Child Victim #1 had instructed to meet. Child Victim #1 described the white male as approximately 5'7"-5'8", with a shaved head and large blue eyes, approximately 200 pounds, fat and ugly. Child Victim #1 described a tattoo on the white male's arm/shoulder as having some type of red banner across it. S/A Burkett would later identify the white male as BRYAN DOUGLAS CONLEY.

- Child Victim #1 stated that while riding, Child Victim #1 continued to text with "Bryant" who told Child Victim #1 that "Bryant" would pay Child Victim #1 even more money if "Bryant" had sex with CONLEY.

- CONLEY and Child Victim #1 departed towards Tennessee, drove for a few hours and eventually stopped at a Super 8 hotel in Lagrange, Kentucky. Upon arrival, CONLEY went inside and booked room #210 and paid cash.

- S/A Burkett later identified this as the Super 8 Hotel located at 1420 E Crystal Drive, Lagrange, Kentucky 40031.

- At that point, Child Victim #1 had vaginal, oral and anal sex with CONLEY. Child Victim #1 stated that CONLEY did not wear a condom and ejaculated into Child Victim #1's mouth. Child Victim #1 initially tried to get CONLEY to wear a condom but CONLEY claimed to have had a vasectomy and said Child Victim #1 didn't have to worry about pregnancy.

- After that, CONLEY and Child Victim #1 left and drove to Bowling Green, Kentucky and drove back to the Super 8 hotel.

- Once back at the hotel, Child Victim #1 again had vaginal, oral and anal sex with CONLEY. Child Victim #1 stated that CONLEY did not wear a condom and ejaculated into Child Victim #1's mouth. After that CONLEY ordered a pizza and then Child Victim #1 and CONLEY ate pizza in the hotel room. CONLEY and Child Victim #1 then went to sleep in separate beds.

- On Sunday, 11/11/18, CONLEY and Child Victim #1 woke up late, went to McDonald's drive through between 11:00 AM and 1:00 PM, then departed and began driving towards Tennessee.

- At some point, Child Victim #1 was texting with "Bryant," who allegedly told Child Victim #1 to get onto PoF and if Child Victim #1 could find someone to have sex with and allow CONLEY to film it, "Bryant" would pay Child Victim #1 even more money.

- Child Victim #1 began trying different locations and every male that replied, Child Victim #1 would ask if they would have sex with Child Victim #1 and allow a friend to film it. All of the men declined except for one. S/A Burkett would later confirm this information by searching through the PoF messages along with Child Victim #1.

- Eventually, a light skinned black male named "Ryan" agreed and told Child Victim #1 to go to Park Place Apartments in Jackson, Tennessee. At this point, the two began texting on cell phones rather than the PoF platform. Child Victim #1 and "Ryan" exchanged nude photographs via cell phone. "Ryan" utilized the PoF screen name RynoBSmoove96.

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· At some point that afternoon/evening, Child Victim #1 and CONLEY arrived at one of the bottom apartments and met "Ryan," along with "Ryan's" brother. "Ryan's" brother then departed.

· Child Victim #1 and "Ryan" went into a bedroom and had oral, vaginal and anal sex. "Ryan" started with a condom but eventually removed the condom when Child Victim #1 complained about it. Child Victim #1 stated that that Child Victim #1 had told "Ryan" that Child Victim #1 was 18 years old.

· CONLEY was in the room the entire time and filmed Child Victim #1 having sex with "Ryan" using CONLEY'S cell phone.

· When finished, CONLEY and Child Victim #1 departed and drove to a rest stop somewhere around Lake Catherine State Park in Little Rock, Arkansas and slept in the car.

· CONLEY and Child Victim #1 then departed and continued to travel south. At this point, Child Victim #1 did not believe that "Bryant" was ever going to meet with Child Victim #1 and Child Victim #1 wanted to go home.

· CONLEY agreed to take Child Victim #1 to a house in Texas and stopped at the "24 Hour Market" gas station located at 598 N 4th Street, Wills Point, Texas. When Child Victim #1 went inside to purchase a drink, CONLEY left Child Victim #1 there. Child Victim #1's purse, cell phone and belongings were still in the vehicle.

· Child Victim #1 borrowed a cell phone from an employee and attempted to get help through PoF. S/A Burkett later verified this information by searching through the PoF messages along with Child Victim #1.

· While at the gas station, Child Victim #1 made contact with an individual who identified himself to Child Victim #1 as "SLACK" and offered to allow Child Victim #1 to stay at "SLACK'S" house. S/A Burkett would later identify "SLACK" through the Wills Point police report as CECIL NAKIA AUTRY.

· Child Victim #1 then left with AUTRY and spent the day smoking marijuana and drinking Hennessey with Coke. Child Victim #1 then stayed at AUTRY'S residence located at 2017 Dyer Street, Wills Point, Texas.

· That night, Child Victim #1 and AUTRY were in the bed together and AUTRY was begging for sex, at one point saying, "How am I gonna take care of you if you can't take care of me?" Child Victim #1 eventually pulled Child Victim #1's pants down and AUTRY performed oral sex on Child Victim #1.

· AUTRY then attempted repeatedly to have sex with Child Victim #1 who said "No." AUTRY attempted but had a very large penis and could not penetrate Child Victim #1 past the head of AUTRY'S penis. Child Victim #1 began crying and telling AUTRY to stop. AUTRY eventually got angry and stopped.

· In the morning, AUTRY again tried to have sex with Child Victim #1, but AUTRY'S penis was too large.

· AUTRY never threatened or injured Child Victim #1.

· At this point, Child Victim #1 contacted Child Victim #1's stepfather in order to attempt to go home.

· AUTRY then transported Child Victim #1 to the Wills Point Police Department.

5. Wills Point Police Department Detective Cassie Mosely prepared a report of the recovery of Child Victim #1, who had been entered into NCIC as a missing person (Attachment A, Wills Point Police Report assigned case #1811-00637).

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6. At approximately 3:49 PM, S/A Burkett stopped the recording and started a new recording. There was no time lapse between the two. During the second recording, S/A Burkett learned that prior to the series of events, Child Victim #1 had only had sex two times and it was with a prior boyfriend. S/A Burkett explained all of the crime victims' benefits available and how the process would continue. S/A Burkett ended the interview at 3:58 PM and departed.
7. S/A Burkett took hand written notes during the interview (Attachment B, field notes).
8. On 11/15/2018, S/A Burkett made contact with the LaGrange Kentucky Police Department who sent Officer Meaks to the Super 8 hotel located at 1420 E Crystal Drive, Lagrange, Kentucky and the officer inquired about who rented room #210 on 11/10/2018. Officer Meaks contacted S/A Burkett and informed S/A Burkett that the hotel staff advised Officer Meaks that on said date, the individual who rented the room provided the name BRYAN CONLEY, telephone number 915-241-7423 and paid for the room in cash. There was no video available.
9. On 11/26/2018, S/A Burkett conducted an intel database search of the name "BRYAN CONLEY" in Tennessee, Kentucky, Texas and Ohio. S/A Burkett located numerous individuals by the same name; however, S/A Burkett was able to locate the CONLEY in question as matching the physical description provided by Child Victim #1, being in the National Guard, previously living in El Paso (which is where the 915 area code is from), having an address in Ohio and Tennessee and CONLEY'S mother is the registered owner of a gray 2014 Ford Taurus assigned Tennessee license plate #7J09N0.
10. S/A Burkett was also able to locate CONLEY through Facebook and sent a photograph to Child Victim #1 and asked if Child Victim #1 had ever seen the individual. Child Victim #1 advised S/A Burkett that the photograph was the "fat white guy" and that it was "100% him."
11. On 11/29/2018, S/A Burkett conducted a different database search and found that on 03/25/2018, Apex, North Carolina Police Department was contacted by Elizabeth Heather Glass and advised that Glass had met an individual named "BRYAN CONLEY" in an online game in March of 2018 and began texting through cell phones. CONLEY had utilized telephone number 915-241-7423.
12. At the end of March, CONLEY traveled from Tennessee to North Carolina, where CONLEY met up with Glass and had sexual relations. Glass stated that CONLEY claimed to be in the military and living in Tennessee. CONLEY departed and had been calling and harassing Glass from March until Glass contacted police on 04/27/2018 (Attachment C, police report).
13. On 11/29/2018, S/A Burkett transferred the digital audio recording to a DVD that was designated Non-Drug Exhibit #S1.P1. S/A Burkett reviewed the DVD and found it to be of good quality and clarity. S/A Burkett timed, dated, initialed and on 12/06/2018, submitted Non-Drug Exhibit #S1.P1 to DPS CID S/A Josh Roraback to be placed into entrusted property under tag #3896.
14. On 12/07/2018, S/A Burkett transferred the digital audio/video recording to a portable storage device that was designated Non-Drug Exhibit #S1.P2. S/A Burkett reviewed the video and found it to be of good quality and clarity. S/A Burkett timed, dated, initialed and submitted Non-Drug Exhibit #S1.P2 to S/A Roraback to be placed into entrusted property under tag #3901.
15. This investigation will continue.

INVOLVED LOCATIONS

2017 Dyer Street
 Wills Point, TX
 Home Address : AUTRY, CECIL, NAKIA

INVOLVED VEHICLES**DPS SENSITIVE**

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38 F.3d 1217

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff–Appellee,

v.

James L. EWING, Defendant–Appellant.

No. 94–3010.

I

Oct. 18, 1994.

On Appeal from the United States District Court for the Southern District of Ohio, No. 93–00101; [George C. Smith](#), District Judge.

Synopsis

S.D.Ohio

AFFIRMED.

Procedural Posture(s): On Appeal.

Before: [GUY](#) and [BATCHELDER](#), Circuit Judges; and [McCALLA](#), District Judge. *

Opinion

PER CURIAM.

*1 Defendant, James L. Ewing, was convicted of conspiracy to distribute cocaine base, in violation of [21 U.S.C. § 841\(a\)\(1\)](#), and possession with intent to distribute in excess of five grams of cocaine base, in violation of [21 U.S.C. §§ 841\(a\)\(1\) and 841\(b\)\(1\)\(B\)\(iii\)](#). On appeal, Ewing contends the district court erred (1) in dismissing an earlier indictment without prejudice under the Speedy Trial Act, [18 U.S.C. §§ 3161 et seq.](#); (2) in not dismissing count 2 of a later indictment on the grounds of vindictive prosecution; and (3) in sentencing him as a career offender pursuant to [United States Sentencing Guidelines § 4B1.1](#). For the

following reasons, we find no merit to these arguments and affirm.

I.

Since none of the issues raised on appeal involve the facts leading to Ewing's arrest, they will not be discussed. Suffice it to say that on November 5, 1992, Columbus police officers arrested Ewing and charged him with offering to sell a controlled substance in violation of Ohio law. At that time state authorities detained Ewing at the Franklin County Jail.

Also on November 5, 1992, an ATF special agent caused a criminal complaint to be filed against Ewing in the district court. That same day a magistrate judge issued a warrant for Ewing's arrest, and the United States Marshal's Service lodged a federal detainer against Ewing at the County Jail.

On November 13, 1992, the state drug charge against Ewing was dismissed. Thus, as of that date, Ewing was being held in the Franklin County Jail solely on the basis of the federal detainer. According to the district court, it appears that the Franklin County Sheriff's Department was aware that the state charge had been dropped, but did not inform the federal agency of this fact.

A federal grand jury initially indicted Ewing on December 17, 1992, 35 days after he was detained solely on the basis of the federal detainer. The indictment charged Ewing and Kevin Edwards with one count of conspiracy to distribute and possess in excess of 5 grams of cocaine base, in violation of [21 U.S.C. §§ 841\(a\)\(1\) and 841\(b\)\(1\)\(B\)\(iii\)](#). As part of this count, Ewing and Edwards also were charged with possessing firearms to protect the cocaine base and the proceeds of the cocaine base distribution from others, in violation of [21 U.S.C. § 846](#).

On December 31, 1992, Ewing filed a motion to dismiss the indictment, based on a violation of the Speedy Trial Act, and requested an oral hearing. Without holding a hearing, the district court found that the filing of the detainer was equivalent to an arrest on November 13, 1993, "because it was, at that time, the only basis for [Ewing's] continued incarceration." (App. 84.) The court then held that a violation of the Act had occurred because Ewing was not indicted until more than 30 days after his "arrest." Exercising its

discretion under 18 U.S.C. § 3162(a)(2), the court dismissed the indictment without prejudice.

Ewing was reindicted on May 26, 1993. The new indictment charged him with one count of conspiracy to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), which included a firearms charge brought under 21 U.S.C. § 846, and one count of possession with intent to distribute in excess of five grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(iii) and 18 U.S.C. § 2.

*2 Ewing filed motions to dismiss the indictment based upon prosecutorial vindictiveness and a speedy trial violation. Both of these motions were overruled.

A jury trial commenced on August 2, 1993. Three days later, the jury returned a verdict finding Ewing guilty of both counts. The court sentenced Ewing to 300 months in prison, to be followed by four years of supervised release. The court also ordered Ewing to pay a special assessment of \$100.

II.

Ewing's first assignment of error concerns the district court's dismissal of the initial indictment without prejudice. The decision to dismiss with or without prejudice for noncompliance with the Speedy Trial Act is within the discretion of the district court. *United States v. Taylor*, 487 U.S. 326, 336 (1988). The Act enumerates three factors that trial courts must consider when making this decision: (1) the seriousness of the offense; (2) the facts and circumstances that led to the dismissal; and (3) the impact of reprosecution on the administration of the Act and upon justice. 18 U.S.C. § 3162(a)(2). A district court's judgment on how these considerations balance "should not lightly be disturbed." *Taylor*, 487 U.S. at 337.

The district court, in a written order dismissing the case without prejudice, began its analysis by observing that it must evaluate the three factors enumerated in the Speedy Trial Act. The court's order went on to give the following specific reasons for its decision:

With regard to the first factor, the offense, conspiracy to distribute more than five (5) grams of crack cocaine, with a firearm specification, is a very serious offense. As to the

second factor, the Court finds that this dismissal was caused by an unfortunate administrative oversight, and there is no indication or allegation of bad faith on the part of any agency involved.





In connection with the third factor, defendant has proffered evidence he argues demonstrates prejudice. After carefully considering defendant's proffer, the Court finds that, given that the delay was relatively brief, defendant was not prejudiced thereby. The Court finds that the reprosecution in this case would serve the ends of justice.

(App. 84–85) (footnote omitted).




We agree with the district court's analysis. The first factor to be considered is the seriousness of the crime. Felony drug charges, such as those here, are generally treated as serious offenses. See *United States v. Kottmyer*, 961 F.2d 569, 572 (6th Cir.1992). The second factor to be considered is the facts and circumstances that led to the dismissal. In this case, the district court found the reason for the delay was an "unfortunate administrative oversight." This is not an instance of prosecutorial bad faith or an attempt to take tactical advantage of a delay. "Where there is no affirmative misconduct by either party, the court's conclusion that this second factor authorizes dismissal with or without prejudice is a matter within its discretion." *United States v. Pierce*, 17 F.3d 146, 149 (6th Cir.1994). The third factor to be considered is the impact of a reprosecution on the administration of justice and on the administration of the Speedy Trial Act. Because the delay was not purposeful and Ewing has not shown that he was prejudiced by the delay,¹ this factor also favors dismissal without prejudice. See *United States v. Jones*, 887 F.2d 492, 495 (4th Cir.1989), cert. denied, 493 U.S. 1081 (1990); *United States v. Williams*, 711 F.2d 748, 751 (6th Cir.), cert. denied, 464 U.S. 986 (1983). Therefore, we hold that the district court did not abuse its discretion by dismissing the initial indictment without prejudice.

*3 In Ewing's next assignment of error, he contends that the second count of the later indictment should be dismissed on the grounds of vindictive prosecution. According to Ewing, the initial indictment charged him with one count of conspiracy to distribute cocaine base and named Edwards as a co-conspirator. Exercising his statutory right, he filed a motion to dismiss this indictment for a violation of the Speedy Trial Act. The court sustained this motion and dismissed the action without prejudice. He then was "reindicted for

conspiracy to distribute cocaine base without any named co-conspirator(s) and was charged in an additional count with possession with the intent to distribute cocaine base.” Ewing maintains that this “new” possession charge resulted from prosecutorial vindictiveness. We disagree.

The standard in this circuit for evaluating claims of prosecutorial vindictiveness is “whether, in the particular factual situation presented, there existed a ‘realistic likelihood of vindictiveness’ for the prosecutor’s augmentation of the charges.”   *United States v. Andrews*, 633 F.2d 449, 453 (6th Cir.1980), *cert. denied*, 450 U.S. 927 (1981). In determining whether a “realistic likelihood of vindictiveness” exists, two factors must be weighed. First, the court must determine the prosecutor’s stake in deterring the exercise of a defendant’s rights. Second, the court must review the prosecutor’s actual conduct. If the court finds there is a “realistic likelihood of vindictiveness,” the government bears the burden of disproving it.   *Id.* at 456.

Here, nothing in the record indicates that the district court was presented with any fact suggesting a “realistic likelihood of vindictiveness” on the part of the prosecutor. Although Ewing’s successful motion for dismissal of the initial indictment required some repetition of prosecutorial efforts, in that it compelled the reindictment of Ewing, we do not believe this burden, viewed in this pretrial context, was likely to elicit a vindictive response. Moreover, we have examined the prosecutor’s actual conduct and can find no evidence of vindictiveness. Accordingly, we find no merit to this claim.


Ewing’s third assignment of error is the district court’s classification of him as a career offender under  U.S.S.G. § 4B1.1. We review a district court’s factual findings that underlie the application of a guideline provision for clear error.   *United States v. Garner*, 940 F.2d 172, 174 (6th Cir.1991). However, whether those facts as determined by the district court warrant the application of a particular guideline provision is purely a legal question that we review de novo. *Id.*

 Section 4B1.1 provides that:

Career Offender



A defendant is a career offender if (1) the defendant was at least eighteen years old at the time of the instant offense, (2) the instant offense of conviction is a felony that is either a

crime of violence or a controlled substance offense, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

*4 U.S.S.G., Guidelines Manual,  § 4B1.1 (Nov. 1993).²

Section 4B1.2(1) and its commentary define “crime of violence” as follows:

- (1) The term “crime of violence” means any offense under federal or state law punishable by imprisonment for a term exceeding one year that—
 - (i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
 - (ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

 U.S.S.G. § 4B1.2(1). The November 1, 1993, version of Application Note 2 to  section 4B1.2 states:

“Crime of violence” includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth (*i.e.*, expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another. Under this section, the conduct of which the defendant was convicted is the focus of inquiry.³

Ewing contends that the district court erred in counting his 1987 burglary conviction in Ohio as a crime of violence. The question thus is whether this conviction falls under [section 4B1.2\(1\)\(ii\)](#), either because it was a burglary of a “dwelling,” or because it “otherwise involve[d] conduct that present[ed] a serious potential risk of physical injury to another.” The government maintains that Ewing’s 1987 conviction qualifies as a “burglary of a dwelling.” The district court, however, classified Ewing’s prior conviction as a crime of violence because it found it posed a serious potential risk of injury to others. Therefore, we will first review the district court’s mode of analysis and examine Ewing’s prior conviction under the “otherwise” clause, and only if we disagree with the court’s finding on this matter will we consider the government’s position.

The details with respect to Ewing’s 1987 burglary conviction are as follows. Ewing broke into a car that was parked in a secured, underground garage. The garage was attached to an apartment building, and to enter the garage one needed to use a special key or had to enter the apartment building first. The apartment building also required a key or a resident to “buzz” an individual inside. Apparently, Ewing was successful in getting a resident to “buzz” him into the building. The district court also noted that Ewing had used a knife to pry open windows and unlock the cars.

In [United States v. Lane](#), 909 F.2d 895 (6th Cir.1990), *cert. denied*, 498 U.S. 1093 (1991), this court concluded that attempted burglary in Ohio falls under the “otherwise” clause of [18 U.S.C. § 924\(e\)\(2\)\(B\)\(ii\)](#)⁴ because it is a “crime which ‘involves conduct that presents a serious potential risk of physical injury to another.’” [Land](#), 909 F.2d at 903. The panel based its conclusion on the fact that the Ohio burglary statute requires the actual or likely presence of a person in the burglarized structure. The court observed:


*5 “The fact that an offender enters a building to commit a crime often creates the possibility of a violent confrontation between the offender and an occupant, caretaker, or some other person who comes to investigate.” The fact that [the defendant] did not complete the burglary offense does not diminish the serious potential risk of injury to another arising from an attempted burglary.

Id. (citation and footnote omitted). For the same reasons, many other courts have classified attempted burglary as a violent felony. *See, e.g.*, [United States v. Davis](#), 16 F.3d

212 (7th Cir.1994) (holding that attempted burglary under Illinois law is a violent felony under [§ 924\(e\)\(2\)\(B\)\(ii\)](#)), *petition for cert. filed*, 62 U.S.L.W. 3775 (U.S. May 11, 1994) (No. 93–9130); [United States v. Thomas](#), 2 F.3d 79, 90 (4th Cir.1993) (same under New Jersey law), *cert. denied*, 114 S.Ct. 1194 (1994).

Based on the reasoning expressed in *Lane*, even if we were to assume that the burglary of an attached parking garage does not meet [section 4B1.1](#)’s definition of “burglary of a dwelling,” we believe Ewing’s offense posed a great enough risk of physical injury to another to make it a crime of violence. The garage that Ewing broke into was attached to a large apartment building. Many people lived in that building and it was very likely that a resident, if not several, could be in the garage at any given time. As the district court observed, “[t]he likelihood that a resident would walk by while [Ewing] was in the course of committing the burglary was great.” (App. 104–05.) If, as a panel of this court has previously found, the attempted breaking and entering of a business place is a crime of violence under the “otherwise” clause, then surely the burglary of an underground parking garage attached to a residential building also is one. *See* [United States v. Fish](#), 928 F.2d 185 (6th Cir.), *cert. denied*, 112 S.Ct. 115 (1991).




Ewing’s prior conviction also can be distinguished from offenses that were not classified as crimes of violence because they did not pose a risk of injury to others. In [United States v. Jackson](#), 22 F.3d 583 (5th Cir.1994), the court analyzed the defendant’s prior conviction for burglary under [section 4B1.2\(1\)](#). The court looked to the presentence report and found that, while the defendant had not been convicted of burglary of a dwelling, he had been convicted of burglary of a building with intent to commit theft. More specifically, the court observed that the defendant had been caught in the backyard of a house that had been vacant for seven years in an attempt to take some parts from an air conditioning unit. The court, in rejecting the government’s contention that “neighbors, passersby, or the owners were at risk,” found that the presentence report “provides absolutely no facts upon which to base a conclusion that a serious potential risk of physical injury was posed to anyone.” [Jackson](#), 22 F.3d at 585.

*6 Similarly, in  *United States v. Smith*, 10 F.3d 724, 730 (10th Cir.1993), the Tenth Circuit was asked to decide whether the defendant's 1989 second-degree burglary conviction in California was a crime of violence. The court summarized the details of the crime in question as follows:

Defendant removed a window screen and entered an office in a commercial building through an unlocked window. Using a screwdriver, he pried the lock off a file cabinet drawer, removed a cash box from the drawer, and exited the office. There is no indication that he was armed. The office was unoccupied and its door was locked at the time of the burglary. No confrontation with any person occurred. A police report, apparently attached to the criminal complaint, set forth the facts described above. The report also explained that the commercial building Defendant entered housed the Rouge Center, a drug rehabilitation center providing outpatient and inpatient services, and that it was the office of the

Center's operations manager which was burglarized.

(Citation omitted.) In holding that this offense was not a crime of violence, the court observed that the office was locked “and, therefore, obviously not part of a common living area into which residents could enter at any time.” *Id.* at 734.


Jackson and *Smith* both stand for the proposition that, when an offense involves a low risk of confrontation between the assailant and others, courts should be reluctant to classify such a crime as violent under  section 4B1.1. See also  *United States v. Talbott*, 902 F.2d 1129, 1133 (4th Cir.1990) (holding that two prior convictions for burglary of commercial structures did not come within the ambit of a “crime of violence”). Here, however, there was a very high risk of confrontation and, because Ewing was in possession of a knife, the potential for injury to another was even greater. Accordingly, we find the district court did not err in holding that Ewing's 1987 state conviction for burglary was a crime of violence for purposes of  section 4B1.2.⁵







AFFIRMED.

All Citations

38 F.3d 1217 (Table), 1994 WL 577055

Footnotes

- * Honorable Jon P. McCalla, United States District Court for the Western District of Tennessee, sitting by designation.
- 1 In order to establish that he had been prejudiced, Ewing submitted his own affidavit. Ewing claims that his “prolonged” incarceration affected his ability to support his children, maintain employment, and prevented him from locating a material witness who would have provided exculpatory testimony. Given that his indictment was delayed by only five days, we do not believe these allegations alone are serious enough for us to disturb the district court's consideration of this factor.
- 2 The Guidelines Manual in effect on the date that the defendant is sentenced applies.  U.S.S.G. § 1B1.11(a) (Nov. 1993). Ewing was sentenced on December 23, 1993. Thus, references to the guidelines are to the November 1993 Guidelines Manual.

- 3 The Supreme Court has recently held that generally the Sentencing Commission's commentary is to be given “ ‘controlling weight unless it is plainly erroneous or inconsistent with the [guideline,]’ ” and that the  [section 4B1.2](#) commentary is a “binding interpretation of the phrase ‘crime of violence.’ ”  [Stinson v. United States](#), 113 S.Ct. 1913, 1919–20 (1993).
- 4 Given the substantial similarity between the definitions for “violent felony” and “crime of violence” set forth in  [§ 924\(e\)\(2\)\(B\)](#) and guidelines  [section 4B1.2\(1\)](#), respectively, courts interpreting one phrase have found persuasive authority interpreting the other. See, e.g.,  [United States v. De Jesus](#), 984 F.2d 21, 24 n. 6 (1st Cir.1993);  [United States v. Preston](#), 910 F.2d 81, 86 n. 6 (3d Cir.1990), *cert. denied*, 498 U.S. 1103 (1991).
- 5 Because of the way we reach our holding, we need not consider the government's contention that the burglary of a parking structure connected to a dwelling qualifies as the burglary of a dwelling.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 3:23-CR-000194-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

ORDER

This matter is before the Court on Defendant Bryan Douglas Conley's Motion to Dismiss Count 2 of the Indictment. (R. 19.) Having reviewed the parties' briefs and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. Defendant Conley's Motion to Dismiss (R. 19) is **GRANTED**; and
2. This matter is **DISMISSED WITH PREJUDICE**.

This the ____ day of _____, 20__.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 3:23-cr-14-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

* * * * *

ORDER

Pursuant to 28 U.S.C. § 636(b)(1)(A), it is hereby

ORDERED that the defendant's ex parte motion (Docket No. 20) is **REFERRED** to
U.S. Magistrate Judge Regina S. Edwards for resolution.

March 21, 2023

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular official seal of the United States District Court for the Western District of Kentucky.

David J. Hale, Judge
United States District Court

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U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was entered on 3/23/2023 at 8:54 AM EDT and filed on 3/23/2023

Case Name: USA v. Conley

Case Number: 3:23-cr-00014-DJH

Filer:

Document Number: 22(No document attached)

Docket Text:

TEXT ORDER by Magistrate Judge Regina S. Edwards on 3/23/2023 as to Bryan Douglas Conley. An ex parte hearing re [20] EX PARTE MOTION is scheduled for 4/10/2023 at 1:30 PM before Magistrate Judge Regina S. Edwards.

This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

cc: Counsel (AEH)

3:23-cr-00014-DJH-1 Notice has been electronically mailed to:

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3:23-cr-00014-DJH-1 Notice will not be electronically mailed to.:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

Criminal No. 3:23-CR-00014-DJH

BRYAN D. CONLEY

DEFENDANT

**NOTICE OF INTENT TO INTRODUCE EVIDENCE OF OTHER ACTS UNDER
FED. R. EVID. 404(b) AND MOTION TO ADMIT EVIDENCE OF OTHER ACTS,
RES GESTAE, AND INEXTRICABLY INTERTWINED EVIDENCE**

– Filed Electronically –

The United States respectfully states its intention to introduce in its case-in-chief evidence of uncharged conduct and other conduct in which the defendant engaged. As specified in further detail below, the United States seeks to introduce evidence: (1) that the defendant communicated through his cellular device using third party applications that created additional telephone numbers, in addition to his Mobile Station International Subscriber Directory Number (MSISDN) obtained through Verizon, and posed as people other than himself, and (2) that the defendant produced and possessed child sexual abuse material (“CSAM”) of victim A.Y. To the extent that this evidence does not constitute *res gestae* or is not inextricably intertwined with the charged offense, the United States tenders this Notice of Intent in accordance with Fed. R. Evid. 404(b)(2). The United States also respectfully moves this Court to enter an *in limine* order authorizing the government to introduce this evidence in its case-in-chief.

INTRODUCTION

Beginning in November 2018, the defendant, Bryan Douglas Conley, used aliases, invented a third party, and the online dating application Plenty of Fish (“POF”) to lure and mislead victims for sexual activity. He then used his vehicle to transport these victims interstate. Finally, and when confronted by law enforcement, the defendant blames the invented third party for any misconduct or as an excuse for his conduct.

A grand jury indicted Conley on February 7, 2023 in the Western District of Kentucky. DN 4. Counts 1 and 2 charges the defendant violation of 18 U.S.C. Section 2421(a) (Mann Act) and 18 U.S.C. 2423 (Interstate Transportation of a Minor) in which the defendant transported a minor victim between November 8 to November 12, 2018 interstate with the intent the minor victim engage in prostitution and production of visual images of the minor engaging sexual activity. Count 3 charges Kidnapping by Inveigle and Decoy (18 U.S.C. Section 1201(a)(1)) of a second victim in late January 2019. Conley was also charged with Bank Fraud (18 U.S.C. 1344), Aggravated Identity Theft (18 U.S.C. 1028A), and ten counts of Interstate Threats (18 U.S.C. 875(c)) relating to text message threats sent to the second victim's elderly parents with ransom demands, all of which occurred during the course of the kidnapping.

Before and during the charged conduct, the defendant used third party cellular device applications to communicate. Specifically, the defendant used TextNow and TextMe, which are VoIP (Voice over Internet Protocol) services that allow users to text and call. TextNow and TextMe provides the user with a real phone number which can be used on any smartphone, tablet or desktop computer with an Internet connection.¹ The Voice Over Internet Protocol ("VOIP")² numbers provided by TextNow and TextMe are separate numbers from each other and from the MSISDN provided by the defendant's cellular device provider.

Relating to Counts 1 and 2, the defendant, beginning on or about November 8, 2018 contacted A.Y. using POF. The defendant posed as a fictitious person named, "Bryant" with the last name "Debeers" or "Debeirs." The defendant then contacted A.Y. using a different telephone number and posed as a different person that was sent at the behest of "Debeers" or "Debeirs" to pick up A.Y. Prior to picking up the A.Y., "Bryant" directed A.Y. to send him CSAM. A.Y. complied and sent "Bryant" two CSAM videos on or about the day the defendant picked up A.Y. The two CSAM videos were later recovered from the defendant's cellular device.

¹ <https://supportfree.textnow.com/hc/en-us/articles/360000817806-What-is-TextNow->

² Voice over Internet Protocol (VoIP), is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line.

Relating to Count 3 in January 2019, the defendant again posed as a fictitious person on POF, this time as “Lance,” when he contacted R.W. The defendant contacted R.W. using his cellular device but TextMe VOIP number 213-630-0758. In addition to posing as a fictitious person, the defendant lied to and misled R.W. claiming that “Lance” was a modeling agent. The defendant then contacted R.W. using a different telephone number and posed as a different person that was sent at the behest of “Lance.” This time the defendant posed as “Brian” and used his cellular device but TextNow VOIP number 915-777-3617 when contacting R.W.

Prior to and during the events charged in Counts 1, 2, and 3, the defendant contacted various other individuals using his TextMe and TextNow VOIP numbers and, in doing so, the defendant posed as other individuals. Specifically, the defendant posed as: “Lance,” “Cynthia,” “Eric,” “Detective Maier,” and “Brian.” The defendant also communicated with others in group chats in which the defendant comprised two of the three participants, using his TextMe and TextNow VOIP numbers.

MEMORANDUM OF LAW

A. The Evidence Sought to Be Introduced is *Res Gestae* and/or Inextricably Intertwined Evidence

At trial, the United States will seek to introduce evidence that: (1) that the defendant communicated through his cellular device using third party applications that created additional telephone numbers, in addition to his Mobile Station International Subscriber Directory Number (MSISDN) obtained through Verizon, and posed as people other than himself, and (2) that the defendant produced and possessed child sexual abuse material (“CSAM”) of victim A.Y.

Rule 404(b) of the Federal Rules of Evidence does not apply to bar background evidence, often referred to as *res gestae*. United States v. Hardy, 228 F.3d 745, 748 (6th Cir. 2000). Similarly, evidence that “is ‘inextricably intertwined’ with evidence of the crime charged,” United States v. Everett, 270 F.3d 986, 992 (6th Cir. 2001) (quoting United States v. Barnes, 49 F.3d 1144, 1149 (6th Cir.1995)), or evidence of acts that are “intrinsic” or “part of a continuing pattern of illegal activity,” Barnes, 49 F.3d at 1149 (6th Cir. 1995), does not implicate Rule 404(b). Evidence falling within this exception is limited to that which

“has a causal, temporal or spatial connection with the charged offense,” such as evidence that “is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of the witness’s testimony, or completes the story of the charged offense.” Hardy, 228 F.3d at 748.

In this case, the evidence of the defendant using two additional VOIP telephone numbers to communicate from his cellular device is intrinsic to the charged offenses or otherwise part of a continuing pattern. In addition, evidence that the defendant possessed and produced CSAM of A.Y. is directly probative of Counts 1 and 2, arises from the same events as the charged offense, forms an integral part of the witness’s testimony, or completes the story of the charged offense.

B. The Evidence Sought to Be Introduced is Admissible Under Rule 404(b)

To the extent that evidence discussed above does not constitute *res gestae* or is not inextricably intertwined with the charged offenses, the United States tenders this Notice of Intent in accordance with Fed. R. Evid. 404(b)(2). The Court may admit evidence of uncharged conduct under Rule 404(b) to prove relevant facts other than the defendant's character. See Fed. R. Evid. 404(b). More specifically, the court may admit evidence of uncharged conduct under Rule 404(b) for the purpose of proving “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. . .” Id.

In ruling on the admissibility of 404(b) evidence, the trial court must determine that act in question occurred, that the evidence is admissible for a proper purpose, and that the probative value of the evidence outweighs its potential prejudicial effects. See United States v. Johnson, 27 F.3d 1186, 1190 (6th Cir. 1993); United States v. Ismail, 756 F.2d 1253, 1259 (6th Cir. 1985); United States v. Dabish, 708 F.2d 240, 242 (6th Cir. 1983). Evidence of other misconduct becomes unfairly prejudicial if “the jury’s decision will be based upon improper factors, notably the character and past conduct of the accused, rather than upon the evidence presented on the crime charged.” United States v. Vance, 871 F.2d 572, 577 (6th Cir. 1989); see also United States v. Mendez-Ortiz, 810 F.2d 76, 79 (6th Cir. 1986) (“‘[u]nfair prejudice,’ as used in Rule 403, does not mean the damage to the defendant's case that results from the legitimate probative force of the evidence; rather, it refers to evidence which tends to suggest decision on an improper basis”).

1. There Is Sufficient Evidence the Other Acts Occurred

As noted, the first determination a court must make before admitting other-act evidence under Rule 404(b) is whether there is sufficient evidence that the other act occurred. The standard of proof is low: the government is not required to prove the other act beyond a reasonable doubt, by clear and convincing evidence, or even by a preponderance of the evidence. United States v. Bell, 516 F.3d 432, 441 (6th Cir. 2008) (citing Huddleston, 485 U.S. at 689). The government need submit only enough evidence to support a reasonable finding that the defendant committed the other act. Id.

Here, a digital forensic examiner will testify and explain that both items of evidence are derived from a review of the defendant's cellular device. See United States v. Bonds, 12 F.3d 540, 572 (6th Cir. 1993) (finding that testimony from single eyewitness "amply support[ed]" a finding that the other act occurred).

2. The Evidence Is Being Offered for a Permissible Purpose

The second determination a court must make before admitting other-act evidence under Rule 404(b) is whether it is offered for a permissible purpose: i.e., that "it is probative of a material issue other than character." United States v. Cox, 957 F.2d 264, 267 (6th Cir. 1992) (quoting Huddleston, 485 U.S. at 689). In this case, the evidence proposed by the United States falls squarely within the exceptions outlined in Fed. R. Evid. 404(b)(2), including identity, modus operandi, and, common plan or scheme.

3. The Probative Value of the Evidence Outweighs the Danger of Unfair Prejudice

Finally, the third determination a court must make before admitting other-act evidence under Rule 404(b) is whether its probative value is substantially outweighed by the danger of unfair prejudice. Cox, 957 F.2d at 267. Courts consider several factors in weighing the probative value of 404(b) evidence against its prejudicial effect.

One factor is the evidence's overall significance to the case. Courts have cautioned that "404(b) evidence, like other relevant evidence, should not lightly be excluded when it is central to the prosecution's case." United States v. Perez-Tosta, 36 F.3d 1552, 1562 (11th Cir. 1994). The Sixth Circuit has stated that the centrality of the issue for which the 404(b) evidence was admitted weighs in favor of admission. See

United States v. Vance, 871 F.2d 572, 576 (6th Cir. 1989) (“[A]n important indication of probative value of evidence is the prosecution's need for the evidence in proving its case.”). Another factor is the amount of time elapsed between the 404(b) incident and the charged incident. Generally, the probative value of other-act evidence decreases in a linear fashion as time passes. See Ismail, 756 F.2d at 1260. Another factor is the availability of alternative sources of proof. See Bell, 516 F.3d at 445 (“The district court should consider the government’s alternative sources of proving intent when weighing the probative value of other acts evidence.”). Still another factor is the nature and degree of potential prejudice. Not all prejudice is *unfair* prejudice. “[U]nfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” Bonds, 12 F.3d at 567. 404(b) evidence is more likely to compel a jury to render its verdict on an improper basis if it is particularly graphic or inflammatory, or if it is more severe in degree than the charged conduct. See United States v. Blair, 225 F.3d 660 (6th Cir. 2000) (unpublished) (noting that evidence of the 404(b) assault “was more ‘graphic,’ ‘horrendous,’ and ‘emotional’” than evidence of the charged assault). Finally, another factor is the potential for a limiting instruction. The Sixth Circuit, while recognizing that a limiting instruction is not a cure-all, has held that an instruction carefully setting forth the permissible uses of 404(b) evidence mitigates the prejudicial impact, if any, of such evidence. United States v. English, 785 F.3d 1052, 1056 (6th Cir. 2015). A limiting instruction is especially impactful if given before and after the evidence at issue, and again during the jury charge. See United States v. Allen, 619 F.3d 518, 525 (6th Cir. 2010).

The factors described above militate in favor of admitting the government’s proposed evidence in this case. The proposed evidence is inextricably intertwined with evidence of the crime charged and is necessary to the government’s case. There is no time lapse between the 404(b) incident and the charged incidents. In fact, the Indiana bank robbery constitutes uncharged conduct which arose out of the same series of transactions as the charged offenses. This is necessary background information to the underlying charges as this conduct by the defendant was essential in helping law enforcement further develop the suspect vehicle and ultimately identify the defendant. Should the Court exclude this evidence, the United

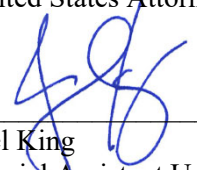
States would be unable to fully explain to the jury how the defendant was identified as the perpetrator of these bank robberies. Although there is certainly a potential for prejudice associated with this evidence, this prejudice can be cured by the Court providing a limiting instruction to the jury to ensure the evidence is not considered for an improper purpose. Moreover, the Sixth Circuit's pattern jury instruction 7.13 Other Acts of Defendant is specifically designed to alleviate any concerns raised by this type of evidence.

CONCLUSION

Defense counsel and the Court should take notice of the United States' intent to seek introduction of this evidence. Further, for the above-stated reasons, the government respectfully requests an *in limine* order ruling that the above-described evidence is admissible as inextricably intertwined evidence or *res gestae* or, in the alternative, under Rule 404(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

On March 23, 2022, I electronically filed this document through the ECF system, which will send a notice of electronic filing to all Counsel of record.



 Joel King
 Special Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY

DEFENDANT

**NOTICE OF INTENT TO INTRODUCE FLIGHT EVIDENCE
AND MOTION TO ADMIT FLIGHT AS SUBSTANTIAL EVIDENCE OF GUILT IN A
CRIMINAL CASE UNDER RULES 402, 403, and 404(b).**

This Court should admit at trial evidence showing that Bryan Conley fled before a scheduled court date as substantive evidence of guilt. That evidence is admissible under Fed. R. Evid. 402 or 404(b) and 403 to show he knows he is guilty of the crimes the grand jury charged him with committing.

INTRODUCTION

A grand jury indicted Conley on February 7, 2023 in the Western District of Kentucky. DN 4. Counts 1 and 2 charges the defendant violation of 18 U.S.C. Section 2421(a) (Mann Act) and 18 U.S.C. 2423 (Interstate Transportation of a Minor) in which the defendant transported a minor victim between November 8 to November 12, 2018 interstate with the intent the minor victim engage in prostitution and production of visual images of the minor engaging sexual activity. Count 3 charges Kidnapping by Inveigle and Decoy (18 U.S.C. Section 1201(a)(1) of a second victim in late January 2019. Conley was also charged with Bank Fraud (18 U.S.C. 1344), Aggravated Identity Theft (18 U.S.C. 1028A), and ten counts of Interstate Threats (18 U.S.C. 875(c) relating to text message threats sent to the second victim's elderly parents with ransom demands, all of which occurred during the course of the kidnapping.

During the prior prosecution in U.S. v. Conley, 3:19-cr-00019-DJH, a superseding indictment was not sealed and the defendant was to appear while on bond and electronic monitoring in Louisville, Kentucky to meet with his attorney. The United States learned in court at defendant Conley's

arraignment that he had told his counsel that his family had been in an accident and had to be air lifted to the hospital and he did not appear at his arraignment. The United States contacted the FBI and United States probation to learn that Conley's electronic monitoring device was located around Smith's Grove, Kentucky, near Bowling Green. FBI recovered a cut ankle monitor around Smiths Grove and a manhunt for Conley immediately began. Authorities later caught Conley in Ada, Ohio. The admission of that evidence that Conley purposefully cut his monitoring device while on home detention and fled from law enforcement to Ada, Ohio, will further illustrate Conley's guilt given he fled Kentucky to avoid his on-going legal troubles. On February 1, 2019, Conley was released on supervised bond with conditions that his travel be restricted to Texas and Kentucky. He was placed on home dentition and GPS monitoring as a condition of his release. On June 14, 2019, the grand jury issued a superseding indictment adding Kidnapping, Bank Fraud and Aggravated identity theft to Conley previous charges. On June 6, 2019, the summons scheduling arraignment on the superseding indictment for June 20, 2019, was returned executed. On June 19, 2019, Conley filed a motion to waive his personal appearance at arraignment (the motion included Conley's signature acknowledging that Conley received a copy of the Superseding Indictment). DN 26 and DN 26-1 (3:19-cr-00019-DJH).

According to the violation conduct filed by the United States Probation office, on June 20, 2018, Conley was to appear in U.S. District Court for the Western District of Kentucky for his arraignment on the superseding indictment. Conley received permission by his supervising officer in Texas to travel to Kentucky for court purposes and left a via personal vehicle for Louisville on June 14, 2019. On June 20, 2019, Conley did not appear as required in U.S. District court for Arraignment purposes as he notified his attorney that his wife and child had been involved in a bad car accident and needed to return to Texas immediately to join them at the hospital. USPO noted that Conley's appearance at court was waived on June 19, 2019, after his defense counsel filed a Motion for Waiver because of the alleged emergency. On June 21, this office received notification from his supervising officer in Texas that they had received a Tracker Strap Tamper alert notification from his GPS monitor at 11:25 a.m. that mooring. They then attempted to communicate with Mr. Conley; however, their efforts were unsuccessful. They then

telephonically contacted Mr. Conley's wife who indicated that Mr. Conley was in Kentucky at the VA Hospital attending court-ordered counseling. She did not provide any information to the officers about being involved in a car accident during their conversation. Conley was arrested in Ohio and did not have permission to be there. The FBI quickly determined that The FBI interviewed Conley's wife and other family members were not in an accident. It is undisputed that Conley's whereabouts were unknown, and he had just been indicted for Kidnapping.

The probation officer supervising Conley sent a GPS location of the ankle monitor to the FBI in Bowling Green. The FBI recovered the Ankle monitor on the western shoulder of I-65 Northbound in the grass between the should and the woods. The battery was located in the same vicinity. Photographs of the damaged monitor and batter are attached as Exhibit 1 (Photograph of ankle strap for GPS Monitor) and Exhibit 2 (Photograph of Battery to GPS monitor).

Conley was arrested on June 22, 2019 at around 8:05 p.m. in Ada, Ohio by the Ada Police Department. Conley was apparently knocking on doors asking for money. Conley did not have permission to be Ohio. FBI took custody of Conley and transported him to the federal courthouse for his removal hearing. Conley was not asked any questions but stated that someone else had removed his ankle monitor. He told the FBI SA Komar on June 24, 2019, that "someone held a gun to his head and made him do the things he did".

The evidence that Conley's ankle monitor was removed, and he traveled to state where he was not authorized to be after he was indicted for Kidnapping is uncontroverted evidence of flight. The removal of the monitor is evidence Conley was concealing his location so he could flee. In addition, there is evidence Conley knew he was to appear in federal Court in Kentucky as ordered by Probation. He lied to his attorney and fled. Conley's arguments are simply challenges to the weight of the evidence. He can cross-examine witnesses and present evidence in his favor. None of his arguments affect the sufficiency of the evidence of flight to support it admission in this case.

The ongoing investigation of Conley later yielded another victim of his interstate travels and use of the internet to defraud unwitting victims when he was charged with a violation of 18 U.S.C. 2421(a)

for transporting a female who he picked up in Ohio through Kentucky to Tennessee and elsewhere for the purpose of prostitution. Conley used a fictitious online persona to entice the female into meeting with Conley and ultimately transported her across state lines to engage in sexual activity for money. Conley ultimately abandoned the young female at a truck stop in Texas.

MEMORANDUM OF LAW

I. BECAUSE CONLEY FLED FROM BOND AND HOME DETENTION, AND BECAUSE THIS FLIGHT HAS PROBATIVE VALUE, THE DISTRICT COURT SHOULD ADMIT HIS FLIGHT AS EVIDENCE OF HIS GUILT.

The Sixth Circuit recognizes defendants' flight, concealment of evidence and implausible stories as evidence which allows an inference of guilty knowledge. *See United States v. Jackson*, 55 F.3d 1219, 1226 (6th Cir. 1995). Flight has been deemed relevant to show guilt through consciousness of guilt. *United States v. Touchstone*, 726 F.2d 1116, 1119 (6th Cir. 1984); *United States v. Rowan*, 518 F.2d 685, 691 (6th Cir. 1975). The relevance of such evidence depends on a series of inferences. Flight evidence is probative if the district court is confident that inferences can be drawn: 1) “from the defendant's behavior to flight”; 2) “from flight to consciousness of guilt”; 3) “from consciousness of guilt to consciousness of guilt concerning the crime charged”; and (4) “from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.” *United States v. Dillon*, 870 F.2d 1125 (6th Cir. 1989) (holding that the defendant’s departure from the city after hearing that a co-conspirator was about to implicate him in grand jury testimony was properly admitted as evidence of guilt). Flight may be proven “where it occurs after any event which would tend to spark a sharp impulse of fear of prosecution or conviction in a guilty mind.” *Id.* at 1128. In *United States v. Carter*, 236 F.3d 777 (6th Cir. 2001), the trial court gave an instruction on flight substantially similar to Pattern Instruction 7.14. The Sixth Circuit concluded that giving the instruction was not an abuse of discretion and did not unconstitutionally require the defendant to testify or explain prior incidents of flight. The instruction did not appear to suggest guilt on the defendant’s part, but rather stated that “evidence of flight may or may not indicate a defendant’s guilty conscience or intent to avoid punishment.” *Id.* at 792 n.11 (italics in

original), citing *Illinois v. Wardlow*, 528 U.S. 119, 123-27 (2000). *See also United States v. Swain*, 2007 U.S. App. LEXIS 16825 at 7-9, 2007 WL 2031447 (6th Cir. 2007) (unpublished) (giving instruction 7.14 on flight was not error because adequate evidence existed; Instruction 7.14 accurately reflects the law, citing *United States v. Carter*, *supra* and *United States v. Diakite*, 5 Fed. Appx. 365, 370-71 (6th Cir. 2001) (unpublished)).

Because Conley fled and disposed of his ankle monitor prior to his arraignment on additional charges, Conley's flight has probative value as evidence of guilt and the inference that he fled to avoid prosecution can reasonably be drawn. Moreover, Conley had to be located and arrested while the case was pending because he removed his monitoring device. The Court can confidently draw the inference that Conley fled because his pending charges.

The Sixth Circuit has held that evidence of flight is admissible even though the flight was not immediately after the commission of the crime or after the defendant is accused of the crime. *Touchstone*, *supra* at 1119-20. In that case the court explicitly approved the following instruction: The intentional flight or concealment of a defendant is not of course sufficient in itself to establish his guilt; but is a fact which, if proved, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence. *Id.* at 1118 and 1120 n.6.

In *Illinois v. Wardlow*, *supra*, the Supreme Court recognized flight as a factor the police could use in determining whether they had reasonable suspicion to justify a stop under the Fourth Amendment. The Court stated, "Headlong flight wherever it occurs is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Wardlow*, *supra* at 124. Although flight immediately after being charged with a crime is sufficient to prove guilt of that crime, it is not necessary. Flight may be proven "where it occurs after any event which would tend to spark a sharp impulse of fear of prosecution or conviction in a guilty mind." *Touchstone*, *supra* at 1128. An unsolicited phone call from an FBI agent telling Clark that he was executing a search warrant and requesting that Clark return home would "spark a sharp impulse of fear . . . in a guilty mind." The FBI later discovered

over 600 images of child pornography on his computer. The Court can confidently draw the inference from Clark's guilty conscious to guilt of his crime.

I. Flight Evidence is Considered Relevant Evidence Under Rule 402

The Sixth Circuit has consistently held that, under Rule 402 and not excluded under 403, flight is admissible as evidence of guilt by conduct and that juries have the power to determine how much weight and value should be given to the flight evidence. United States v. Dillon, 870 F.2d 1125, 1126 (6th Cir. 1989) (citing United States v. Touchstone, 726 F.2d 1116, 1119 (6th Cir. 1984)). Given the Sixth Circuit hasn't excluded flight evidence under 403, it can be implied that the evidence is considered relevant and admissible under 402.

II. Conley's Flight is Admissible Under Rule 404(b).

In a recent unpublished opinion, the Sixth Circuit held flight evidence as admissible under Rule 404(b) as "other acts." When conducting this analysis for flight evidence, the district court's task is to determine the flight occurred, the flight is offered for a legitimate purpose and not for character, and that the probative value outweighs the unfair prejudicial affect. United States v. Perez-Martinez, 746 F. App'x 468 at 474-75 (citing United States v. Murphy, 241 F.3d 447, 450 (6th Cir. 2001)).

The United States contends the flight evidence meets all three factors to be considered admissible under a 404(b) analysis.

1. There Is Sufficient Evidence the Other Act Occurred.

Under the first step, the court assesses whether the "other acts" occurred. Here, there is sufficient evidence to show that the flight in question occurred. Conley physically removed his electronic ankle bracelet, missed his scheduled court date, and was apprehended in Ohio while he was supposed to be on home detention. See United States v. Perez-Martinez, 746 F. App'x 468 (6th Cir. 2018) (Evidence of defendant missing parole reports, not returning parole officer's calls, and not being able to be located until he was detained re-entering the United States from Canada served as sufficient evidence of the flight taking place).

2. The Evidence is Being Offered for a Permissible Purpose.

The Sixth Circuit weighs this factor as the four-step analysis described below in the 403 analysis. As discussed below, the United States holds firm that all four factors of the probative value measurement test in Myers are met in the Conley case. The flight evidence is not offered to show the character of the defendant but is used to show the guilt by conduct.

3. The Probative Value of the Evidence Outweighs the Danger of Unfair Prejudice.

Finally, the third determination a court must make before admitting other-act evidence under Rule 404(b) is whether its probative value is substantially outweighed by the danger of unfair prejudice. Id. at 477. (Evidence of defendant's flight was not unfairly prejudicial where the government only introduced evidence of the defendant's probation violation to demonstrate his flight). Like the Perez-Martinez case, the evidence is simply being offered to help establish the flight and the guilt associated with that flight.

Here, all three factors fall in favor of the government. The evidence reasonably establishes the flight occurred, the evidence is being offered for a permissible purpose, and the probative value outweighs the unfair prejudicial effects.

III. The Evidence Sought to Be Introduced is Admissible Given its Probative Value to the Case; Rule 403 Does Not Exclude It.

As previously stated, the Sixth Circuit has held that flight is admissible as evidence of guilt by conduct and that juries have the power to determine how much weight and value should be given to the flight evidence. United States v. Dillon, 870 F.2d 1125, 1126 (6th Cir. 1989) (citing United States v. Touchstone, 726 F.2d 1116, 1119 (6th Cir. 1984)). The task of the district court is to determine whether the evidence's probative value is outweighed by the danger of unfair prejudice. If the district court finds that the evidence is not so unfairly prejudicial, the flight evidence may be admitted as evidence of guilt. Id. When determining how to balance the probative and prejudicial value of the flight evidence, the Sixth Circuit has adopted the four-step analysis developed by the Fifth Circuit in United States v. Myers. The Fifth Circuit said:

The four-step analysis depends on the degree of confidence with which four inferences can be drawn: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

Dillon, 870 at 1126 (citing United States v. Myers, 550 F.2d 1036, 1049 (5th Cir. 1977)). When considering the four-step analysis, all four inferences must be “reasonably supported” by the flight evidence. Myers, 550 F.2d at 1050.

Conley’s flight meets all four of those steps to allow the flight evidence to be admitted to further prove Conley’s guilt.

A. The Evidence “Reasonably Supports” that all four-steps are satisfied.

The first step in establishing sufficient probative value of flight evidence is the inference that can be drawn from the defendant’s behavior to flight, meaning whether there was an actual, not a speculative flight, in the first place. Dillon, 870 F.2d at 1128 (factor one was satisfied where defendant, after hearing about co-defendant’s grand jury testimony, broke a family obligation and was later arrested in Florida under an assumed name); see also Touchstone, 726 F.2d at 1119-20 (flight evidence was admissible where the defendant disappeared on the third day of trial).

The second and third step go to two interrelated factors: immediacy and the defendant’s knowledge that the defendant is in trouble with the law. Id. Those two factors require that the timing of the flight must induce the sudden onset or the sudden increase of fear in the defendant’s mind that the defendant will face apprehension, accusation of, or conviction of the crimes charged. Id. It is not required that the defendant take flight immediately following the committed crime; flight can be induced much later than when the crime was committed. Id. (defendant fled almost two years after the crime and after becoming aware of his co-defendant’s plan to testify against him); see also United States v. Oliver, 397 F.3d 369, 376 (6th Cir. 2005) (inferences could be drawn given the defendant fled knowing he had been indicted for the charges against him).

For the fourth and final factor, from guilty consciousness to actual guilt being related to the crimes in the case, the Sixth Circuit has held numerous facts to be “reasonably supporting” evidence. United States v. Oliver, 397 F.3d 369, 376 (6th Cir. 2005) (evidence of the defendant’s statements, prior police investigations, and evidence seized during home search were sufficient to support a guilty consciousness to

actual guilt); see also United States v. Perez-Martinez, 746 F. App'x 468, 476 (6th Cir. 2018) (evidence was sufficient where defendant pointed to no other charges he was facing nor identified any other possible motivation to flee other than the charges-at-hand).

Here, Conley's flight and the facts that surround it satisfy all four inferences. Conley was on home monitoring and removed his bracelet when he fled to Ohio from his upcoming court date in Kentucky. Although Conley didn't immediately flee following his crimes, the facts surrounding his flight meet the sudden-increase-in-fear standard. Conley had an upcoming court date surrounding additional charges related to the Superseding Indictment; he knew of those charges and that his presence in court was required. Due to the sudden onset of fear of legal consequences, Conley removed his bracelet and fled the state of Kentucky. Conley's flight meets the fourth inference is clearly met given that Conley has no other charges or motivations to point to as to why he fled prior to his upcoming court date. The evidence meets the "reasonably supported" threshold laid out in Myers.

IV. Proposed Jury Instruction

7.14 Evidence of Flight

(1) You have heard testimony that after the crime was supposed to have been committed, the defendant fled or attempted to flee from prosecution.

(2) If you believe that the defendant fled or attempted to flee from prosecution, then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that he committed the crime charged. This conduct may indicate that he thought he was guilty and was trying to avoid punishment. On the other hand, sometimes an innocent person may act for some other reason. The defendant has no obligation to prove that he had an innocent reason for his conduct.

Authority: Pattern Crim. Jury Instr. 6th Cir. 7.14 (2022)

CONCLUSION

Defense counsel and the Court should take notice of the United States' intent to seek the introduction of this evidence. Further, for the above-stated reasons, the government respectfully requests that the above-described evidence be admissible under Rules 402, 403, and 404(b).

This court should grant the United States's Motion in Limine.

Respectfully submitted,

MICHAEL A. BENNETT
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CERTIFICATE OF SERVICE

I certify that this pleading was electronically filed using the Court's ECF system on March 23, 2023, with notice to counsel for defendant.

s/ Joshua Judd
Joshua Judd
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:23-CR-00014DJH

BRYAN DOUGLAS CONLEY

DEFENDANT

PROPOSED ORDER

The United States moved to admit flight as substantive evidence of guilt. The motion of the United States is granted.





MIME-Version:1.0
From:kywd-ecf-notice@kywd.uscourts.gov
To:kywd-ecf-notice@kywd.uscourts.gov
Bcc:
--Case Participants: Joshua F. Barnette (bcampbell@stites.com, cbrown@stites.com, jbarnette@stites.com), Joshua D. Judd (caseview.ecf@usdoj.gov, joshua.judd@usdoj.gov, lasonya.brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Joel King (caseview.ecf@usdoj.gov, joel.king@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Judge David J. Hale (jaylen_amaker@kywd.uscourts.gov, megan_renwick@kywd.uscourts.gov, nthompson@kywd.uscourts.gov, victoria_clark@kywd.uscourts.gov)
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U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was entered on 3/27/2023 at 7:58 AM EDT and filed on 3/27/2023

Case Name: USA v. Conley

Case Number: 3:23-cr-00014-DJH

Filer:

Document Number: 26(No document attached)

Docket Text:

TEXT ORDER by Magistrate Judge Regina S. Edwards on 3/27/2023 as to Bryan Douglas Conley. The ex parte hearing scheduled for 4/10/2023 is RESCHEDULED to 3/29/2023 at 10:00 AM before Magistrate Judge Regina S. Edwards.

This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

cc: Counsel, USP (AEH)

3:23-cr-00014-DJH-1 Notice has been electronically mailed to:

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3:23-cr-00014-DJH-1 Notice will not be electronically mailed to.:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

MOTION IN LIMINE TO EXCLUDE CERTAIN PSYCHOLOGICAL EVALUATIONS

Comes now Defendant Bryan Douglas Conley, by and through counsel, and hereby moves this Court to exclude as evidence in this case certain psychological and psycho-educational evaluations because the evaluations are irrelevant, they are unduly prejudicial, they have not been authenticated, and because the government has not disclosed any expert to opine on the evaluations.

“Adult Female 1” is the alleged victim of Count 3 in the Indictment. (*See* R. 4.) Previously, this individual was identified as R.W. (*See* R. 45 in W.D. Ky. 3:19-CR-19.) On October 31, 2022, the government produced several psychological / psycho-educational evaluations, and associated documents, that had been conducted on R.W. more than twenty years ago. The evaluations are dated: December 19, 1990; April 5, 1991; May 21, 1992; February 10, 1997; and August 2 & 3, 2001. These evaluations, collectively, have been identified, though not Bates stamped, by the government as USA1713 - USA1766.

The evaluations are irrelevant to this case. F.R.E. 401 states that “[e]vidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Psychological evaluations and psycho-educational evaluations conducted on an alleged victim more than twenty years ago does not fit the

definition of relevant. Therefore, pursuant to F.R.E. 402, the irrelevant psychological and psycho-educational evaluations are inadmissible.

Even if the Court determines the psychological and psycho-educational evaluations are relevant, the evaluations should be excluded by operation of F.R.E. 403 because any probative value the evaluations might have would be substantially outweighed by their unfair prejudice. The government would only introduce these evaluations to show R.W.'s assessment results as they were on the dates of the evaluations. The five evaluations were conducted when R.W. was: 9 years old (two evaluations); 10 years old; 15 years old; and 19 years old, respectively. Conversely, R.W. was 37 years old at the time of the alleged conduct. Nothing in the evaluations purport to assess R.W. at 37 years old, and nothing in the reports can be projected onto R.W. at age 37 as nearly twenty years passed from the time of her last evaluation to the time of the conduct alleged in the indictment. Any reasoning for the evaluations, or any findings by the evaluations, would only serve to prejudice Mr. Conley at trial because the jury would believe that the reasoning or findings of the evaluations were somehow relevant to the alleged conduct and suggest that Mr. Conley knew or should have known of the findings in the reports.

Moreover, the government has not disclosed any experts to testify about the evaluations or opine on how, if at all, the evaluations may be relevant to R.W. at the time of the alleged conduct. The time to disclose any experts passed on February 27, 2023. (*See* R. 12.)

Because the evaluations are irrelevant, because the evaluations' probative value is substantially outweighed by unfair prejudice, and because the government has not identified any experts to testify and opine on the evaluations' results, the Court should exclude the psychological evaluations, psycho-educational evaluations, and any associated testimony related to documents identified as USA1713-USA1766.

Respectfully submitted,

/s/ Joshua F. Barnette

Joshua F. Barnette

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Counsel for Bryan Douglas Conley

CERTIFICATE OF SERVICE

I hereby certify that on 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Joshua F. Barnette

Joshua F. Barnette

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

ORDER

This matter is before the Court on Defendant Bryan Douglas Conley's Motion in Limine to Exclude Certain Psychological Evaluations. [R. 27.] The Court being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. Defendant Conley's Motion in Limine to Exclude Certain Psychological Evaluations [R. 27] is **GRANTED**;
2. All psychological and psycho-educational evaluations, and associated documents, identified, though not Bates stamped, as USA1713 - USA1766 are excluded from a trial in this matter.

This the ____ day of _____, 20__.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

MOTION IN LIMINE TO EXCLUDE CERTAIN TEXT MESSAGES

Comes now Defendant Bryan Douglas Conley, by and through counsel, and hereby moves this Court to exclude certain text messages allegedly sent by Mr. Conley to K.C. and Elizabeth Heather Glass. The substance of these unauthenticated text messages are irrelevant and, even if relevant, their probative value is substantially outweighed by the risk of causing unfair prejudice, confusing the issues, and misleading the jury. Further, the text messages are inadmissible hearsay.

K.C. is purportedly Mr. Conley's ex-wife. (*See* Exhibit 1, Affidavit of for Search Warrant in 3:19-MJ-453, at pp.18-19, 56-57.) According to an FBI affidavit for a search warrant in Western District of Kentucky Case No. 3:19-MJ-453-HBB, K.C. advised that she had been receiving threatening text messages from unknown numbers since spring of 2018. (*Id.*) One of those text messages, memorialized in the search warrant affidavit, reads:

Hi
You seem to never return
my messages so further
action will be taken
So I know where you live

Work
 Kids dr and school
 You fucked my husband
 and think you can get
 away with it?
 You have 30 day to get
 ahold of you x and
 answer immediately when
 I text back
 If not your family across
 the street and kids will
 pay for it.
 No cops.
 10K
 A BBC
 Camera
 And hotel is what you will need

(*Id.*) According to the affidavit, a screenshot of the text message is included as an attachment to the search warrant affidavit. (*Id.*)

Elizabeth Heather Glass purportedly resides in Apex, North Carolina. In April 2018, Ms. Glass filed a police report for harassing phone calls. (*See* Exhibit 2, Apex, North Carolina Police Report.) In doing so, Ms. Glass reported that, after initially meeting Bryan Conley on an online gaming platform, they met in person in North Carolina and engaged in sexual relations. (*Id.*) Sometime thereafter, according to the police report, Ms. Glass began receiving harassing messages from Mr. Conley, but none of the messages were threatening. (*Id.*) Mr. Glass claimed that while she had returned his text messages on occasion, she had also told him to stop messaging her. (*Id.*) Ms. Glass reported that some of the harassing messages she received would come from phone numbers different from Mr. Conley's phone number. (*Id.*)

1. *The communications reported by K.C. and Ms. Glass are irrelevant.*

Federal Rule of Evidence 401 states "evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence

in determining the action.” Generally speaking, relevant evidence is admissible, and irrelevant evidence is not admissible. F.R.E. 402. Here, the text messages reported by K.C. and Ms. Glass do not tend to make any fact that is of consequence in determining this action more or less probable. Thus, the substance of the text messages is irrelevant and the text messages are inadmissible.

2. *Even if the substance of the text messages is relevant, any probative value the text messages may have is substantially outweighed by the risk of causing prejudice, confusing the issues, or misleading the jury.*

Even if the Court determines the substance of the text messages are relevant, the F.R.E. 403 balancing test mandates the exclusion of the text messages in this case. Under F.R.E. 403, even relevant evidence may be excluded “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury. . . .”

Here, while K.C. and Ms. Glass allege that Mr. Conley sent the text messages, they both admit the messages came from various numbers. Consequently, neither K.C. nor Ms. Glass can say with certainty that Mr. Conley sent the text messages. Because no one can prove Mr. Conley sent the text messages, the text messages’ probative value is greatly diminished. On the other hand, the introduction of the text messages would cause unfair prejudice, confuse the issues, and mislead the jury. Permitting the introduction of the text messages would cause great prejudice to Mr. Conley because the jury would believe that if Mr. Conley sent such text messages, he should be punished for that behavior regardless of whether his charged conduct goes unproven. Introduction of these text messages would also confuse the issues and mislead the jury. Because no one can prove Mr. Conley sent these text messages, the admission of the text messages would result in a trial-within-a-trial just on the issue of authenticating the text messages and whether

they actually came from Mr. Conley. This would be a distraction from the actual issues in the case and an inefficient use of the Court's time and resources.

The government is likely to argue that the text messages are needed as a basis for establishing background information related to their investigation of Mr. Conley. However, the fact that law enforcement talked with K.C., or obtained a copy of the police report filed by Ms. Glass, is sufficient to show the background of their investigation. The government need not introduce the substance of the text messages reported by K.C. and Ms. Glass to law enforcement in order to establish the background of their investigation.

Because any probative value these text messages may have is so greatly outweighed by the risk of causing unfair prejudice, confusing the issues, and misleading the jury, the Court should exclude the text messages from the trial in this matter.

3. *The text messages are also inadmissible hearsay.*

Neither K.C. nor Ms. Glass can say with certainty that Mr. Conley sent the text messages they reported to law enforcement. While both believe Mr. Conley sent the text messages, the text messages cannot be authenticated. Further, no recognized exceptions to the rule against hearsay would permit the admission of the text messages. (*See* F.R.E. 803.) Because the text messages cannot be authenticated as coming from Mr. Conley, they cannot be admitted under F.R.E. 804(b)(3) as a statement against interest. Moreover, because both K.C. and Ms. Glass claim – but cannot prove – Mr. Conley sent the text messages, the text messages themselves are actually hearsay within hearsay, as defined in F.R.E. 805, and would require an exception to each layer of hearsay before the government could admit the text messages. Simply put, the substance of the text messages amount to inadmissible hearsay and should be excluded.

For all of the reasons above, the Court should exclude from admission at trial the substance of the text messages reported to law enforcement by K.C. and Ms. Glass.

Respectfully submitted,

/s/ Joshua F. Barnette

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Counsel for Bryan Douglas Conley

CERTIFICATE OF SERVICE

I hereby certify that on 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Joshua F. Barnette

Joshua F. Barnette

AQ 106 (Rev. 04/10) Application for a Search Warrant

FILED
VANESSA L. ARMSTRONG, CLERK

JUN 11 2019

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF KENTUCKY

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA FOR
SEARCH AND SEIZURE WARRANT FOR

1. SAMSUNG GALAXY S8+ SM-G955U,
IMEI 355989084777502,
2. WHITE NEMA THUMBDRIIVE,
3. SILVER SEAGATE BACKUP HARDDRIVE
SN: NA958ZHD
4. BLACK HUAWEI TABLET MODEL GB2-W09

ALL CURRENTLY LOCATED AT THE
FEDERAL BUREAU OF INVESTIGATION,
12401 SYCAMORE STATION PLACE,
LOUISVILLE, KENTUCKY 40299

3:19mj-453-HBB

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (*identify the person or describe property to be searched and give its location*): *SEE ATTACHMENT A.*

1. SAMSUNG GALAXY S8+ SM-G955U,
IMEI 355989084777502,
2. WHITE NEMA THUMBDRIIVE,
3. SILVER SEAGATE BACKUP HARDDRIVE
SN: NA958ZHD
4. BLACK HUAWEI TABLET MODEL GB2-W09

ALL CURRENTLY LOCATED AT THE FEDERAL BUREAU OF INVESTIGATION, 12401 SYCAMORE STATION PLACE,
LOUISVILLE, KENTUCKY 40299

located in the Western District of Kentucky, there is now concealed (*identify the person or describe the property to be seized*):
ATTACHMENT B.

The basis for the search under Fed. R. Crim P. 41(c) is (*check one or more*):

- ☒ evidence of a crime;
☒ contraband, fruits of a crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Offense Description	Code Section
Interstate Threatening Communications -	Title 18, United States Code, Sections 875(a) and (c);
Kidnapping -	Title 18, United States Code, Section 1201;
Ransom Money -	Title 18, United States Code, Section 1202;
Selling or Buying of Children -	Title 18, United States Code, Section 2251A;
Bank Fraud -	Title 18, United States Code, Section 1344; and
Aggravated Identity Theft -	Title 18, United States Code, Section 1028A.
Sex Trafficking of Children by Force, Fraud, or Coercion—	Title 18, United States Code, Section 1591(a)(1);
Transportation of Minors -	Title 18, United States Code, Section 2423(a) and (e);
Sexual Exploitation of Children (Production of Child Pornography)—	Title 18, United States Code, Section 2251(a); and
Possession of Child Pornography—	Title 18, United States Code, Section 2252A(a)(5)(B).

The application is based on these facts:

FILED

VANESSA L. ARMSTRONG, CLERK

JUN 11 2019

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE

3:19mj-453-HBB

AFFIDAVIT IN SUPPORT OF SEARCH AND SEIZURE WARRANT

SAMSUNG GALAXY S8+ SM-G955U, IMEI 355989084777502, WHITE NEMA

THUMBDRIVE, SILVER SEAGATE BACKUP HARD DRIVE SN: NA958ZHD, and

BLACK HUAWEI TABLET MODEL GB2-W09 all currently located at the Federal

Bureau of Investigation, 12401 Sycamore Station Place, Louisville, Kentucky 40299

I, Andrew Phillips having been duly sworn, state;

Identity of Law Enforcement Officer Making Request

1. I, Andrew Phillips, being duly sworn, do hereby state the following.
2. I am a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the Louisville Field Office. I have been a Special Agent of the FBI since July 2003. I have been involved in the investigation of numerous types of offenses against the United States, including Financial Institution Fraud, Mortgage Fraud, Tax Fraud, Immigration Fraud, and the illegal structuring of financial transactions and the use of these financial transactions to promote fund raising or to lawfully engage in monetary transactions involving the proceeds of specified and unlawful activity, commonly referred to collectively as Money Laundering. I have also conducted investigations into violations of the Controlled Substances Act.
3. In the course of conducting and participating in criminal investigations, I have been involved in interviewing and debriefing informants; interviewing witnesses; interviewing victims; conducting physical surveillance; consensually monitoring and

recording conversations; and preparing and executing search and arrest warrants.

4. My knowledge of the facts and circumstances contained within this affidavit is based on my personal investigation, as well as reports made to me by other law enforcement agencies, including local city, county, and state law enforcement, information obtained from other non-governmental institutions and businesses located in Kentucky and elsewhere, and various other reports obtained during my investigation. The statements contained in this affidavit are based either on my personal knowledge or information obtained from other law enforcement officers, cooperating witnesses, victims, and information obtained by way of legal process. This affidavit does not set forth every fact discerned throughout the investigation; rather, it contains a summary of the investigation to date and sets forth only those facts that I believe necessary to establish probable cause to search the items described.
5. The information contained throughout this affidavit is either known personally by me or other federal agents and task force officers of the FBI Louisville Field Office. The information contained herein is supported by my training, experience, and participation in this and other investigations, including receipt of information from reliable sources and review of documentation and records as more particularly described herein. I have set forth the facts that I believe are necessary to establish probable cause to conduct a search of the Samsung Galaxy S8+ model number SM-G955U, IMEI 355989084777502, telephone number 915-241-7423, a white Nema thumbdrive, a silver Seagate backup hard drive with serial number NA958ZHD, and a black Huawei tablet model GB2-W09, all currently located at the Federal Bureau of Investigation, 12401 Sycamore Station Place, Louisville, Kentucky 40299.

Offense Being Committed

6. Bryan Conley (CONLEY) is suspected of conducting the following offenses:
- a. Interstate Threatening Communications - Title 18, United States Code, Sections 875(a) and (c);
 - b. Kidnapping - Title 18, United States Code, Section 1201;
 - c. Ransom Money - Title 18, United States Code, Section 1202;
 - d. Selling or Buying of Children - Title 18, United States Code, Section 2251A;
 - e. Bank Fraud - Title 18, United States Code, Section 1344; and
 - f. Aggravated Identity Theft - Title 18, United States Code, Section 1028A.
 - g. Sex Trafficking of Children by Force, Fraud, or Coercion—Title 18, United States Code, Section 1591(a)(1);
 - h. Transportation of Minors - Title 18, United States Code, Section 2423(a) and (e);
 - i. Sexual Exploitation of Children (Production of Child Pornography)—Title 18, United States Code, Section 2251(a); and
 - j. Possession of Child Pornography—Title 18, United States Code, Section 2252A(a)(5)(B).

Probable Cause – Interstate Threatening Communications, Kidnapping, Ransom Money, and Selling or Buying of Children

7. On 29 January 2019 at approximately 10:00 AM CST, R.W. left her residence located at [REDACTED] TN. R.W. was believed to have left in her 2013 Toyota Prius.
8. On 29 January 2019 at approximately 1:45 PM CST, the Brentwood Police Department (BPD), located in Brentwood, Tennessee, received a call from M.W., who reported her daughter, R.W. had been kidnapped. Prior to calling BPD, M.W. received iMessages on her phone (615-838-4651) from R.W.'s phone number (615-636-5512).
9. CONLEY, using R.W.'s cellular telephone, claimed to have R.W., and subsequent messages directed M.W. to pay a ransom of \$20,000 to ensure R.W.'s release. CONLEY told M.W. and another family member to start driving towards Toledo, OH,

where M.W. would receive another call from CONLEY.

10. The following are examples of iMessages from 615-636-5512 to 615-838-4651:

- a. 615-636-5512: Pack everything you have worth value and head towards [REDACTED]
- b. 615-636-5512: One cop or police report she's done. Goal is close to 20,000 as you can
- c. 615-636-5512: She will be missing fingers and toes if you don't hurry le fuck up
- d. 615-636-5512: Ok I'm going to start removing toes if not answer
- e. 615-636-5512: You have ten minutes to be on road or I sell her ass
- f. 615-636-5512: One more lie she's dead
- g. 615-636-5512: If you argue again I'll message in 3 hours after she's been raped a lot
- h. 615-636-5512: She will be raped every hour aft
- i. 615-636-5512: In 1 hour they will start rapeing her ass
- j. 615-636-5512: You listen or I send you pic of her body
- k. 615-636-5512: Go to mall and wait for me to get money confirmed

11. CONLEY told M.W. that R.W. was being held at a residence in Toledo, OH, but later changed the location to Cincinnati, OH. CONLEY refused to allow M.W. to talk with R.W., but sent M.W. a proof of life photograph at approximately 6:42 PM CST. The proof of life photograph depicted R.W. inside an unknown vehicle with what appeared to be binding material around her mouth.

12. The ransom was ultimately negotiated down to \$400 and jewelry. CONLEY and the family of R.W. agreed the father of R.W. would start travelling towards Toledo, OH, to drop off the newly negotiated ransom.
13. BPD reviewed the proof of life photograph and determined that the interior of the vehicle was consistent with a 2013-2018 Ford Taurus SE.
14. At approximately 8:54 AM on 29 January 2019, an unidentified user attempted to log in to R.W.'s USAA bank account. The individual provided R.W.'s correct social security number but failed to correctly answer any of the security questions. At 11:31 AM there was a successful login to R.W.'s USAA bank account using R.W.'s telephone number.
15. USAA provided that the telephone number associated with the first attempted login which was 915-241-7423. An exigent request to Sprint Corporation revealed, 915-241-7423 was registered to CONLEY's wife at [REDACTED] 37042.
16. An NCIC query revealed Cynthia Conley had a gray 2014 Ford Taurus registered to her at [REDACTED] 37042. Open source searches revealed Cynthia Conley and CONLEY both had resided at [REDACTED] 37042.
17. On January 29, 2019 at approximately 12:02 AM CST, a witness at Walmart in Oak Grove, KY, advised a white male attempted to use R.W.'s credit card. After having the credit card denied, the unidentified white male left in a grey Ford Taurus. A review of surveillance video by law enforcement confirmed that a white male left in a grey Ford Taurus.
18. During the initial iMessages messages between CONLEY and M.W., CONLEY offered as proof he had R.W. by providing an address where R.W.'s Toyota Prius was left.

CONLEY told M.W. the Toyota Prius was parked at [REDACTED]

[REDACTED] On January 30, 2019, R. W.'s Toyota Prius was located at the Kroger located at 185 Adam Shephard Parkway, Shepherdsville, KY.

19. Emergency ping orders were obtained for CONLEY's wife and R.W.'s cellular telephones. Using the emergency ping order, it was revealed that CONLEY's wife's telephone and R.W.'s telephones were in close proximity throughout the duration of the pings.
20. At approximately 2:25 PM CST on 30 January 2019, while FBI Special Agents were located with the father of R.W., in the state of Tennessee, the father received a message from the phone of R.W. with the following text, "One more lie she's dead". Location information provided by the cellular carrier, Verizon Wireless, placed R.W.'s phone at the following coordinates in the state of Kentucky at 2:25 PM CST on 30 January 2019: 36.96229889 LAT/-87.454605 LONG. These coordinates plot in vicinity of Hopkinsville, Kentucky.
21. On 30 January 2019, at approximately 3:30 PM CST, the ransom payment was delivered to the Flying J Travel Center, located at 18750 Herndon Oak Grove Road, Oak Grove, KY 42262.
22. On 30 January 2019 at approximately 5:30 PM CST, FBI Louisville Division observed CONLEY retrieve the ransom payment from behind a dumpster at the Flying J Travel Center in Oak Grove, KY. CONLEY got into a Ford Taurus and left the Flying J Travel Center.

23. FBI Louisville Division followed CONLEY in the 2014 Ford Taurus to a Marathon Gas Station located at 802 South Main Street, Leitchfield, KY 42754. CONLEY was arrested at the Marathon Gas Station. Subsequent to the arrest of CONLEY, a search was performed. During the search of CONLEY's person, an Apple iPhone A1864, S/N DX3XH0XEJCLP, was found. CONLEY repeatedly asked FBI personnel to retrieve his telephone, a Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502, from the center console of the Ford Taurus.
24. Subsequent to the arrest of CONLEY, R.W. was found in the rear passenger seat of Ford Taurus driven by CONLEY.
25. The Ford Taurus, VIN 1FAHP2D89EG147917 and contents therein; the Apple iPhone A1864, S/N DX3XH0XEJCLP; and the Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502 were all seized and transported FBI Headquarters, located at 12401 Sycamore Station Place, Louisville, KY 40299 for storage.
26. Review of information related to the location of Apple servers indicates that there are no Apple servers located in Kentucky or Tennessee. Consultation with individuals familiar with Apple's iMessaging service reveals that iMessages travel from the sender's Devices, in this case R.W.'s iPhone, to the receiver's Devices, in this case M.W.'s iPhone, by way of Apple servers. iMessages sent from R.W.'s iPhone with telephone number 615-636-5512 to M.W.'s iPhone with telephone number 615-838-4651, between 29 January 2019 through 30 January 2019, traversed through Apple servers located outside of Kentucky, Tennessee, and Ohio.

Interview of R.W. on 30 January 2019

27. On 30 January 2019, the FBI conducted an interview of R.W. R.W. advised she met a person named "Lance" on the dating service "PlentyofFish". R.W. matched with "Lance" and began communicating with "Lance" about modeling. R.W. was told by "Lance" that "Lance's" agent, CONLEY, could assist R.W. with a modeling career. "Lance" asked to meet R.W. in Dover, TN on 26 January 2019, but R.W. was told to meet CONLEY at McDonalds to drive to the location chosen by "Lance".
28. During the course of meetings with CONLEY, R.W. and CONLEY discussed the modeling industry and CONLEY told R.W. that he was an undercover police officer. CONLEY further advised R.W. that "Lance" was also a police officer and they both discovered a plot that involved R.W. being targeted on PlentyOfFish to be kidnapped and sold into a sex trafficking ring.
29. On 27 January 2019, R.W. and CONLEY met at a hotel in Brentwood, TN where R.W. and CONLEY had consensual sexual intercourse. While at the hotel, CONLEY took nude photographs of R.W. R.W. was also gagged in a photograph taken by CONLEY. R.W. believed that the photographs were all related to being a model.
30. On 29 January 2019, at approximately 1:00 PM or 2:00 PM, R.W. met with CONLEY at a Kroger near Louisville, KY. R.W. left her car, a Toyota Prius, in the parking lot of Kroger and got into a car with CONLEY.
31. After arriving at a location with CONLEY, R.W. was bound and blindfolded for a photography shoot. R.W. said she continued to believe the bondage photographs were taken in relation to modeling. The bondage photographs were taken inside of CONLEY's car. Shortly after entering CONLEY's car, CONLEY took R.W.'s telephone and she was not allowed to use it.

32. After being bound and photographed, R.W. was convinced to remain out of sight of the public. R.W. was bound with a rope for several hours and covered with a blanket. R.W. was told that the police needed photographs of her bound. R.W. recalled seeing an Elizabethtown sign while being driven around. R.W. was unbound after reaching Elizabethtown. R.W. and CONLEY slept in CONLEY's car the night of 29 January 2019. R.W. was led to believe she was still in danger of being targeted by the sex trafficking ring and CONLEY was waiting to hear from CONLEY's Chief of Police. R.W. advised she was encouraged into having sexual intercourse again with CONLEY.
33. When stopping to retrieve the ransom money, CONLEY told R.W. that he was stopping to retrieve R.W.'s wallet. R.W. advised she did not know CONLEY was retrieving ransom money. R.W. further advised she was unaware of the ransom demands made to her family.
34. FBI asked if R.W. had met or spoken to "Lance" in person. She said she had only ever texted him with her phone. She said the messages were green meaning that the messages were not sent to an iPhone but to another type of phone.

Interview of Conley on 30 January 2019

35. On 30 January 2019, CONLEY was interviewed by the FBI. CONLEY advised he met R.W. through his friend "Lance". CONLEY met "Lance" approximately one year ago while living in Clarksville, TN. CONLEY stated "Lance" was a police officer.
36. On 28 January 2019, R.W. and "Lance" were supposed to meet at Land Between the Lakes (LBL), but R.W. did not know how to find the meet location, therefore CONLEY agreed to help R.W. get to the meet location. CONLEY stated that "Lance"

did not make it to the meet location during his first time with R.W. R.W. and CONLEY exchanged numbers and began communicating.

37. On 29 January 2019, R.W. and "Lance" were supposed to meet again, but "Lance" was arrested. R.W. met CONLEY at a Kroger in Shepherdsville, KY. CONLEY and R.W. stayed together in a hotel near Bowling Green, KY. After waking in the morning, on 30 January 2019, CONLEY and R.W. drove around talking. CONLEY drove R.W. back to the Land Between the Lakes area where they hung out. CONLEY received a call from "Lance" while at Land Between the Lakes. "Lance" told CONLEY that he was not going to meet R.W., therefore CONLEY could take R.W. home. "Lance" asked CONLEY to pick up a bag for him at the Flying J on exit 41A. CONLEY stated that "Lance" told CONLEY to remove cash from the bag and give some of the cash to R.W. CONLEY gave R.W. \$20 from the bag. CONLEY did not provide a last name of "Lance".

38. CONLEY stated that "Lance" informed him of a plot where R.W. may be kidnapped. CONLEY was told to drive R.W. around because of the possible danger.

39. CONLEY stated that he and R.W. had consensual sexual intercourse during their time together. R.W. stayed in the back seat of CONLEY's car during her entire stay with CONLEY.

40. CONLEY stated "Lance" had "freelancing" photography shoots that R.W. could do to earn money. CONLEY took photographs of R.W. bound and gagged as part of the "freelancing" photography shoots. CONLEY also stated that R.W. consented to CONLEY taking nude photographs of her. CONLEY stated that he only had possession of R.W.'s telephone when CONLEY took pictures of R.W.

41. CONLEY stated that he accidentally used R.W.'s credit card when seen on surveillance footage at Walmart on 29 January 2019.

Arrest of Conley on 30 January 2019

42. When CONLEY was arrested by the FBI on 30 January 2019, agents retrieved \$344.66 in cash from his person. Included in the \$344.66 were (17) \$20.00 bills. Prior to the loading and placement of the ransom bag, agents made a record of the serial numbers of the currency placed inside. Affiant compared the serial numbers previously recorded to the (17) \$20.00 bills taken from CONLEY's person. A total of (15) of the \$20.00 bills were exact matches between the currency loaded into the ransom bag and the currency taken from CONLEY's person. The other two \$20.00 bills were a suspected match as the last digit of the serial number on the currency loaded into the ransom bag could not be clearly seen.
43. While CONLEY was being booked at the FBI office in Louisville, KY, early in the morning of 31 January 2019, he spontaneously stated in the presence of the agents "this is what I get for helping out a buddy", indicating towards his handcuffs.

Interview of R.W. on 13 February 2019

44. On 13 February 2019, R.W. was interviewed again by the FBI about her interaction with CONLEY between 26 January 2019 and 30 January 2019. R.W. advised that the "Lance" profile on Plenty of Fish stated that "Lance" was living in the Nashville area and having a famous family name. R.W. explained that the photo of "Lance" showed a clean shaven, white male, who was "good looking". R.W. has only communicated with

"Lance" via messages sent over the Plenty of Fish application and through text messages on her phone. R.W. advised the first time she communicated with "Lance" was on 26 January 2019. R.W. has logged onto Plenty of Fish since the kidnapping but the "Lance" profile has been deleted.

45. R.W. stated that while talking to CONLEY, he told her that he was interested in assisting her in developing a modeling portfolio and that individuals could make money in the modeling business. CONLEY advised that modeling jobs including sexual content and/or nudity paid more, up to thousands of dollars. After meeting CONLEY on 26 January 2019 at the Land Between the Lakes area, R.W. got into the back seat of CONLEY's vehicle and he took photos of her on his cell phone, including sexually suggestive photos. Afterwards, R.W. returned home.

46. The next day, 27 January 2019, R.W. continued to communicate with CONLEY. CONLEY told R.W. that "Lance's" last name was Debeer or DeBeir. R.W. also sent CONLEY a photo of a coworker, "Missy", as "Missy" wanted to become involved in modeling with CONLEY as well. Later on 27 January 2019, CONLEY invited R.W. to the Extended Stay hotel where they discussed modeling and a modeling contract. While at the hotel, CONLEY took R.W.'s personal information to include her date of birth, address, phone numbers, and other personal details for the modeling contract.

47. CONLEY convinced R.W. to have sex with him that night for the purpose of developing her modeling portfolio. CONLEY also had R.W. drink an unknown substance from a red Yeti container. Afterwards, R.W. returned home.

48. On 28 January 2019, "Lance" contacted R.W. and asked to meet her at the Land Between the Lakes, with CONLEY being available to drive her to the location. R.W.

advised that again "Lance" was a "no show". During this meeting with CONLEY, R.W. advised she had placed her purse and backpack in his vehicle. Inside her backpack was her wallet, which contained various personal cards, including her USAA credit card, USAA debit card, social security card, and other affects. CONLEY advised R.W. that "Lance" had been arrested for a second time and could not make the meeting, so R.W. drove home, however R.W. forget to retrieve her purse and backpack from CONLEY's vehicle. While driving home, R.W. contacted CONLEY about her purse and backpack she left in his vehicle. CONLEY stated he had her purse and backpack and that she could come to a hotel near Fort Campbell to retrieve them. R.W. went home instead.

49. R.W. advised that on 29 January 2019, she had received a fraud alert from USAA regarding her USAA bank account. R.W. logged in to check on her account. R.W. advised she never gave CONLEY permission to use her identity or credit/bank cards. R.W. remembers that the alert stated there were two unauthorized transactions from Walmart and/or Mapco.
50. On 29 January 2019, CONLEY contacted R.W. advising there was a photo shoot in Kentucky and he instructed her to start driving towards Louisville. R.W. ran out of gas along the way and eventually met CONLEY at the Kroger in Shepherdsville around 1:30 pm. Upon meeting CONLEY at the Kroger, she entered his vehicle. CONLEY advised that the previously mentioned photo shoot was a bondage scene. Additionally, CONLEY gave R.W. a red Yeti container, the same as from the previous meeting, and directed her to drink the contents. After drinking the contents, R.W. became very sleepy. CONLEY stopped and tied R.W.'s hands, feet, and mid-section explaining it

was for the bondage scene. CONLEY also gagged R.W. and put a hood over her head. R.W. then fell asleep for about two hours and when she woke up, she had no idea where she and CONLEY were located.

51. R.W. advised that shortly after getting into CONLEY's vehicle on 29 January 2019, he took her iPhone from her, saying he wanted to get some video's from it. R.W. gave CONLEY her password and never saw her iPhone again.

52. At some point on 29 January 2019, R.W. told CONLEY that she wanted to be cut loose and return home. CONLEY eventually cut R.W. loose but would not take her to her car or home saying that R.W. had been targeted by a sex trafficking ring and it was not safe for her to return that night. Eventually CONLEY parked the vehicle in a secluded parking lot and got into the back seat with R.W. where he pressured her into have sexual intercourse with him.

53. On 30 January 2019, CONLEY began driving again and R.W. told him she needed to return to her car to go to work. R.W. advised that CONLEY kept "blowing her off". All day on 30 January 2019, CONLEY did not stop to let R.W. get anything to eat and CONLEY told her that he had made plans for her to stay with him another night and that she still couldn't go home. Later CONLEY was arrested.

54. R.W. advised that she never would have had sexual intercourse with CONLEY if she knew he was lying about being a modeling agent or undercover cop.

55. At the conclusion of the interview, the FBI returned some of R.W.'s personal property which had been in CONLEY's Ford Taurus. R.W. advised that several of the items in her purse had been given to her by CONLEY. Those items were new sharpies, Pilot G2

ink pens, a 2019 calendar, a black portfolio, and a black business card holder. These items are seen in image "Office items given to R.W" in Attachment C.

Search of Bryan Conley's Ford Taurus, VIN: 1FAHP2D89EG147917

56. The FBI executed a search warrant of CONLEY's Ford Taurus at the FBI Louisville Field Office. Search of the Ford Taurus revealed various items of evidentiary value as discussed below.
- A. The FBI recovered, from the rear driver's side passenger seat and floor, a multicolored blanket and a green and black bungee cord with duct tape on it as seen in image "ERT_0036". These items matched the items seen in a proof of life photo sent to R.W's mother. The proof of life photo showed R.W. bound and laying on a car's seat during her kidnapping. The photo sent to R.W.'s mother is seen in image "IMG_0409" in Attachment C.
 - B. The FBI recovered, from the front passenger seat, a small sandwich bag with various gold jewelry inside as seen in image "ERT_0041" in Attachment C. These items matched items which were provided to CONLEY as part of the ransom demand placed inside a McDonalds bag. FBI agents, directing R.W.'s parents at the time of the kidnapping, took a photo of these items in the event that the image of the gold jewelry needed to be sent to CONLEY. A photo of these gold jewelry items from R.W. mother's phone is seen in image "thumb_IMG_2072" in Attachment C.
 - C. The FBI recovered, from under the front driver's seat, a black 1911 BB gun loaded with a magazine containing BBs, as seen in image "ERT_0038" in Attachment C.

- D. The FBI recovered, from the front passenger seat, black zip ties, as seen in image “ERT_0043” in Attachment C.
- E. The FBI recovered, from the front passenger seat, a purple bottle of NyQuil ZzzQuil and a 36 oz red Yeti container, as seen in image “ERT_0042” in Attachment C. This matches the description of the container that CONLEY gave to R.W. containing an unknown substance which after drinking, caused her to become extremely drowsy and eventually fall asleep.
- F. The FBI recovered, from a back pack in the trunk, additional zip ties, a Trojan condom package, and a second black 1911 BB gun, as seen in image “ERT_0053” and “ERT_0055” in Attachment C.
- G. The FBI recovered a Walmart receipt dated 1/28/2019 at 5:02 PM showing the purchase of rope, cable ties, tap measure, and spring binders from the location of 1680 Fort Campbell Blvd, Clarksville, TN. Legal process to Walmart confirmed this transaction and included still shots of CONLEY at the register purchasing these items. In CONLEY’s hand appears to be the same rope that was used to bind R.W. as seen in image “IMG_0409” in Attachment C. The still shots can be seen in image “Still Shots” in Attachment C.
- H. The FBI recovered a notebook which contained R.W.’s phone number, email address, and physical dimensions as seen in image “Conley car SW notebook” in Attachment C.
- I. The FBI recovered a McDonalds bag, containing coffee creamers and other condiment items, which is believed to be the ransom bag that CONLEY retrieved

from the Tri-State International Trucks Inc. located at 200 J W Dickson Drive, Oak Grove, KY on 1/30/2019.

- J. The FBI recovered various Walgreens receipts for Vanilla Visa cards valued at \$200.00 each.
- K. The FBI recovered a note from the trunk of CONLEY's vehicle. The note stated the following:

Hello no cops
 Things you need
 Kalie + x husband + BBC 8+
 10K – all \$20.00
 Hotel
 Your phone # on your car
 Ill message soon
 Next time its your kids
 DP must nut
 In all holes 2x
 Each

Interview of B. CONLEY's ex-wife K.C. on 19 February 2019

57. On 19 February 2019 and 20 February 2019, affiant interviewed CONLEY's ex-wife, K.C. K.C. advised that she had been receiving threatening text messages from unknown numbers since the spring of 2018. Specifically one on 17 September 2018 which stated the following:

Hi,
 You seem to never return
 my messages so further
 action will be taken
 So I know where you live
 Work
 Kids dr and school.
 You fucked my husband
 and think you can get
 away with it?

You have 30 day to get
ahold of your x and
answer immediately when
I text back
If not your family across
the street and kids will
pay for it.
No cops.
10k
A BBC
Camera
And hotel is what you will need

These text messages can be seen in images "Screenshot 20180917-171211 Messages" and "Screenshot 20180917-171216 Messages" See Attachment C.

58. K.C. advised that in the past, CONLEY has broken into her email account in order to communication with her by sending emails to herself, which CONLEY knew would be delivered on K.C.'s cell phone. CONLEY has posed as her online and created various online accounts in her name, such as on Facebook and MySpace, using photos of her from when they were married. K.C. advised that after they had become divorced, she was cleaning out a vehicle they utilized and she found a thumb drive with file names which included "rape" and other violent acts. K.C. tried to provide the thumb drive to the local police but they advised her to destroy it instead.
59. K.C. indicated that she had another disturbing experience with CONLEY shortly after their divorce. During a visitation session with the children, CONLEY brought K.C. and the children food and drinks. K.C.'s daughter attempted to take a drink of K.C.'s beverage which CONLEY had brought her, and CONLEY disciplined the girl saying it was K.C.'s drink, not the child's. K.C. stated that during that session, CONLEY had been acting strange. Additionally, the drink CONLEY gave K.C. tasted "weird". Later

that night, K.C. and her daughter started experiencing vaginal bleeding which caused K.C. to take the daughter to the children's hospital for testing.

Correspondence with R.W. on 19 February 2019

60. On 19 February 2019, R.W. sent affiant an email advising that she had found some photos used for the Plenty of Fish "Lance" profile on the internet. Those images can be seen in "Lance from attachment1", "Lance from attachment2", and "Lance from attachment3" See Attachment C.

Search of R.W.'s Apple iPhone A1864, S/N DX3XH0XEJCLP, 615-636-5512

61. The FBI conducted a search of R.W.'s Apple iPhone at the FBI Louisville Field Office. Search of the Apple iPhone revealed various items of evidentiary value as discussed below:
- A. The outgoing call log showed (4) calls to phone number 915-777-3617 which had been deleted between 1/28/2019 and 1/29/2019.
 - B. Safari search terms on 1/26/2019 for "mcdonald's in dover tn", on 1/27/2019 for "debate jewelry", "des barres jewelry", "famous jewelry brands", and "famous".
 - C. Images on the iPhone which show four pictures of a white male that R.W. identified on 19 February 2019 as being "Lance" from the Plenty of Fish "Lance" profile. Of note, two were marked for deletion on 1/29/2019 at 1:32:55 PM (UTC-6) and 1:32:58 PM (UTC-6).
 - D. Image on the iPhone which shows R.W. bound and gagged which was marked for deletion on 1/29/2019 at 6:43:11 PM (UTC-6).

- E. Image on the iPhone which shows R.W.'s coworker, Missy Cox, which was marked for deletion on 1/29/2019 at 6:43:11 PM [(UTC-6).
- F. Images on the iPhone which show a nude buttocks and hands bound with tape behind a person's back. [believed to be R.W.]
- G. Image on the iPhone which was sent to CONLEY, at FBI direction, to communicate the ransom drop location at Tri-State International Trucks.
- H. Image on the iPhone which was sent to CONLEY, at FBI direction, of the ransom drop bag, a McDonald's carry out bag placed at the edge of a paved surface and grass.
- I. Two iMessage threads, one between R.W.'s phone and R.W.'s mother's phone and another between R.W.'s phone and R.W.'s father's phone. The discussion is related to the kidnapping and paying of a ransom. I should be noted that many of the iMessages do not appear on R.W.'s phone and are suspected of being deleted by CONLEY.
- J. One SMS thread between R.W.'s phone and R.W.'s mother's phone related to paying the kidnapping ransom.

Search of B. Conley's Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502

62. The FBI conducted a search of CONLEY's Samsung Galaxy at the Louisville Field Office. Search of the Samsung Galaxy revealed various items of evidentiary value as discussed below:

- A. Thousands of pornographic images and at least (2) images of child pornography.
Affiant requested an FBI Special Agent who is an expert in violent crimes against children (VCAC) to review the (2) images of child pornography for confirmation.
- B. Screenshots of text messages which include photos of a light skinned black male with his shirt unbuttoned and the text messages identifying himself as Eric De Beer and being number 1 in the diamond business. Additional photos inside the screenshots show close ups of a black male penis. On some screenshots an image of a Chase checking account (...4417) with Available Balance (\$9,999,991.51) is included.
- C. Images of the same white male whom R.W. identified as "Lance".
- D. Hundreds of pornographic video clips.
- E. An unsent text message to CONLEY's wife with the number "1008". This number is the passcode to R.W.'s iPhone.
- F. A contact in CONLEY's phone identified as "Lance" using phone number 915-777-3617.
- G. An active user account for TextMe, Inc. on CONLEY's phone with user name bhtown101b4414 and TextMe, Inc. phone number 213-630-0758.
- H. TextMe chat sessions between R.W. and the TextMe, Inc. user name bhtown101b4414 in which R.W. identifies this user as "Lance". The user tells R.W. on 1/26/2019 at 11:18 PM that R.W. can contact CONLEY at phone number 915-777-3617 to meet at the McDonalds in Dover.
- I. Four text messages between CONLEY and the "Lance" contact on 1/29/2019.
- J. Photos of R.W. nude.

K. Video of R.W. and CONLEY engaging in various forms of sexual intercourse.

L. Video of a young black female, wearing pink under garments, dancing. This video is dated 11/10/2018.

M. A contact in CONLEY's phone identified as "Eric" using telephone number 915-248-0746.

63. Legal processes was served on TextNow for the telephone number 915-777-3617. TextNow provided records which contained two files related to phone number 915-777-3617 and Username: loveiseasy2862. The information TextNow provided is as follows: 1) Telephone number: 915-777-3617 is associated with email: loveiseasy2862@gmail.com for the period of: 1/2/2019 02:09:41 UTC - 1/31/2019 04:59:59 UTC.

Information provided by Special Agent Jim Burkett with the Texas Department of Public Safety (DPS) – Criminal Investigative Division (CID)

64. Special Agent (SA) Jim Burkett, DPS CID, Tyler contacted affiant and advised he was investigating CONLEY for Human Trafficking of a 17-year-old juvenile. The following information was provided by SA Jim Burkett:
65. On 14 November 2018, SA Burkett was contacted and advised that a possible Human Trafficking victim was located at a juvenile facility in Grand Saline, Texas.
66. SA Burkett conducted an interview of the 17-year-old juvenile female, Victim #1, that provided credible and reliable information that SA Burkett has corroborated. SA Burkett learned that Victim # 1 lives in Pataskola, Ohio, and on approximately 8 November 2018, Victim # 1 went onto a dating website called "Plentyoffish.com"

(PoF). Victim # 1 quickly made contact with an individual named "Bryant", who claimed to be a mixed race male in his 20's from Memphis, TN. "Bryant" utilized a profile name of "loveiseasy" with some numbers after it.

67. After a while of texting on the PoF application, Victim # 1 began texting with "Bryant" through Victim # 1's cell phone. Victim # 1 stated that pictures later exchanged through text message showed "Bryant" to be tall and muscular, with caramel colored skin, and a tattoo on the left side of his chest.
68. The conversation began as relationship talk, but once sexual activity was mentioned by "Bryant", the conversation turned into "Bryant" saying that "Bryant" would pay for different sex acts. "Bryant" offered \$200,000 for anal sex with Victim #1, and even more money if Victim # 1 brought a friend. "Bryant" also promised a new cellular telephone, a car, a new I.D., cash, etc. The conversation continued via cell phone through 9 November 2018.
- On Saturday, 10 November 2018, "Bryant" claimed to have been in a vehicle accident, so "Bryant" sent a friend to pick Victim # 1 up and bring Victim # 1 to Tennessee for the weekend.
69. Somewhere between 10:00 AM and 11:00 AM, a white male driving a grey Ford Taurus, arrived at a park near Victim # 1's house where Victim # 1 had been instructed to meet. Victim # 1 described the W/M as approximately 5'7" - 5'8", with a shaved head, approximately 200 pounds, and "fat". Victim # 1 described a tattoo on his arm/shoulder as having some type of red banner across it. SA Burkett later identified the white male as CONLEY.

70. Victim # 1 stated that while riding with "Bryant" from Ohio to Kentucky, Victim # 1 continued to text with "Bryant" who told Victim # 1 that "Bryant" would pay Victim # 1 even more money if Victim #1 had sex with CONLEY. Victim # 1 stated that CONLEY had also been texting while driving. SA Burkett advised that he believed based on his follow up investigation that the PoF profile for "Bryant" was likely CONLEY's.

71. CONLEY and Victim # 1 departed towards Tennessee and drove for a few hours and eventually stopped at a Super 8 hotel located at 1420 E Crystal Drive, LaGrange, KY. Upon arrival, CONLEY went inside and booked room # 210 and provided the name "BRYAN CONLEY" and telephone number 915-241-7423. Victim # 1 subsequently engaged in sex with CONLEY on 2 separate occasions in the hotel room.

72. On 11 November 2018 between 11:00 AM and 1:00 PM, CONLEY and Victim # 1 departed LaGrange, KY and began driving towards Tennessee. At some point, Victim # 1 was texting with "Bryant". "Bryant" told Victim # 1 to get onto the PoF application and if Victim # 1 could find someone to have sex with her, and allow CONLEY to film it, "Bryant" would pay Victim # 1 more money. Victim # 1 was not sure of her exact location when that offer was made by "Bryant", but based on the driving time of approximately 5 hours to 6 hours, SA Burkett deduced the communication likely took place in the southern part of Kentucky.

73. Victim # 1 began trying to search in different geographic locations, but every male that replied declined except for one. SA Burkett later confirmed Victim #1's statements by later searching through the PoF messages with Victim # 1.

74. Eventually, a light skinned black male named "Ryan" agreed to have sex with Victim #1 while CONLEY filmed it. "Ryan" told Victim # 1 to go to Park Place Apartments in Jackson, TN. At this point, the two began texting on cell phones rather than over the Plenty of Fish application. Victim # 1 and "Ryan" exchanged nude photographs via cell phone. "Ryan" utilized the screen name of "RynoBSmoove96" on the Plenty of Fish application. At some point that afternoon/evening, Victim # 1 and CONLEY arrived at the apartments and met "Ryan", along with "Ryan's" brother. "Ryan's" brother then departed thereafter.
75. Victim # 1 and "Ryan" went into a bedroom and had oral, vaginal, and anal sex. CONLEY was in the room the entire time, and filmed Victim # 1 having sex with "Ryan", using his [CONLEY's] cell phone. After the sexual act was completed, CONLEY and Victim # 1 departed, and after another day, Victim #1 was abandoned in Texas without her cellular telephone.
76. SA Burkett conducted database searches and learned that CONLEY had been using telephone # 915-241-7423 as far back as 25 March 2018 and as recently as 30 January 2019.
77. There is probable cause to believe that CONLEY committed violations of 18 U.S.C. § 1591 (Sex trafficking of children by force, fraud, or coercion), 18 U.S.C. § 2423 (Transportation of minors), 18 U.S.C.A. § 2251 (Sexual Exploitation of Children), and 18 U.S.C.A. § 2252A(a)(5)(B) (Possession of Child Pornography).
78. It is believed that Conley's Samsung Galaxy S8+ SM-G955U, IMEI 355989084777502 may contain images of the victim. The United States intends to search for images of the minor victim Conley's phone and share the results with the Texas Department of

Public Safety. In addition, the FBI will search all digital information identified in Attachment A for evidence of all crimes listed in paragraph 77.

Probable Cause – Bank Fraud and Aggravated Identity Theft

79. During the course of R.W.'s kidnapping on 29 January 2019 and 30 January 2019, the FBI sought financial records for R.W. which could identify her potential use of credit cards or debit cards in order to locate where she had been prior to, and during the time, that she had been kidnapped. Additionally, the FBI sought to identify any associates she may have been with prior to the kidnapping. The FBI became aware that on 29 January 2019, shortly after midnight, R.W.'s Visa credit card, with number [REDACTED] 2402, had been declined twice by her bank at the Walmart Supercenter located at 14800 Fort Campbell Blvd., Oak Grove, KY 42262.
80. Video files/clips provided by Walmart identified CONLEY as attempting to use R.W.'s Visa credit card, with number [REDACTED] 2402, at the Walmart register during the time in question. Walmart provided video of CONLEY at the register and they also provided electronic records from the register for the attempted purchase, which consisted of CONLEY attempting to purchase (2) Vanilla Prepaid Mastercard gift cards for \$200/each.
81. Walmart provided the below business records of the electronic transaction details:
- ST# 03362 OP# 009044 TE# 44 TR# 07339
VMC 200 079936640140 206.88 0
VMC 200 079936640140 206.88 0
SUBTOTAL 413.76
TOTAL 413.76

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*****2402 I
EXPIRATION DATE 02/21
EMV TENDER DECLINED ONLINE
EMV TENDER DECLINED OFFLINE
CARD ISSUER DENIED THE CHARGE
VOIDED BANKCARD TRANSACTION
CMT 000000041376
Visa Credit
AID A0000000031010
ICC 0840 en
TVR 0080008000 CVMR 5E0300 ARC 51
AAC E77259247BF69B10
IAD D45CA965CD3A60903531
ATC 0022 UP# 611270BF TSI F800
TERMINAL # SC010024
01/29/19 00:01:27
*****2402 I
EXPIRATION DATE 02/21
EMV TENDER DECLINED ONLINE
EMV TENDER DECLINED OFFLINE
CARD ISSUER DENIED THE CHARGE
VOIDED BANKCARD TRANSACTION
CMT 000000041376
Visa Credit
AID A0000000031010
ICC 0840 en
TVR 0080008000 CVMR 5E0300 ARC 05
AAC D08E6C0C4EE1EF0B
IAD 6DA254DA80C2BA223035
ATC 0023 UP# 34AA648A TSI F800
TERMINAL # SC010024
01/29/19 00:02:23
CSM 00006236 ASHLEY JON
CSM 00009052 SELF CHECKOUT MGR#52 2
===== CSM ABORT TRANSACTION =====
# VOIDS= 0 ** AMT VOIDS= 0.00
===== CSM APPROVED ABORT =====
***** TRANSACTION CANCELED *****

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82. During interviews with R.W., the FBI became aware of R.W. leaving her purse and backpack in CONLEY's vehicle on 28 January 2019. Inside R.W.'s purse and

backpack were various personal identification documents and bank/credit cards.

CONLEY admitting to attempting to use R.W. credit card, explaining that it was an accident, however it seems unlikely that CONLEY would mistake R.W.'s card for his own considering R.W.'s personal and credit/bank cards were inside her purse.

83. The FBI also became aware of an unauthorized attempt to log into R.W.'s bank account on 29 January 2019 at approximately 8:54 AM. The individual who attempted to log into R.W.'s bank account used an unregistered phone number of 915-241-7423. Bank records showed that R.W. regularly logged into her account profile via an iPhone. The bank reported that the correct social security number was provided but the authentication questions were answered incorrectly by the user of 915-241-7423.
84. As previously documented, subscriber records for 915-241-7423 returned to Cynthia Conley, CONLEY's wife. Additionally, when CONLEY was arrested on 30 January 2019 by the FBI, this phone was found inside his vehicle.

COLLECTOR CHARACTERISTICS

85. Based upon Affiant's knowledge, experience, and training in child exploitation and child pornography investigations, and the training and experience of other law enforcement officers with whom I have had discussions, there are certain characteristics common to individuals involved in the receipt and collection of child pornography:
- a. Child pornography collectors may receive sexual gratification, stimulation, and satisfaction from contact with children; or from fantasies they may have viewing children engaged in sexual activity or in sexually suggestive poses, such as in person, in photographs, or other visual media; or from literature describing such activity.

b. Collectors of child pornography may collect sexually explicit or suggestive materials, in a variety of media, including photographs, magazines, motion pictures, videotapes, books, slides and/or drawings or other visual media. Child pornography collectors oftentimes use these materials for their own sexual arousal and gratification. Further, they may use these materials to lower the inhibitions of children they are attempting to seduce, to arouse the selected child partner, or to demonstrate the desired sexual acts.

c. Collectors of child pornography almost always possess and maintain their "hard copies" of child pornographic material, that is, their pictures, films, video tapes, magazines, negatives, photographs, correspondence, mailing lists, books, tape recordings, etc., in the privacy and security of their home or some other secure location. Child pornography collectors typically retain pictures, films, photographs, negatives, magazines, correspondence, books, tape recordings, mailing lists, child erotica,[1] and videotapes for many years.

d. Likewise, collectors of child pornography often maintain their collections that are in a digital or electronic format in a safe, secure and private environment, such as a computer and surrounding area. These collections are often maintained for several years and are kept close by, usually at the collector's residence, to enable the collector to view the collection, which is valued highly.

e. Collectors of child pornography also may correspond with and/or meet others to share information and materials; rarely destroy correspondence from other child pornography distributors/collectors; conceal such correspondence as they do their sexually explicit material; and often maintain lists of names, addresses, and telephone

numbers of individuals with whom they have been in contact and who share the same interests in child pornography.

f. Collectors of child pornography prefer not to be without their child pornography for any prolonged time period. This behavior has been documented by law enforcement officers involved in the investigation of child pornography throughout the world.

g. Based on the information conveyed in the probable cause section of this affidavit, the Affiant believes CONLEY has a sexual interest in children and child pornography.

Technical Terms

86. Based on my training and experience, I use the following technical terms to convey the following meanings:

- a. Wireless telephone: A wireless telephone (or mobile telephone, or cellular telephone) is a handheld wireless device used for voice and data communication through radio signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Wireless

telephones may also include global positioning system (“GPS”) technology for determining the location of the Devices.

- b. Tablet: A tablet is a mobile computer, typically larger than a phone yet smaller than a notebook, that is primarily operated by touching the screen. Tablets function as wireless communication device and can be used to access the Internet through cellular networks, “Wi-Fi” networks, or otherwise. Tablets typically contain programs called apps, which, like programs on a personal computer, perform different functions and save data associated with those functions. Apps can, for example, permit accessing the Web, sending and receiving e-mail, and participating in Internet social networks.
- c. Hardrive: An external hardrive can serve as backup copy of the data stored on your hard drive in a computer or laptop. Accordingly, Seagate External Hard Drives can store documents, images, data, system backups, photos, and project files.
- d. Thumbdrive: A thumb drive is a removable data storage Devices. Other common names for a flash drive include pendrive, thumb drive or simply USB. These devices have the ability to store a variety of digital files similar to those stored on a hard drive.
- e. IP Address: An Internet Protocol address (or simply “IP address”) is a unique numeric address used by computers on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet computer must be assigned an IP address so that Internet traffic sent from and directed to that

computer may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static—that is, long-term—IP addresses, while other computers have dynamic—that is, frequently changed—IP addresses.

- f. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices are communicating with each other are in the same state.

87. Based on my training, experience, and research, and from consulting the manufacturer's advertisements and product technical specifications available online at <https://www.samsung.com/global/galaxy/galaxy-s8/specs/>, I know that the Samsung Galaxy S8+ with model number SM-G955U, utilizing telephone number 915-241-7423, and having the IMEI 355989084777502; has a digital camera and video recording capabilities. It has the ability to connect to the internet via cellular signal and Wi-Fi. It has Bluetooth technology that allows it to connect to other devices to share information. The black Huawei tablet model GB2-W09e has similar capabilities as the phone and can be used to connect to the internet, send and receive messages, connect via Bluetooth, take photographs and videos. It can also be used as a digital storage device. The Samsung Galaxy, a white Nema thumbdrive; a silver Seagate backup hard drive with serial number NA958ZHD; and a black Huawei tablet model GB2-W09e have capabilities that allow it to serve as digital media storage devices. In my training and experience, examining data stored on these devices of this type can uncover,

among other things, evidence that reveals or suggests who possessed or used the Devices. In addition, these devices can also provide location information.

Electronic Storage and Forensic Analysis

88. Based on my knowledge, training, and experience, I know that electronic devices can store information for long periods of time. Similarly, things that have been viewed via the Internet are typically stored for some period of time on the devices. This information can sometimes be recovered with forensics tools.
89. There is probable cause to believe that things that were once stored on the devices may still be stored there, for at least the following reasons:
- a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person “deletes” a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.
 - b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In

addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.

- c. Wholly apart from user-generated files, computer storage media—in particular, computers' internal hard drives—contain electronic evidence of how a computer has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory "swap" or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

- d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or "cache."

90. Forensic evidence. As further described in Attachment B, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how the devices were used, the purpose of its use, who used it, and when. There is probable cause to believe that this forensic electronic evidence might be on the devices because:

- a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file).

Virtual memory paging systems can leave traces of information on the storage

medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage Devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created.

- b. Forensic evidence on the devices can also indicate who has used or controlled the devices. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence.
- c. A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.
- d. The process of identifying the exact electronically stored information on a storage medium that is necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

- e. Further, in finding evidence of how devices were used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.
- f. I know that when an individual uses electronic devices to obtain unauthorized access to a victim electronic devices over the Internet, the individual's electronic devices will generally serve both as an instrumentality for committing the crime, and also as a storage medium for evidence of the crime. The electronic devices is an instrumentality of the crime because it is used as a means of committing the criminal offense. The electronic devices is also likely to be a storage medium for evidence of crime. From my training and experience, I believe that an electronic devices used to commit a crime of this type may contain: data that is evidence of how the electronic devices were used; data that was sent or received; and other records that indicate the nature of the offense.

91. Nature of examination. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit the examination of the devices consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the devices to human inspection in order to determine whether it is evidence described by the warrant.

92. Manner of execution. Because this warrant seeks only permission to examine devices already in law enforcement's possession, the execution of this warrant does not involve

the physical intrusion onto a premises. Consequently, I submit there is reasonable cause for the Court to authorize execution of the warrant at any time in the day or night.

Conclusion

93. Based on the above information, affiant submits there is probable cause to believe that

CONLEY has committed the following offenses:

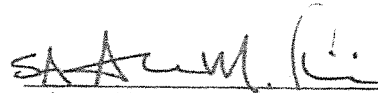
- A. Interstate Threatening Communications - Title 18, United States Code, Sections 875(a) and (c);
- B. Kidnapping - Title 18, United States Code, Section 1201;
- C. Ransom Money - Title 18, United States Code, Section 1202;
- D. Selling or Buying of Children - Title 18, United States Code, Section 2251A;
- E. Bank Fraud - Title 18, United States Code, Section 1344; and
- F. Aggravated Identity Theft - Title 18, United States Code, Section 1028A.
- G. Sex Trafficking of Children by Force, Fraud, or Coercion—Title 18, United States Code, Section 1591(a)(1);
- H. Transportation of Minors - Title 18, United States Code, Section 2423(a) and (e);
- I. Sexual Exploitation of Children (Production of Child Pornography)—Title 18, United States Code, Section 2251(a); and
- J. Possession of Child Pornography—Title 18, United States Code, Section 2252A(a)(5)(B).

94. CONLEY utilized a scheme where he created fraudulent dating profiles on the Plenty of Fish application. These profiles were designed by CONLEY to include stock internet photos of attractive men as profile pictures. Additionally, CONLEY developed a notional backstory of being a single and wealthy man, typically involved in the diamond business, looking for a relationship. CONLEY did this in order to lure women into conversations with him, which he eventually moved to face-to-face encounters. CONLEY utilized this scheme with R.W. calling himself “Lance” and with Victim #1 calling himself “Bryant”. Both times he claimed to have a last name ending in “Debeers” or “Debiers” and being famous as a rich individual involved in the diamond business.

95. After arranging meetings with both R.W. and Victim #1, CONLEY used various excuses why Lance and Bryant could not meet R.W. or Victim #1. Those excuses included car accidents, or getting arrested, or being an undercover police officer. Then CONLEY, acting as Lance and/or Bryant, offered to send a "friend" who would actually meet R.W. or Victim #1 on behalf of Lance and/or Bryant.
96. During CONLEY's time with R.W., he enticed her into believing he was a modeling agent and that he would take her to meet Lance on several occasions. Additionally, CONLEY lied to R.W. by telling her that she could make considerable amounts of money doing modeling sessions, to include sessions that were sexual. CONLEY provided bona fides to his story by taking R.W.'s personal and physical information for a modeling contract, texting cover text messages to himself from "Lance", and pretending to take photos and videos of R.W. for her modeling portfolio. CONLEY eventually kidnapped R.W. and made threatening interstate communications to her mother and father, to include demands to pay a ransom for R.W.'s safe return.
97. During CONLEY's time with Victim #1, he enticed her into believing that "Bryant" would pay her enormous amounts of money to have sex with himself ["Bryant"], to have sex with CONLEY, and to travel across state lines to have sex with a Plenty of Fish user named "Ryan". CONLEY then produced a video record of the sexually explicit conduct between Victim #1 and "Ryan". CONLEY eventually left Victim #1 at a gas station in Texas with no resources, no cellular telephone, and no other means to return to her home in Ohio.
98. Investigation by affiant revealed that CONLEY attempted to defraud a bank through the unauthorized use of R.W. credit card for the attempted purchase of Vanilla cards.

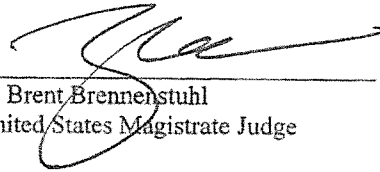
Additionally, CONLEY attempted to log in to R.W.'s USAA online profile using her social security number and identity fraudulently.

99. I submit that further evidence relating to this criminal conduct will be found in CONLEY's cell phone, thumb drive, backup hard drive, and tablet. I therefore respectfully request that this Court issue a search warrant for the a SAMSUNG GALAXY S8+ SM-G955U, IMEI 355989084777502, WHITE NEMA THUMBDRIVE, SILVER SEAGATE BACKUP HARD DRIVE SN: NA958ZHD, and BLACK HUAWEI TABLET MODEL GB2-W09, more particularly described in Attachment A, authorizing the seizure of the items described in Attachment B.
100. I submit that this affidavit supports probable cause for a search warrant authorizing the examination of the devices described in Attachment A to seek the items described in Attachment B.



Andrew Phillips
Special Agent
Federal Bureau of Investigation

Sworn to me and subscribed in my presence this 11 ^{JUNE} Day of ~~May~~ 2019.



H. Brent Brennenstuhl
United States Magistrate Judge

Communicated by telephone
in accordance with
Fed.R.Crim. P.4.1 and 41.

ATTACHMENT A

DESCRIPTION OF PROPERTY TO BE SEARCHED

The property to be searched is a Samsung Galaxy S8+ with model number SM-G955U, utilizing telephone number 915-241-7423, and having the IMEI 355989084777502; a white Nema thumbdrive; a silver Seagate backup hard drive with serial number NA958ZHD; and a black Huawei tablet model GB2-W09, all currently located at FBI Headquarters, 12401 Sycamore Station Place, Louisville, KY 40299.

This warrant authorizes the forensic examination of these devices for the purpose of identifying the electronically stored information described in Attachment B.

ATTACHMENT B

LIST OF ITEMS TO BE SEIZED

1. All records on the Devices described in Attachment A that relate to Bryan Douglas Conley and involve violations of the following:
 - a. Interstate Threatening Communications - Title 18, United States Code, Sections 875(a) and (c);
 - b. Kidnapping - Title 18, United States Code, Section 1201;
 - c. Ransom Money - Title 18, United States Code, Section 1202;
 - d. Selling or Buying of Children – Title 18, United States Code, Section 2251A;
 - e. Bank Fraud - Title 18, United States Code, Section 1344; and
 - f. Aggravated Identity Theft - Title 18, United States Code, Section 1028A.
 - g. Sex Trafficking of Children by Force, Fraud, or Coercion—Title 18, United States Code, Section 1591(a)(1);
 - h. Transportation of Minors – Title 18, United States Code, Section 2423(a) and (e);
 - i. Sexual Exploitation of Children (Production of Child Pornography)—Title 18, United States Code, Section 2251(a); and
 - j. Possession of Child Pornography—Title 18, United States Code, Section 2252A(a)(5)(B).
2. Including, but not limited to all, visual depictions, including still images, videos, films or other recordings relating to interstate threatening communications or extortion, kidnapping, ransom money and the events described in this warrant;
3. any information recording CONLEY's communications with R.W. and Victim#1;
4. all messages to and from R.W. and Victim #1, including but not limited to; Short Message Service (SMS), Multimedia Messaging Service (MMS), iMessages and messages to and from any application software;
5. any information recording CONLEY's communications with "Lance" or "Bryant";

6. any information recording CONLEY's communications with M.W. and any family members of R.W.;
7. Any and all documents, records emails, and internet history pertaining to interstate threatening communications.
8. Evidence of user attribution showing who used or owned the cellular phone during the time period the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, saved usernames and passwords, documents and browsing history;
9. Evidence of user location information;
10. All records on the devices described in Attachment A that relate to violations of Sex Trafficking of Children by Force, Fraud, or Coercion—Title 18, United States Code, Section 1591(a)(1); Transportation of Minors – Title 18, United States Code, Section 2423(a) and (e); Sexual Exploitation of Children (Production of Child Pornography)—Title 18, United States Code, Section 2251(a); and Possession of Child Pornography—Title 18, United States Code, Section 2252A(a)(5)(B), and Selling or Buying of Children – Title 18 U.S.C. Section 2251A, including but not limited to:
 - a. Evidence related to production, transmission, possession, transfer, of images portraying minors in a sexual activity; and
 - b. Any communications (Chat logs, emails, instant messages, text messages, SMS messages) with others about the production, transmission, possession, transfer, of images portraying minors in a sexual activity.

11. Evidence of user attribution showing who used or owned the devices at the time the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, saved usernames and passwords, documents, and browsing history;
12. Records evidencing the use of the Internet Protocol address to communicate with others about production, transmission, possession, transfer, of images portraying minors in a sexual activity, including:
 - a. records of Internet Protocol addresses used; and
 - b. records of Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked" or "favorite" web pages, search terms that the user entered into any Internet search engine, and records of user-typed web addresses.
 - c. As used above, the terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.
13. All records on the devices described in Attachment A that relate to violations of Bank Fraud - Title 18 U.S.C. Section 1344; Aggravated Identity Theft - Title 18 U.S.C. Section 1028A including but not limited to:
 - a. Any and all images of bank records, receipts, bank statements, checks, deposit tickets and items, cashier's checks, money orders by whatever form, bank drafts or notes, traveler's checks, wire transfer records, cash disbursement journals or ledgers, cash receipts journals or ledgers, safe

deposit box records and keys, storage facility records and keys, insurance records, records and receipts of expenditures of funds, tax returns, records or documents related to income, expenses, assets, liabilities, and any other documents recording or relating to the acquisition, conversion, movement, secreting, transfer, and disbursement of currency and currency equivalents, including any records identifying the source of the receipt and disposition of such funds.

- b. Any and all images of cashier's checks, traveler's checks, money orders, bank drafts, credit cards, or financial documents and items.
- c. Any and all images of documents, records, and objects relating to or issued by the United States government or state governments which bear identifying information.
- d. Any and all means of identification, social security numbers, dates of birth, access Devices numbers, credit card numbers and names of others.
- e. Any and all financial information identifying Victim #1 or R.W.

3. Records evidencing the use of the Internet Protocol address to communicate with, R.W. or Victim #1, including:

- a. records of Internet Protocol addresses used;
- b. records of Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked" or "favorite" web pages, search terms that the user entered into any Internet search engine, and records of user-typed web addresses.

As used above, the terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored,

including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.

This warrant authorizes a review of electronic storage media and electronically stored information seized or copied pursuant to this warrant in order to locate evidence, fruits, and instrumentalities described in this warrant. The review of this electronic data may be conducted by any government personnel assisting in the investigation, who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, and technical experts. Pursuant to this warrant, the FBI may deliver a complete copy of the seized or copied electronic data to the custody and control of attorneys for the government and their support staff for their independent review. Pursuant to this warrant, the FBI may deliver a complete copy of the seized or copied electronic data to the custody and control of Texas Department of Public Safety, and their support staff for their independent review.

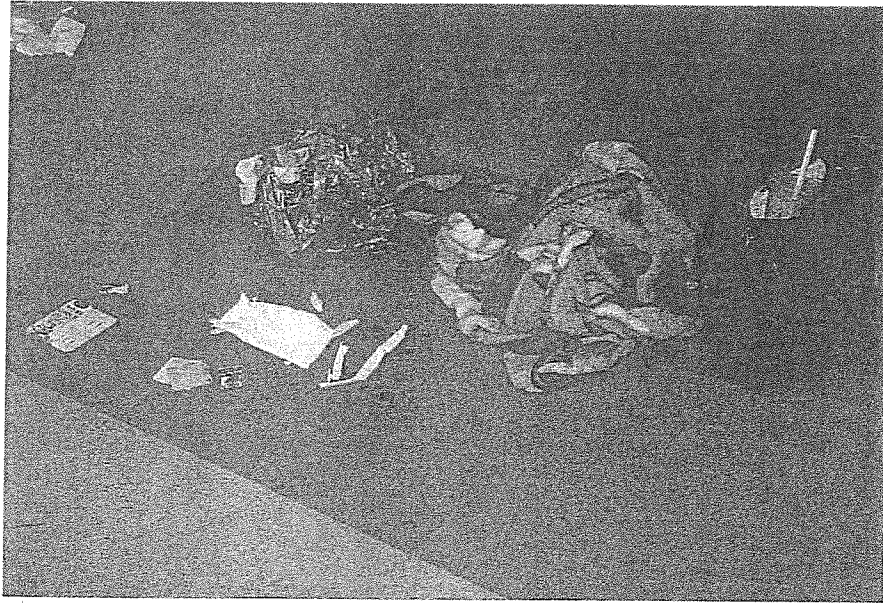
ATTACHMENT C

IMAGES, PHOTOGRAPHS, AND FILES REFERENCED IN SEARCH AFFIDAVIT

- 1) Office items given to R.W.



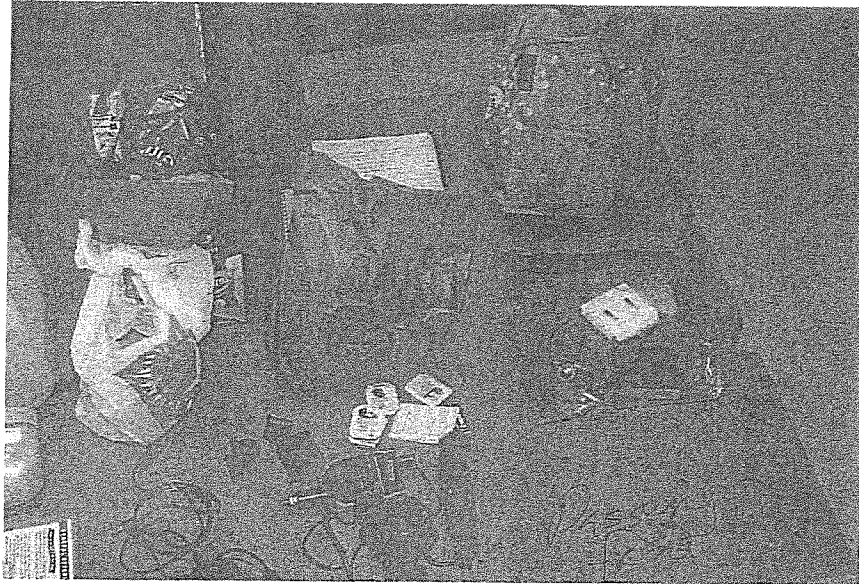
2) ERT_0036



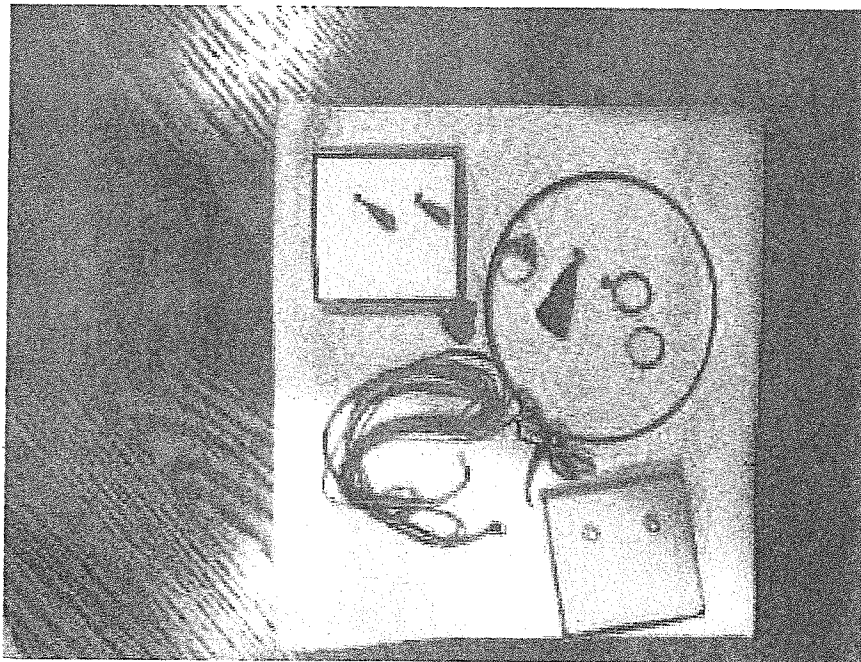
3) IMG_0409



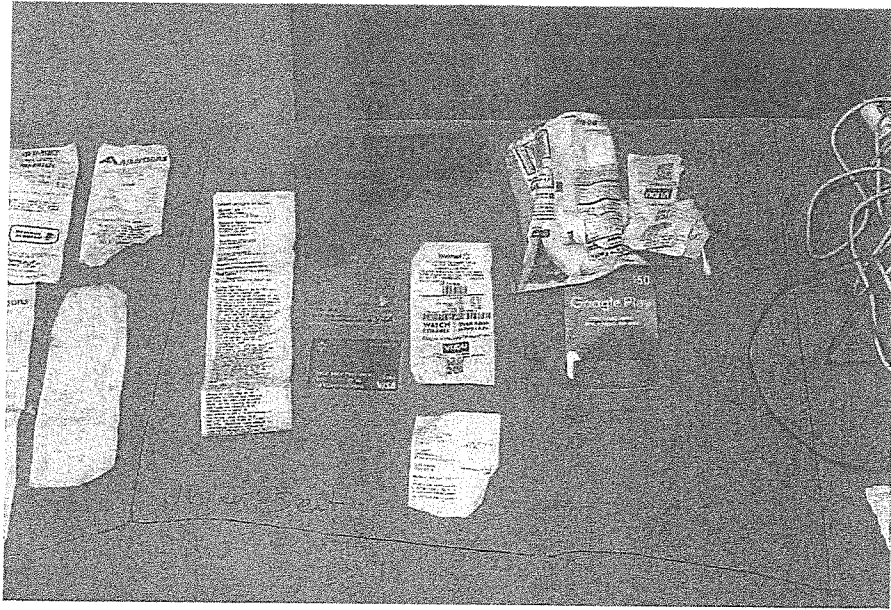
4) ERT_0041



5) Thumb_IMG_2072



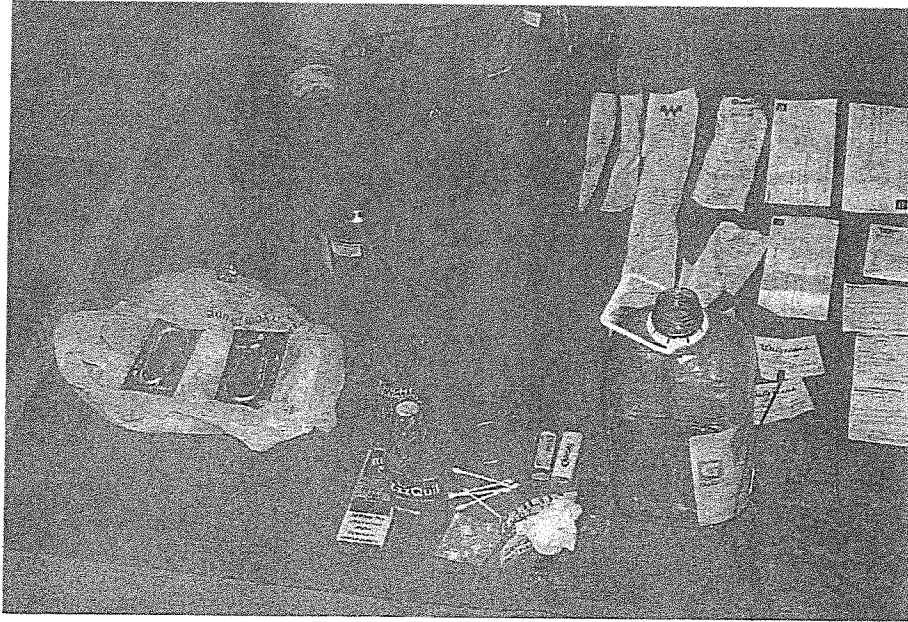
6) ERT_0038



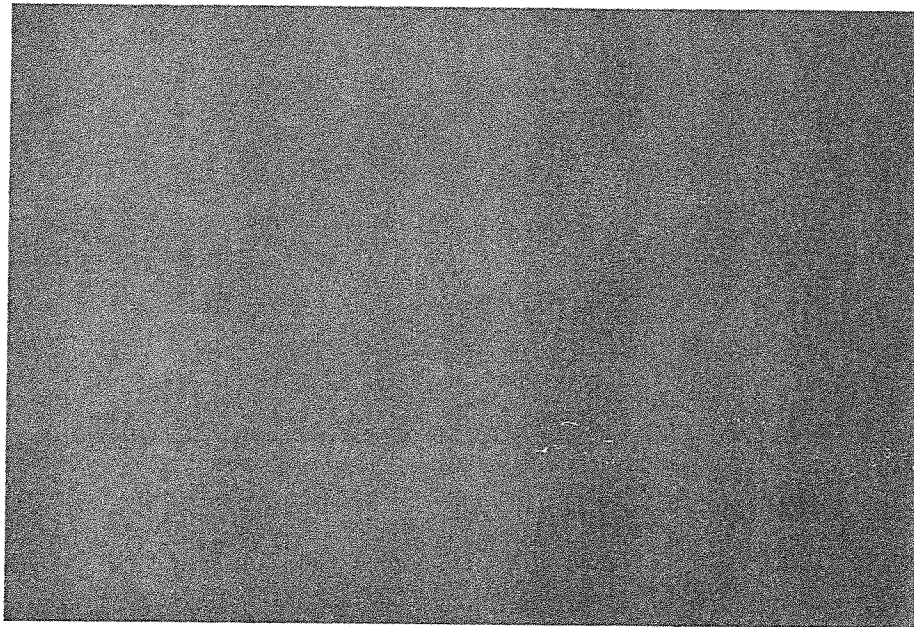
7) ERT_0043



8) ERT_0042



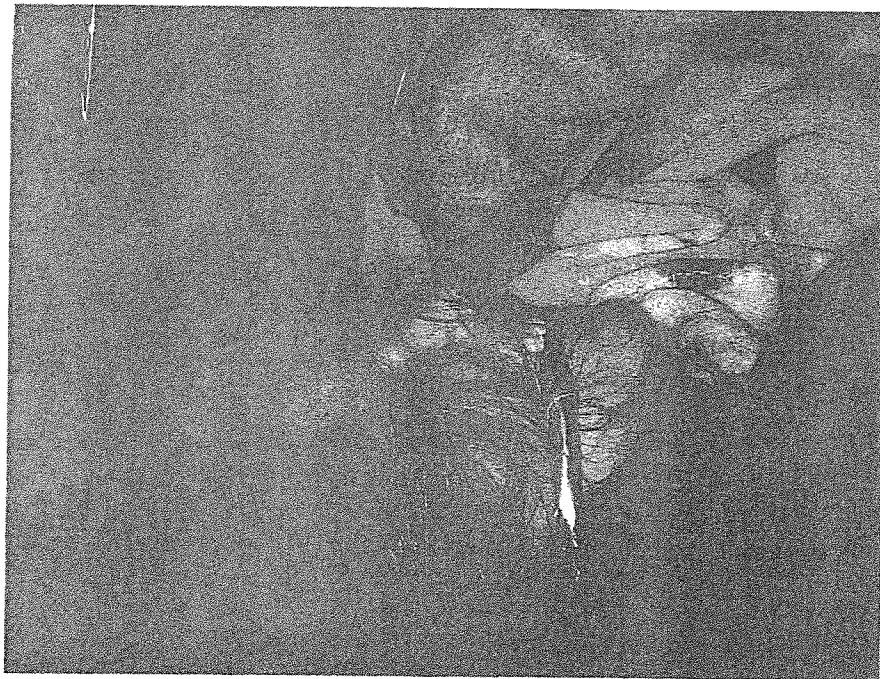
9) ERT_0053



10) ERT_0055



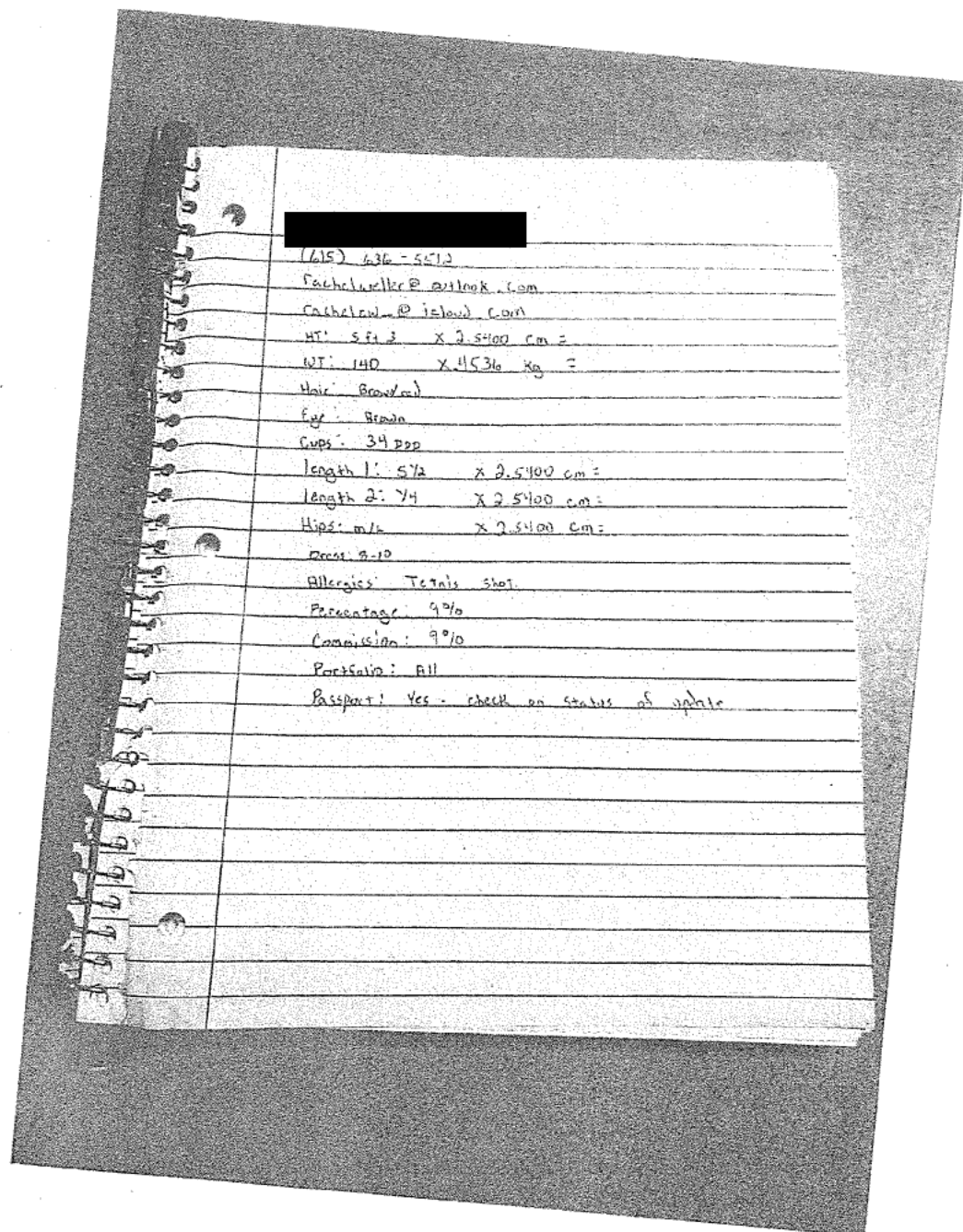
11) IMG_0409



12) Still Shots



13) Conley car SW notebook



14) Screenshot 20180917-171211 Messages

Screenshot 20180917-171216 Messages



6% 5:12 PM

< 4195045411



Hi.
You seem to never return
my messages so further
action will be taken

So I know where you live.
Work
Kids dr and school.
You fucked my husband
and think you can get
away with it?
You have 30 days to get
ahold of your x and
answer immediately when
I text back.
If not your family across
the street and kids will
pay for it.
No cops.
10k
A BBC
Camera
And hotel is what yo



VIEW ALL



Good luck tramp I'll find u

1:04 PM



Enter message





* LTE 6% 5:12 PM

< 4195045411



Mon, Sep 17, 2018 1:04 PM

So I know where you live.

Work

Kids dr and school.

You fucked my husband and think you can
get away with it?

You have 30 days to get ahold of your x and
answer immediately when I text back.

If not your family across the street and
kids will pay for it.

No cops.

10k

A BBC

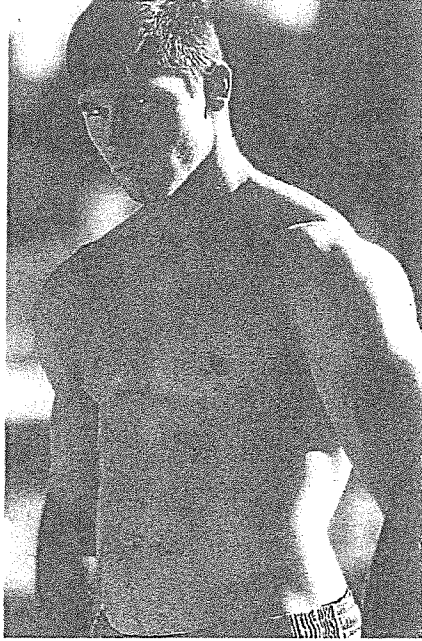
Camera

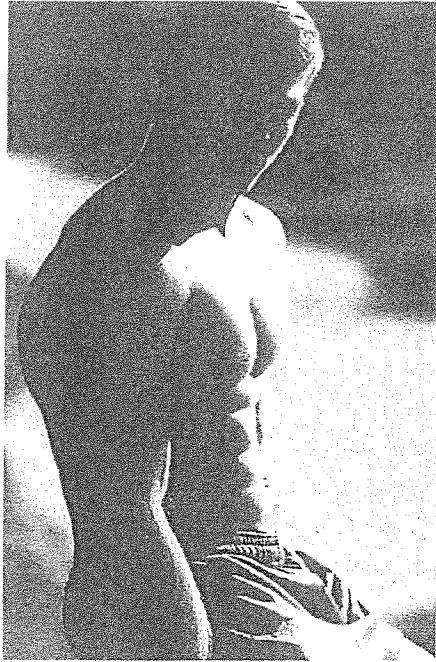
And hotel is what you will need.

15) Lance from attachment1

Lance from attachment2

Lance from attachment3





V
I
C
T
I
MOTHERS INVOLVEDPROPERTY

INCIDENT/INVESTIGATION REPORT

Apex Police Department

Case # 2018-001240

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type	Up to 3 types of activity

Assisting Officers

Suspect Hate / Bias Motivated: *None*

NARRATIVE

REPORTING OFFICER NARRATIVE

Apex Police Department

OCA
2018-001240
Date / Time Reported
Tue 04/24/2018 18:32

Victim

GLASS, ELIZABETH HEATHER

Offense

HARASSING PHONE CALLS

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Synopsis: I, Officer Corbett with the Apex Police Department, was on duty and in uniform operating my marked patrol car in the city of Apex on Tuesday, 04-24-2017. I responded to a report of Harassment at [REDACTED]

Investigation Notes: On Tuesday, 04-24-2017 at 1832 hours I responded to the Apex Police Department in reference to harassment. Upon arrival I spoke with the caller, Elizabeth glass, who stated she was having issues with a man she had just met. The male was identified only as Bryan Conley. Elizabeth stated that she had met Bryan on an online game and began speaking with him. In late March 2018 Elizabeth stated that her and Bryan met up and had sexual relations. Elizabeth learned that Bryan was in the military and lived in Tennessee.

After Bryan left North Carolina Elizabeth has been receiving numerous messages from Bryan. Elizabeth stated that none of the messages are threatening. Elizabeth stated that Bryan has been messaging her since March 25th. Elizabeth has told Bryan to stop messaging her but also has been messaging him back as well. Elizabeth also stated that Bryan was using different numbers to contact her. Elizabeth just wanted the incident reported, but no prosecution at this time.

I advised Elizabeth to contact her phone provider to block all contact from Bryan, as well as a no contact order.

Disposition: Closed.

Incident Report Additional Suspect List

Apex Police Department

OCA: 2018-001240

Additional Suspect List

Page 3

S U S P E C T	Name (Last, First, Middle) <i>Conley, Bryan</i>				Also Known As		Home Address <i>, TN</i>	
	Empl/Occu				Business Address			
	DOB. / Age		Race <i>W</i>	Sex <i>M</i>	Eth	Hgt	Wgt	Physical Char
	Scars, Marks, Tattoos, or other distinguishing features							
	Type of Weapon							
	Dir of Travel Mode of Travel							
Veh Yr/Make/Model			Style		Color	Lic/Lis	Vin	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

ORDER

This matter is before the Court on Defendant Bryan Douglas Conley's Motion in Limine to Exclude Certain Text Messages. [R. 28.] The Court being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. Defendant Conley's Motion in Limine to Exclude Certain Text Messages [R. 28] is **GRANTED**;

2. The government is hereby prohibited from introducing the text messages, or the substance of the text messages, allegedly sent by Mr. Conley to K.C. and Elizabeth Heather Glass; the text messages are hereby excluded from a trial in this matter.

This the ____ day of _____, 20__.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

**MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATED TO ECONO LODGE
THEFT**

Comes now Defendant Bryan Douglas Conley, by and through counsel, and hereby moves this Court to exclude any evidence related to a purported television theft from a Cave City, Kentucky, Econo Lodge in June 2019, because such evidence is irrelevant and unduly prejudicial.

In discovery, the government produced a police report from June 20, 2019, concerning a stolen television at the Econo Lodge, located at 870 Mammoth Cave Road in Cave City, Kentucky. (Exhibit 1, Cave City, Kentucky Police Report.) This report has been identified and Bates stamped as USA-002190 - USA-002192. (*See id.*)

The narrative of the police report indicates that an individual named Bryan Conley stayed in room 107 at the hotel from June 15, 2019 - June 20, 2019. (*See id.*) Upon the individual checking out of the hotel, hotel management noticed that a television, valued at \$380, was missing from the room. (*Id.*) Hotel management reported that they attempted to contact the individual at the provided telephone number, but “discovered” the number to be a false number; management also suspected that the individual’s address was also false. (*Id.*) According to the report, hotel management “observed Conley operating a gray 4 door sedan car.” (*Id.*)

Any evidence related to the Econo Lodge incident from June 2019, is irrelevant to this case. F.R.E. 401 states that “[e]vidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. The June 2019 Econo Lodge incident allegedly occurred sometime after Mr. Conley was arrested, arraigned, and released on pretrial supervision in February 2019. Whether the allegations contained in the police report occurred or not, they have no tendency to make a fact that is of consequence to determining this case more or less probable. Further, the allegations contained in the police report are of no consequence whatsoever in determining the outcome of this matter. Consequently, and pursuant to F.R.E. 402, any allegations contained in the police report, and any evidence associated with the Econo Lodge event from June 2019, is irrelevant and inadmissible.

Even if the Court determines the June 2019 Econo Lodge event is relevant, the events should be excluded by operation of F.R.E. 403 because any probative value the allegations might have are substantially outweighed by their unfair prejudice. The government would only introduce these evaluations to portray Mr. Conley as having definitively stolen the Econo Lodge television. There is no other reason to introduce evidence related to the June 2019 Econo Lodge event. The introduction of this evidence would confuse the jury and prejudice Mr. Conley by having a jury consider his guilt on a stolen television, which is wholly unrelated to the charges Mr. Conley faces in the instant matter.

Because the June 2019 Econo Lodge event is irrelevant, and because the Econo Lodge event’s probative value, if any, is substantially outweighed by unfair prejudice, the Court should exclude any and all evidence related to the alleged stolen television incident that purportedly occurred in June 2019 at the Econo Lodge in Cave City, Kentucky, and which is associated with documents produced in discovery and identified as USA-002190 - USA-002192.

Respectfully submitted,

/s/ Joshua F. Barnette

Joshua F. Barnette

STITES & HARBISON PLLC

400 West Main Street, Suite 1800

Louisville, KY 40202

859.226.2318

jbarnette@stites.com

Counsel for Bryan Douglas Conley

CERTIFICATE OF SERVICE

I hereby certify that on 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Joshua F. Barnette

Joshua F. Barnette

DRAFT KYIBRS REPORT

COMMONWEALTH OF KENTUCKY

AGENCY ORI/NAME 0050200 CAVE CITY POLICE DEPARTMENT										INCIDENT NUMBER KY CC-19-074																	
INCIDENT DATE/TIME 6/20/2019 07:30 TO 6/20/2019 08:00										EXACT / ESTIMATE ESTIMATE		REPORT DATE 6/20/2019		RECEIVED 18:40		DISPATCHED 18:40		ARRIVED 18:42		CLEARED 18:57							
REPORTED BY: ERIC, MEADOR														HOW REPORTED IN PERSON													
LICENSE/ID STATE:										LICENSE/ID NUMBER:																	
ADDRESS: 807 MAMMOTH CAVE RD														CITY: CAVE CITY						STATE: KY		ZIP CODE: 42127		PHONE NUMBER:			
EXACT LOCATION OF OFFENSE 870 MAMMOTH CAVE RD														ADDRESS 870 MAMMOTH CAVE RD						STATE: KY		ZIP CODE: 42127		SECTOR NO:			
CITY CAVE CITY														LATITUDE 37 DEG		LONGITUDE 8.088 MIN		LATITUDE 85 DEG		LONGITUDE 58.528 MIN							
COUNTY BARREN																											
SEQUENCE # 1 OF 1										LOCATION TYPE: HOTEL, MOTEL, ETC.										TYPE WEAPON/FORCE INVOLVED:				CRIMINAL ACTIVITY/GANG IFO			
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OFFENSE CODE: 23915				ASCF CODE: 0				KRS CODE: 514.030				CLASS: A		DEGREE: M		COUNTS: 1											
BIAS MOTIVATION: NONE (NO BIAS)										METHOD ENTRY:				NUMBER PREMISES: 0													
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KYIBRS REPORT

COMMONWEALTH OF KENTUCKY

DRAFT

VICTIM SEQUENCE		VICTIM NAME		PHONE	
1 of 1		ECONO LODGE			
LICENSE/ID STATE:		LICENSE/ID NUMBER:			
<input type="checkbox"/> Address Unknown		ADDRESS: 870 MAMMOTH CAVE RD		VICTIM TYPE: BUS	
CITY: CAVE CITY		STATE: KY	ZIP CODE: 42127	KY RESIDENT:	
DATE OF BIRTH	SSN	HEIGHT	WEIGHT	EYE COLOR	HAIR COLOR
GENDER		RACE		ETHNIC ORIGIN	PEACE OFFICER?
					<input type="checkbox"/> YES
NBR	OFFENDER #	VICTIM RELATIONSHIP TO OFFENDER: VICTIM WAS		NBR	OFFENDER #
1	1	OTHERWISE KNOWN			
VICTIM OF OFFENSE(S)		AGG ASSAULT/ HOMICIDE CIRC		ADDTL JUSTIFIABLE HOMICIDE CIRC	
23915					
LEOKA ASSIGNMENT		LEOKA ACTIVITY			
SUSPECT SEQ. #		NAME: CONLEY, BRYAN		ARRESTED?	ARREST DATE
1 of 1		ALIAS:		<input type="checkbox"/> YES	
LICENSE/ID STATE:		LICENSE/ID NUMBER:			
ADDRESS		EST AGE		PHONE:	KY RESIDENT:
CITY: CLARKSVILLE		STATE: TN	ZIP CODE: 37042	00	
SSN	SEX	RACE	ETHNIC ORIGIN	HEIGHT	WEIGHT
	MALE	WHITE	NOT HISPANIC		
ARRESTEE SEQ. #	MULTIPLE ARREST IND.	ARREST TYPE		RELATED CITATION NUMBERS	
of				1	4
ARRESTEE ARMED WITH				2	5
				3	6
SUSPECT SEQ. #		NAME:		ARRESTED?	ARREST DATE
of		ALIAS:		<input type="checkbox"/> YES	
LICENSE/ID STATE:		LICENSE/ID NUMBER:			
ADDRESS		DATE OF BIRTH:		PHONE:	KY RESIDENT:
CITY:		STATE:	ZIP CODE:		
SSN	SEX	RACE	ETHNIC ORIGIN	HEIGHT	WEIGHT
ARRESTEE SEQ. #	MULTIPLE ARREST IND.	ARREST TYPE		RELATED CITATION NUMBERS	
of				1	4
ARRESTEE ARMED WITH				2	5
				3	6
WITNESS/OTHER SEQ		WITNESS NAME		PHONE	
1 of 1		ERIC, MEADOR			
LICENSE/ID STATE:		LICENSE/ID NUMBER:			
ADDRESS: 807 MAMMOTH CAVE RD		DATE OF BIRTH:			
CITY: CAVE CITY		STATE: KY	ZIP CODE: 42127	SSN:	

DRAFT

KYIBRS REPORT: NARRATIVE
COMMONWEALTH OF KENTUCKY

SYNOPSIS:

Responded to the Econo Lodge in reference to a theft complaint.

INVESTIGATION:

June 20, 2019

On this date I responded to the Econo Lodge located at 870 Mammoth Cave Road in reference to a theft of a television.

Upon arrival, I made contact with the manager on duty, Eric Meador. Meador stated that he rented out a room to a Bryan Conley for the listed dates of, 6/15-6/18, then 6/19-6/20. Meador stated that Conley checked out of his room around 0730-0800 hours on 6/20. Meador stated that when they arrived at room 107, where Conley had been staying, he noticed the television was missing from the room. Meador stated that to remove the television from the wall you would need a special screw. I was shown the screw that anchors all the televisions and it was a square drive bit.

The television was an Insignia brand and was valued at \$380. Management couldn't locate a serial number for the television. A telephone number was left by Bryan Conley and management stated they attempted to call the number but it was discovered to be a false. It is suspected that the address Mr. Conley gave may be false as well.

Management stated they observed Conley operating a gray 4 door sedan car.

No other leads have been discovered at this time.

ATTACHMENTS:

METHODS OF OPERATION:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

ORDER

This matter is before the Court on Defendant Bryan Douglas Conley's Motion in Limine to Exclude Evidence Related to Econo Lodge Theft. [R. 29.] The Court being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. Defendant Conley's Motion in Limine to Exclude Evidence Related to Econo Lodge Theft [R. 29] is **GRANTED**; and

2. Any and all evidence related to the alleged theft of a television from the Econo Lodge in Cave City, Kentucky is hereby excluded from a trial in this matter.

This the ____ day of _____, 20__.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

DEFENDANT’S TRIAL MEMORANDUM

Comes now Defendant Bryan Douglas Conley, by and through counsel, and hereby submits this Trial Memorandum.

A. STATUTES INVOLVED AND ELEMENTS OF OFFENSES

Count 1 - Interstate Transportation for Prostitution or Other Criminal Purposes

Count 1 of the indictment charges Mr. Conley with interstate transportation for prostitution in violation of 18 U.S.C. §2421(a). The elements of that offense are as follows:

1. The Defendant knowingly transported Minor Female 1 (the individual identified in the indictment) in interstate or foreign commerce, or in any Territory or Possession of the United States; and
2. The Defendant intended Minor Female 1 to engage in, or attempt to engage in, prostitution or in any sexual activity for which any person can be charged with a criminal offense.

Count 2 – Transportation of Minors

Count 2 of the indictment charges Mr. Conley with transportation of a minor in violation of 18 U.S.C. §2423(a). The elements of that offense are as follows:

1. The Defendant knowingly transported Minor Female 1 (the individual identified in the indictment) in interstate or foreign commerce, or in any Territory or Possession of the United States; and
2. The Defendant intended Minor Female 1 to engage in, or attempt to engage in, prostitution or in any sexual activity for which any person can be charged with a criminal offense; and
3. Minor Female 1 had not attained the age of 18 years.

Count 3 – Kidnapping

Count 3 of the indictment charges Mr. Conley with kidnapping by inveigle and decoy in violation of 18 U.S.C. §1201(a). The elements of that offense are as follows:

1. The Defendant unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away Adult Female 1 (the individual identified in the indictment); and
2. The Defendant held Adult Female 1 for ransom, reward, or for any other reason; and
3. In committing or in furtherance of the offense,
 - (a) The Defendant willfully transported Adult Female 1 in interstate or foreign commerce; or
 - (b) The Defendant traveled in interstate or foreign commerce; or
 - (c) The Defendant used the mail; or

(d) The Defendant used a means, facility, or instrumentality of interstate or foreign commerce; and

4. The Defendant acted unlawfully, knowingly, and willfully.

Count 4 - Bank Fraud

Count 4 of the indictment charges Mr. Conley with bank fraud in violation of 18 U.S.C. §1344. The elements of that offense are as follows:

1. The Defendant knowingly executed or attempted to execute a scheme:

(a) to defraud a financial institution; or

(b) to obtain the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution by means of false or fraudulent pretenses, representations, or promises; and

2. The Defendant did so with the intent to defraud; and

3. The financial institution was insured by the FDIC.

Count 5 - Aggravated Identity Theft

Count 5 of the indictment charges Mr. Conley with aggravated identity theft in violation of 18 U.S.C. §1028A. The elements of that offense are as follows:

1. The Defendant knowingly transferred, possessed, or used;

2. without lawful authority;

3. a means of identification of another person;

4. during and in relation to the Bank Fraud charge alleged in Count 4 of the second superseding indictment.

Counts 6 - 15 - Interstate Threats

Counts 6 - 15 of the indictment charges Mr. Conley with interstate threats in violation of 18 U.S.C. §875(c). The elements of that offense are as follows:

1. The Defendant sent a message in interstate commerce; and
2. A reasonable observer would view the message as a threat; and
3. The Defendant intended the message as a threat.

B. STATEMENT OF UNDISPUTED AND DISPUTED FACTS

At this time, Defendant believes all facts are in dispute. Currently, Mr. Conley and the government have not agreed on any stipulated facts. If Mr. Conley and the government agree to any stipulated facts, Mr. Conley will notify the Court.

C. UNRESOLVED SUBSTANTIVE ISSUES OF LAW

Defendant is unaware of any such issue at this time. Defendant notes that he previously filed a motion to dismiss Count 2 of the indictment for prosecutorial vindictiveness. (*See* R. 19.) At the current time, that motion remains pending.

D. STATEMENT OF EVIDENTIARY ISSUES

Currently pending before the Court are the following motions: Mr. Conley's motion in limine to exclude certain psychological evaluations (R. 27); Mr. Conley's motion in limine to exclude certain text messages (R. 28); Mr. Conley's motion in limine to exclude evidence related to an Econo Lodge theft (R. 29). Additionally, the government has filed two notices of

intent to use 404(b) evidence, in which the notice also purports to be a motion in limine. (*See* R. 23; R. 24.) The deadline to file motions in limine is the same date the parties' trial memorandums are due. Thus, the government may still file motions in limine prior to the expiration of the deadline.

Previously, in W.D. Ky. 3:19-CR-19, the government responded to Mr. Conley's motion in limine to exclude certain psychological evaluations and, in doing so, the government stated it "anticipates having [Adult Female 1's] parents testify about her relationship challenges, anxiety, IQ, psychological and emotional developmental challenges," among other things. (*See* R. 151 in W.D. Ky. 3:19-CR-19.) Consequently, if that remains the government's response to the current motion in limine to exclude psychological evaluations, evidentiary issues are likely to arise over lay witnesses testifying as expert witnesses.

E. POTENTIAL TRIAL PROBLEMS

Potential trial problems may include issues surrounding *Jencks* material. Mr. Conley previously made a specific request for the advance production of any *Jencks* material. Because of the complexity of the case, the anticipated length of trial, and the volume of anticipated government witnesses, early production of *Jencks* material is essential to avoiding additional trial problems.

Additionally, the defense anticipates calling witnesses at trial. One such witness had limited availability due to previously scheduled international travel. Counsel for Mr. Conley has provided this information to the government, and the parties have agreed that, depending on how the trial is progressing, this witness may need to be called out of order.

F. PROPOSED JURY INSTRUCTIONS

Mr. Conley's proposed jury instructions are attached as Exhibit 1.

G. PROPOSED VOIR DIRE QUESTIONS

Mr. Conley's proposed voir dire questions are attached as Exhibit 2.

H. EXHIBIT LIST

Mr. Conley respectfully declines to outline his exhibit list or defensive strategy to the United States, but will discuss same with the Court *ex parte* and *in camera* if requested. Additionally, Mr. Conley identifies as potential exhibits any and all exhibits proposed by the United States, including, but not limited, to those exhibits identified by the government in W.D. Ky. 3:19-CR-19 (*see* R. 112; R. 113 in W.D. Ky. 3:19-CR-19), as well as all evidence produced in discovery.

Respectfully submitted,

/s/ Joshua F. Barnette

Joshua F. Barnette

STITES & HARBISON PLLC

400 West Main Street, Suite 1800

Louisville, KY 40202

859.226.2318

jbarnette@stites.com

Counsel for Bryan Douglas Conley

CERTIFICATE OF SERVICE

I hereby certify that on 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Joshua F. Barnette

Joshua F. Barnette

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

**DEFENDANT BRYAN DOUGLAS CONLEY'S
PROPOSED JURY INSTRUCTIONS**

Defendant, Bryan Douglas Conley, by counsel, hereby respectfully submits the following proposed jury instructions in anticipation of the jury trial in this matter, currently scheduled to begin on Monday, April 17, 2023, and for the Court's consideration. Mr. Conley expressly objects to any instructions which do not conform to the ones set forth below and reserve the right to supplement, withdraw, or modify these proposed instructions in response to any proposed instructions submitted by the United States, the evidence at trial, or other developments prior to trial. If the Court should find one sentence or paragraph in an instruction objectionable, Mr. Conley asks the Court to give the remaining parts of that instruction or to give Mr. Conley the opportunity to revise the instruction.

JURY INSTRUCTION NO. 1

INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crime that the Defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

Pattern Jury Instructions, Sixth Circuit, §1.01

JURY INSTRUCTION NO. 2

JUROR'S DUTIES

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you have heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the Defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

Pattern Jury Instructions, Sixth Circuit, §1.02

JURY INSTRUCTION NO. 3

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

As you know, the Defendant has pleaded not guilty to the crimes charged in the indictment. The indictment is not evidence of guilt. It is just the formal way the government tells the Defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, the Defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption and convinces you beyond a reasonable doubt that he is guilty.

This means that the Defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find the Defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

The government must prove every element of the crimes charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the Defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

Pattern Jury Instructions, Sixth Circuit, § 1.03

JURY INSTRUCTION NO. 4

EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agreed to; and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of those things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

Pattern Jury Instructions, Sixth Circuit, § 1.04

JURY INSTRUCTION NO. 5

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

Pattern Jury Instructions, Sixth Circuit, § 1.05

JURY INSTRUCTION NO. 6

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, some of you may have heard the terms “direct evidence” and “circumstantial evidence.”

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chance of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

Pattern Jury Instructions, Sixth Circuit, § 1.06

JURY INSTRUCTION NO. 7

CREDIBILITY OF WITNESSES

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

(D) Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

(E) Ask yourself if the witness had any relationship to the government or the Defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or slant the testimony in favor of one side or the other.

(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was

inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.

(G) And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think, it deserves.

Pattern Jury Instruction, Sixth Circuit, § 1.07

JURY INSTRUCTION NO. 8

CREDIBILITY OF WITNESSES - LAW ENFORCEMENT OFFICER

You have heard the testimony from a number of law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony deserves more or less consideration or greater or lesser weight than that of any other witness.

You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

S1 Modern Federal Jury Instructions - Criminal 4.18 (as amended by counsel)

JURY INSTRUCTION NO. 9

LAWYER'S OBJECTIONS

There is one more general subject that I want to talk to you about before I begin explaining the elements of the crimes charged.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against the other side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

Pattern Jury Instructions, Sixth Circuit, § 1.09

JURY INSTRUCTION NO. 10

SEPARATE CONSIDERATION

The Defendant has been charged with several crimes and I will explain those charges in more detail shortly. But before I do, I want to emphasize several things.

The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence against the Defendant on each charge, and to return a separate verdict for each one of them. For each one, you must decide whether the government has presented proof beyond a reasonable doubt that the Defendant is guilty of a particular charge.

Your decision on any one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

Pattern Jury Instructions, Sixth Circuit, § 2.01 (as modified by counsel)

JURY INSTRUCTION NO. 11

COUNT 1: INTERSTATE TRANSPORTATION FOR PROSTITUTION

18 U.S.C. § 2421(a)

Count 1 of the indictment charges the Defendant with transportation for prostitution and sexual activity. In order for you to find the Defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

1. The Defendant knowingly transported or attempted to transport the person identified in the indictment in interstate commerce; and
2. At the time of the transportation or attempted transportation, the Defendant intended that the person identified in the indictment would engage in prostitution or sexual activity for which the Defendant or any other person identified in the indictment could have been charged with a criminal offense.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the Defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the Defendant not guilty of that charge.

Pattern Criminal Jury Instructions, Seventh Circuit, 2421 (2012 edition with 2014 and 2018 changes)

JURY INSTRUCTION NO. 12

COUNT 2: TRANSPORTATION OF A MINOR

18 U.S.C. § 2423(a)

Count 2 of the indictment charges the Defendant with transportation of a minor with the intent to engage in criminal sexual activity. In order for you to find the Defendant guilty of this charge, the government must prove each of the three following elements beyond a reasonable doubt:

1. The Defendant knowingly transported the person identified in the indictment in interstate commerce; and
2. The person identified in the indictment was less than eighteen years of age at the time; and
3. The Defendant intended that the person identified in the indictment engage in prostitution or sexual activity which if it had occurred the Defendant or any other person identified in the indictment would have committed a criminal offense.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the Defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the Defendant not guilty of that charge.

Pattern Criminal Jury Instructions, Seventh Circuit, 2421 (2012 edition with 2014 and 2018 changes), as amended by counsel

JURY INSTRUCTION NO. 13

COUNT 3 - KIDNAPPING

18 U.S.C. § 1201(a)

Count 3 of the indictment charges the Defendant with kidnapping. It is a Federal crime for anyone to kidnap, seize, confine, inveigle, decoy, abduct, or carry away another person and then transport that person in interstate commerce.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

1. the Defendant knowingly and willfully kidnapped, seized, confined, inveigled, decoyed, abducted, or carried away the victim, Adult Female 1;
2. the Defendant kidnapped, seized, confined, inveigled, decoyed, abducted, carried away the victim with the intent to secure a ransom, reward, or other benefit and held the victim for that reason; and
3. the victim was willfully transported in interstate commerce while being kidnapped, seized, confined, inveigled, decoyed, abducted, or carried away, or the Defendant traveled in or used the mail or any means, facility, or instrumentality of interstate commerce in kidnapping, seizing, confining, inveigling, decoying, abducting, or carrying away the victim or in furtherance of kidnapping the victim.

To “kidnap” a person means to forcibly and unlawfully hold, keep, detain, and confine that person against the person’s will. Involuntariness or coercion related to taking and keeping the victim is an essential part of the crime.

To “inveigle” a person means to lure, or entice, or lead the person to do something by making false representations or promises, or using other deceitful means.

The government does not have to prove that the Defendant committed the kidnapping for ransom or any kind of personal financial gain. It only has to prove that the Defendant intended to gain some benefit from the kidnapping.

“Interstate commerce” means business or travel between one state and another.

A person is “transported in interstate commerce” if the person is moved from one state to another, in other words, if the person crosses a state line.

The government does not have to prove that the Defendant knew he took the victim across a state line. It only has to prove the Defendant was intentionally transporting the victim.

Pattern Criminal Jury Instructions, Eleventh Circuit, § O49, as amended by counsel

JURY INSTRUCTION NO. 14

COUNT 4: BANK FRAUD

18 U.S.C. § 1344

Count 4 of the indictment charges the defendant with bank fraud. For you to find the Defendant guilty of bank fraud, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

1. First, that the Defendant knowingly executed or attempted to execute a scheme to defraud, that is, a scheme to deceive a financial institution and to deprive it of something of value;
2. Second, that the scheme related to a material fact or included a material misrepresentation or concealment of a material fact;
3. Third, that the Defendant had the intent to deceive the financial institution and to deprive it of something of value;
4. Fourth, that the financial institution was federally insured.

Now I will give you more detailed instructions on some of these terms.

- A. A “scheme” means any deliberate plan or course of conduct.
- B. The term “misrepresentation or concealment” means any false statements or assertions that concern a material fact of the matter in question, that were either know to be untrue when made or made with reckless indifference to their truth. They include actual, direct false statements as well as half-truths and the knowing concealment of material facts.
- C. An act is done “knowingly” if it is done voluntarily, and not because of mistake or some other innocent reason.
- D. A misrepresentation or concealment of fact is material if it has a natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

It is not necessary that the government prove:

- a. that the financial institution suffered financial harm;
- b. that the defendant intended to cause the financial institution harm; or
- c. that the alleged scheme actually succeeded.

If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Pattern Jury Instructions, Sixth Circuit, § 10.03A

JURY INSTRUCTION NO. 15

COUNT 5 - AGGRAVATED IDENTITY THEFT

18 U.S.C. § 1028A

Count 5 of the indictment charges the Defendant with transferring, possessing, or using a means of identification of another person during and in relation to a felony violation listed in the statute.

For you to find the Defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

1. First: that the Defendant committed the felony violation charged in Count 4. The violation charged in Count 4 is a felony violation listed in the statute.

2. Second: that the defendant knowingly transferred, possessed, or used a means of identification of another person without lawful authority.

3. Third: that the Defendant knew the means of identification belonged to another person.

4. Fourth, that the transfer, possession, or use was during and in relation to the crime charged in Count 4.

Now I will give you more detailed instructions of some of these terms.

A. The term “means of identification” is identified as any name or number that may be used to identify a specific individual, including any name, social security number, date of birth, official government-issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, or telecommunication identifying information or access device.

B. The terms “transfer, possess, and use” are defined as follows:

(i) The term “transfer” includes selecting an identification document and placing or directing the placement of such document on an online location where it is available to others.

(ii) Next, I want to explain something about “possession.” To establish actual possession, the government must prove that the Defendant had direct, physical control over the means of identification, and knew that he had control of it. But understand that just being present where something is located does not equal possession. The government must prove that the Defendant had possession of the means of identification, and knew that he did, for you to find him guilty of this crime. This, of course, is all for you to decide.

(iii) The term “use” means active employment of the means of identification during and in relation to the crime charged in Count 4. “Active employment” includes activities such as displaying or bartering. “Use” also includes a person’s reference to a means of identification in his possession for the purpose of helping to commit the crime charged in Count 3.

C. An act is done “knowingly” if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

D. The phrase “without lawful authority” does not require that the Defendant stole the means of identification information from another person but includes the Defendant obtaining that information from another person with that person’s permission or consent.

E. The term “during and in relation to” requires that the means of identification have some purpose or effect with respect to the crime charged in Count 4; in other words, the means of identification must facilitate or further, or have the potential of facilitating or furthering the crime charged in Count 4, and its presence or involvement cannot be the result of accident or coincidence.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any of these elements, then you must find the defendant not guilty of this charge.

Pattern Jury Instructions, Sixth Circuit, § 15.04

Pattern Jury Instructions, Sixth Circuit, § 2.10A

JURY INSTRUCTION NO. 16

COUNTS 6-15: INTERSTATE THREATS

18 U.S.C. § 875(c)

Counts 6-15 of the indictment charges the Defendant with transmitting a communication containing a threat to kidnap or injure. For you to find the Defendant guilty of these offenses, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

1. First, the Defendant knowingly transmitted a communication; and
2. Second, the communication contained a threat to kidnap or injure a particular person;
and
3. Third, the Defendant transmitted the communication for the purpose of making a threat or knowing the communication would be viewed as a threat; and
4. Fourth, the communication was transmitted in interstate commerce.

Now I will give you more detailed instructions on some of these terms.

A. The word “threat” means a statement that is a serious expression of intent to inflict bodily harm on a particular person that a reasonable observer would perceive to be an authentic threat.

B. To transmit something in interstate commerce merely means to send it from a place in one state to a place in another state.

The government need not prove that the defendant intended to carry out the threat or was capable of carrying out the threat at the time it was made. The government need not prove that the defendant made the targeted individual feel threatened or that the targeted individual knew about the threat.

If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on the count you are considering. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of the count you are considering.

Pattern Jury Instructions, Sixth Circuit, § 1801, as amended by counsel

JURY INSTRUCTION NO. 17

DEFENDANT'S THEORY OF THE CASE

Defendant's theory of the case is that he is not guilty of the offenses charged in Counts 1 through 15 of the indictment.

JURY INSTRUCTION NO. 18

That concludes the part of my instructions explaining the elements of the crimes. Next, I will explain some rules that you must use in considering some of the testimony and evidence.

Pattern Jury Instructions, Sixth Circuit, § 7.01

JURY INSTRUCTION NO. 19

DEFENDANT’S FAILURE TO TESTIFY OR PRESENT EVIDENCE

A defendant has an absolute right not to testify or present evidence. The fact that he did not testify or present evidence cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the government to prove the Defendant guilty beyond a reasonable doubt. It is not up to the Defendant to prove that he is innocent.

Pattern Jury Instruction, Sixth Circuit, § 7.02A

JURY INSTRUCTION NO. 20

That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

The first thing you should do in the jury room is choose someone to be your foreperson. This person will help guide your discussions and will speak for you here in court.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk with the lawyers about what you have asked, so it may take some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone, including me, how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

Pattern Jury Instructions, Sixth Circuit, § 8.01

JURY INSTRUCTION NO. 21

EXPERIMENTS, RESEARCH, AND INVESTIGATION

Remember that you must make your decision based only on the evidence you saw and heard here in court.

During you deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as telephone, cell phone, smart phone, iPhone, Blackberry, or computer, the Internet, any Internet service, or any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube, Twitter, Instagram, WhatsApp, Snapchat or other similar electronic service, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate. Even using your smartphones, tablets, and computers -- and the news and social media apps on those devices -- may inadvertently expose you to certain notices, such as pop-ups or advertisements, that could influence your consideration of the matters you've heard about in this courtroom. You are only permitted to discuss this case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow

jurors or the parties in this case. This would unfairly and adversely impact the judicial process. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

Pattern Jury Instructions, Sixth Circuit, § 8.02

JURY INSTRUCTION NO. 22

UNANIMOUS VERDICT

Your verdict, whether it is guilty or not guilty, must be unanimous as to each count.

To find the Defendant guilty of a particular count, everyone one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find him not guilty of a particular count, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous as to each count.

Pattern Jury Instruction, Sixth Circuit, § 8.03

JURY INSTRUCTION NO. 23

DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that -- your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the Defendant guilty beyond a reasonable doubt.

Pattern Jury Instructions, Sixth Circuit, § 8.04

JURY INSTRUCTION NO. 24

VERDICT LIMITED TO CHARGES AGAINST THE DEFENDANT

Remember that the Defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved the crimes charged.

Pattern Jury Instructions, Sixth Circuit, § 8.08

JURY INSTRUCTION NO. 25

COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in anyway. You decide for yourselves if the government has proved the Defendant guilty beyond a reasonable doubt.

Pattern Jury Instructions, Sixth Circuit, § 8.09

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

**DEFENDANT BRYAN DOUGLAS CONLEY'S
PROPOSED VOIR DIRE QUESTIONS**

Defendant, Bryan Douglas Conley, by counsel, hereby respectfully submits the following proposed voir dire questions in anticipation of the jury trial in this matter, currently scheduled to begin on Monday, April 17, 2023, and request that the same be asked of the venire panel. Mr. Conley reserves the right to supplement these proposed voir dire questions, delete questions or areas of inquiry from these voir dire questions, or otherwise modify these proposed voir dire questions.

1. The defendant in this case is Bryan Douglas Conley. Do you personally know this gentleman? Do you know any of his relatives?
2. Does anyone know the judge or attorneys involved in this matter?
3. Has anyone ever served on a jury before, including a grand jury? Criminal or civil? What was the result? Were you the foreperson?
4. Is there anything about your experience as a juror that would make you not want to serve as a juror again or that affected your opinion about the judicial process?

5. Has anyone had any prior contact with the criminal justice system, whether as a defendant, victim, witness, or other participant (such as law enforcement member or court employee)? What was your experience? What happened?

6. Has anyone had any prior contact with the legal system, such as in civil litigation, divorce actions, workers' compensation, and in what context (such as plaintiff, defendant, witness)? What was your experience? What happened?

7. Have any of you, or any of your close friends or relatives, ever been employed by or otherwise affiliated with any federal, state, or local law enforcement agencies or organizations, i.e. Federal Bureau of Investigation, Kentucky State Police, Louisville Metro Police Department? If so, what agency and in what capacity?

8. Have any of you, or any of your close friends or relatives, ever worked for the federal government or for a state or local government? If so, what job(s) did you, your relative, or your close friend have (now or in the past)?

9. Does anyone have any family members or close friends who have been arrested, tried, and/or incarcerated?

10. Have any of you, or any of your close friends or relatives, ever participated in online dating? Have any of you, or any of your close friends or relatives, dated anyone you or they met on a dating website or dating application? If so, would you consider the experience a positive experience or a negative experience?

11. Does anyone have any religious or philosophical beliefs that would make it difficult for you to be a juror?

12. This trial is expected to last more than a week. Would serving on this jury create a hardship for you?

13. Does anyone have any medical problems that might affect your jury service?

14. Does anyone have any problem with hearing, eyesight, or any other physical difficulty which might make it difficult for you to hear or see the evidence presented at trial?

15. The government may call witnesses who are federal, state, or local law enforcement. Does the fact that any individual is employed as a law enforcement officer for the United States Government or another state or local government cause you to believe that, based solely on their employment, they are more credible or more believable than other witnesses or that their testimony should or will be given greater weight than the testimony of the witnesses who are not law enforcement?

16. Does anyone watch television shows that deal with criminal justice issues, e.g. *C.S.I.* or *Law and Order*?

17. Is anyone a member of any groups which speak out on criminal justice issues, such as Mothers Against Drunk Driving or any other advocacy group?

18. Has anyone heard or read anything about this case? What have you heard or read?

19. Every person accused of a crime in our society is presumed to be innocent. In this case, Mr. Conley is presumed to be innocent of all the charges against him. You must presume him innocent unless at the end of the trial the government has proved him guilty beyond a reasonable doubt. The burden of proof is on the government to prove him guilty of each element of each offense beyond a reasonable doubt. The burden never shifts throughout the trial. The law does not require Mr. Conley to produce any evidence at all because no defendant has to prove his innocence. Consequently, Mr. Conley has the absolute constitutional right not to take the stand and testify as a witness. He need not offer any evidence, and may, in fact, stand mute, because he is presumed innocent.

-- Do any of you believe that if a defendant does not testify, he or she must be guilty or is more likely to be guilty than one who does?

-- Are each of you willing to hold the government to its burden of proof and to presume Mr. Conley innocent unless and until the government satisfies you beyond a reasonable doubt of his guilt of each element of each offense with which he is charged?

-- Is there anyone who, right at this moment, could not stand up and say that you do in fact presume Mr. Conley innocent of all charges against him?

-- Does anyone here think that Mr. Conley should testify or present evidence on his own behalf before you could find him not guilty?

20. How many of you feel that the standard of proof in a criminal case should be something other than beyond a reasonable doubt?

21. Do any of you feel that just because someone is charged with a crime that he must have done something wrong?

22. As you have been told, Mr. Conley is charged by indictment. As the judge will tell you, the indictment is not evidence. It is merely the formal manner of informing the accused of the charges against him.

-- Do any of you feel that the United States Attorney's Office would not bring a case against a defendant unless the defendant is guilty?

-- Do any of you feel that because a person has been indicted by the grand jury that more than likely the person is guilty?

23. If Mr. Conley does not present any evidence or call any witnesses, will any of you have a difficult time accepting that and, instead, hold that against him when making your decision?

24. If Mr. Conley chooses to testify, are any of you going to be less likely to believe him because he is charged in a federal indictment?

25. If Mr. Conley chooses to testify, will each of you be able to evaluate his believability and creditability the same as you will with other witnesses?

26. As with any criminal case, the government will present its case first, then the Defendant will have an opportunity to present his case. Will each of you withhold judgment and keep an open mind on this matter until all the evidence has been presented by both sides?

27. The Defendant has been charged with interstate transportation for prostitution. Have any of you, or your family members or close friends, ever been involved with prostitution?

28. Do any of you have strong feelings regarding prostitution that would make it difficult to be fair and impartial in considering the evidence in this case?

29. Will you be able to render a decision based upon the evidence alone or is there something from your personal experiences involving prostitution -- either individually, or a family member, or a close friend -- that would prevent you from being impartial when considering the evidence in this case?

30. The Defendant has been charged with transporting a minor with the intent that the minor engage in prostitution or sexual activity for which someone could be held criminally liable. Will each of you be able to render a decision based only upon the evidence alone? Or is there something from your personal experiences or biases that would prevent you from being impartial when considering the evidence in the case?

31. The Defendant has been charged with kidnapping. Have any of you, or your family members or close friends, ever been kidnapped?

32. Will you be able to render a decision based upon the evidence alone? Or is there something from your personal experiences involving kidnapping -- either individually, or a family member, or a close friend -- that would prevent you from being impartial when considering the evidence in this case?

33. The Defendant has been charged with bank fraud. Have you, or your family members or close friends, ever been the victim of fraud?

34. Will you be able to render a decision based upon the evidence alone? Or is there something from your personal experiences involving fraud -- either individually, or a family member, or a close friend -- that would prevent you from being impartial when considering the evidence in this case?

35. The Defendant is charged with aggravated identity theft. Have you, or your family members or close friends ever been the victim of identity theft?

36. Do any of you have strong feelings regarding identity theft that would make it difficult to be fair and impartial in considering the evidence in this case?

37. Will you be able to render a decision based upon the evidence alone? Or is there something from your personal experiences involving identity theft -- either individually, or a family member, or a close friend -- that would prevent you from being impartial when considering the evidence in this case?

38. The Defendant has been charged with sending threatening text messages. Have you or your family members or close friends ever been the recipient of threatening text messages?

39. Will you be able to render a decision based upon the evidence alone? Or is there something from your personal experiences involving threatening text messages -- either individually, or a family member, or a close friend -- that would prevent you from being impartial when considering the evidence in this case?

40. This case contains sexually explicit language that describes both body parts and sexual activity. Would your exposure to such language make it difficult for you to be fair and impartial in this case? Would your answer change if one of the participants was a minor?

41. This case contains graphic and violent language and pictures. Would your exposure to such material make it difficult for you to be fair and impartial in this case? Would your answer change if one of the participants was a minor?

42. Is there anything about the nature of the case that would make it harder for any of you to presume Mr. Conley innocent at this point? Is there anything about the nature of the case that would result in any of you not holding the government to its burden of proving each element of each offense beyond a reasonable doubt?

43. Do any of you believe that you must hear from the Defendant during the trial in order to find him not guilty?

44. In order to reach a verdict in this case, all jurors must agree to the same result. In your deliberations you should consider the view of, and any points made by, your fellow jurors. But, in the final analysis, each of you must follow your own conscience and be personally satisfied with your individual verdict.

-- Do any of you feel that you would be uncomfortable speaking out and sharing your views with fellow jurors?

-- Would any of you be tempted to change your verdict simply because most of the other jurors, or even all of the other jurors, disagreed with you?

45. Can you think of any reasons, including or in addition to any of those already mentioned, that causes any of you to wish to be excused from service in this case?

46. Finally, as a juror, it would be your sworn duty to be fair and impartial. Are each of you willing to be as fair and impartial to Mr. Conley as you would want jurors to be if they were sitting where you are and you were on trial?

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY

DEFENDANT

UNITED STATES PRETRIAL MEMORANDUM
ELECTRONICALLY FILED

The United States submits this pretrial memorandum for the trial currently scheduled in Louisville for April 17, 2023.

A. STATUTES INVOLVED AND ELEMENTS OF OFFENSES.

Interstate Transportation for Prostitution (18 U.S.C. 2421(a)) (Count 1)

1. The Defendant knowingly transported, or attempted to do so, any individual in interstate or foreign commerce in any Territory or Possession of the United States; and
2. The purpose of the travel was for the individual to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense.

Transportation of Minors (18 U.S.C. § 2423(a)) (Count 2)

1. The Defendant knowingly transported Minor female 1 in interstate commerce
2. At the time of the transportation, Minor Female 1 was less than 18 years old
3. At the time of the transportation, Defendant intended that Minor Female 1 would engage in prostitution or other unlawful sexual activity.

Kidnapping by decoy and inveigle (18 U.S.C. § 1201(a)(1)) (Count 3)

1. The defendant seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away;
2. The defendant held R.W. for ransom, reward, or for any other reason;
3. In committing or in furtherance of the commission of the offense:
 - a. R.W. was transported in interstate or foreign commerce,

- b. The defendant traveled in interstate or foreign commerce,
 - c. The defendant used the mail; or
 - d. The defendant used a means, facility, or instrumentality of interstate or foreign commerce; and
4. The defendant acted unlawfully, knowingly, and willfully.

Bank Fraud (18 U.S.C. § 1344) (Count 4)

- 1. That the defendant knowingly executed or attempted to execute a scheme or artifice to defraud a financial institution or knowingly executed a scheme to obtain the money, funds or other property owned by or under the control of a financial institution, by means of materially false or fraudulent pretenses, representations or promises as detailed in Count 3 of the indictment;
- 2. That the defendant did so with the intent to defraud a financial institution; and
- 3. That the financial institution was insured by the Federal Deposit Insurance Corporation or National Credit Union Administration (NCUA).

Aggravated Identity Theft (18 U.S.C. § 1028A) (Count 6)

- 1. Knowingly transferred, possessed, or used
- 2. Without lawful authority
- 3. Means of identification of another person
- 4. During and in relation to a violation of Bank Fraud in Count 3.

Interstate Ransom Threat (18 U.S.C. § 875(c)) (Count 6-15)

- 1. The Defendant knowingly sent a message in interstate or foreign commerce; and
- 2. Containing a true threat to kidnap any person or to injure the person of another.

B. STATEMENT OF UNDISPUTED AND DISPUTED FACTS

Beginning in November 2018, the Defendant, Bryan Douglas Conley, used aliases and an online dating application, PlentyOfFish (POF), to lure and mislead victims to travel with him across state lines for the purpose of engaging in illegal sexual activity with a minor, A.Y., for the purpose of engaging in sexual activity with R.W. and for the purpose of ransoming the parents of an adult victim, R.W. In addition, Conley stole personal property from both R.W. and A.Y. Conley used the online profiles of “Bryant” and “Lance” to lure and entice the victims into

traveling with Conley in his car. He offered to pay the minor victim money for sexual activity with himself and others and abandoned her at a gas station in Texas, stealing her purse and phone. In January 2019, Conley used an online profile to inveigle and decoy an adult victim.

Conley made false and misleading statements to her including that he was a modeling agent and ultimately that he was law enforcement. He kept the victim in his car and ultimately began issue ransom demands to her parents. FBI dropped a ransom in a bag and the defendant was witnessed picking it up. He was also arrested a short time later with the ransom and the victim's phone in his possession. The victim was safely rescued by the FBI in the back of the defendant's car.

MANN ACT/TRANSPORTATION OF MINOR

This charge involved a minor victim, A.Y., who was 17 at the time she met Conley on PlentyOfFish in November 2018. Conley used a false identity named "Bryant" to communicate with A.Y. to convince her to come to Memphis and have sex for money.

A.Y. wanted to get away from home and set up her profile on PlentyOfFish looking for a "sugar daddy." On November 8, 2018, she received communications from a light-skinned black man supposedly from the username "loveiseasy" from Memphis named "Bryant De Beers". Bryant wanted A.Y. to come to Memphis to have sex with him and he would pay her for it. The two texted and made travel plans. On November 10, 2018, Bryan Conley claimed at the behest of Bryant, he picked up A.Y. in a public park in Ada, Ohio, in a grey Ford Taurus. They drove to LaGrange, Kentucky. During the drive, Conley tells her that Bryant will pay even more money if she has sex with Conley. Conley stays at the Super 8 motel in LaGrange (room 210). Conley and A.Y. have sex. Conley and A.Y. traveled toward Bowling Green, Kentucky, and then returned to the Super 8 motel in Oldham County. While on the way to Bowling Green, Conley

instructed A.Y. to use PlentyOfFish to find someone who will have sex with her while Conley records it with his phone. Conley offered her payment to perform the act. They again returned to the Super 8 motel and have sex again and ordered pizza.

The next day, November 11, 2018, Conley and A.Y. traveled to Jackson, Tennessee. Conley had A.Y. find someone on PlentyOfFish to have sex with; A.Y. found R.B. A.Y. and Conley arrived at R.B.'s apartment. Conley stood in the bedroom room and provided instruction to R.B. while he and A.Y. had sex. During this time, Conley held his cell phone as if he was videotaping. Conley and A.Y. left and traveled to Hot Springs, Arkansas. They both slept in Conley's car. On Monday, November 12, 2018, Conley and A.Y. traveled to Lake Catherine, Texas and again had sex in the car. A.Y. told Conley she wanted to go home. She refused to have sex with Conley and was upset. Conley masturbated. Shortly thereafter, Conley arrived at a gas station and A.Y. got out of the car. Conley drove away leaving A.Y. at the gas station in Wills Point, Texas. Conley stole her purse and cell phone.

On November 14, 2018, SA Jimmy Burkett, Texas Department of Public Safety, interviewed A.Y. SA Burkett confirmed that Conley rented a room at the Super 8 Motel in LaGrange, KY, under his real name and his phone number ending 7423.

Kidnapping, Bank Fraud, Agg ID theft, and Threats:

Conley inveigled and decoyed the victim, R.W., by false representations, promises, and other deceitful means. He engaged in sexual activity under false pretenses, stole her credit card and used it at Walmart without her permission, he attempted to access her bank account with his phone ending 7423, and sent ransom demands to her parents, in a four-day period of time.

Conley lured R.W. to come meet him, under the false pretense that she was going to meet someone named "Lance", a male model, for a romantic relationship. R.W. went to meet

“Lance” but instead was introduced to Conley. Throughout her interactions with Conley, Conley used text application to pose as “Lance” to mislead and manipulate R.W. for sex, money, and purposes of kidnapping R.W. As R.W. and Conley continued interacting, Conley made false representations that he was going to help R.W. become a model. Later while Conley had R.W. in his control, Conley also falsely told R.W. he was an undercover police officer and that she was the target of human trafficking ring. He elaborated that it was not safe for her to return home or work.

In 2019, R.W. was an adult female who lived at home with her parents who have custody of her two children. R.W. worked at a nursing home. All her life, R.W. has suffered from depression and anxiety and is treated with medication. R.W. participated in special education in her youth and was diagnosed as severely emotionally disturbed. R.W. separated from a relationship in December 2018. She was not able to independently care for herself and her children and has an IQ in the 80s.

Conley used the profiles “loveiseasy”, “bhtown”, and the name “Lance” to communicate with R.W. on January 27 and 28 on text applications. R.W. traveled to meet “Lance” around Dover, Tennessee. When she arrived, she met Bryan Conley who told her “Lance” could not make it. Conley said he was Lance’s modeling agent. Conley told R.W. she could be a model and set up another time for them to meet.

On another occasion, Conley told R.W. that she could be a paid model and met with her on another day in Brentwood to prepare her photo portfolio to use for modeling jobs. Conley gave her a drink containing a funny tasting substance from Conley’s Yeti coffee mug. She said Conley took clothed, nude, and sexual photos of her as part of her “portfolio”. She went home that night. Throughout her interview, R.W. said she was really interested in meeting Lance

mode) but never did. Conley stole R.W. purse during this encounter and attempted to use her credit card and access her bank accounts.

R.W. again traveled to meet “Lance” but again met Conley near Ft. Campbell. R.W. stayed late to meet “Lance”. Conley told her that “Lance” had been arrested and would not show up. R.W. returned home in the early morning hours of the next day.

Conley had served as a soldier in the 101st Airborne in Ft. Campbell. He had lived in the area and would have been familiar with the areas surrounding the base in Kentucky and Tennessee.

On January 29, 2019, Conley told R.W. via text about a photo shoot in Louisville with Lance. The photo shoot would involve some clothed photos with her tied up (bondage). She drove toward Louisville and ran out of gas because she said Conley told her Lance had her wallet. She met Conley at the Shepherdsville Kroger. R.W. said Conley took her phone. R.W. also stated she drank a substance in a Yeti container that tasted funny. Conley told her it was Gatorade (or a sports drink) and she needed to drink it as part of her modeling contract for advertising money that would be paid to both of them. She said it made her sleep and she fell in and out of sleep. She said she was bound at her legs, feet, and gaged with rope by Conley. Conley told her it was part of the photo shoot. She said she was bound for maybe 3 or 4 hours. She said Conley removed a gold necklace from her neck. She said she intended to go home the evening of January 29, 2019, after the photo shoot. Conley changed his story telling her that Lance and he were undercover police officers and that she was the target of human trafficking, and it was not safe for her to go home. She was told by Conley that he was retrieving her wallet when he picked up a brown paper bag near a dumpster in the Tri-State International Trucks, Inc. parking lot at 200 J W Dickson Drive, Oak Grove, KY. He returned her wallet, but cards and

other items were missing. The bag Conley retrieved was a McDonald's food bag containing money and jewelry for the ransom payment to R.W.'s parents.

From the perspective of the FBI the case began on January 29, 2019, at approximately 1:45 PM CST when the Brentwood Police Department (BPD), located in Brentwood, Tennessee, received a call from R.W.'s mother, who reported her daughter had been kidnapped. R.W.'s mother's telephone number ending 4651 began receiving violent text messages from R.W.'s cellular telephone ending 5512 demanding a ransom be paid for R.W.

Bryan Conley used R.W.'s cellular telephone to communicate that he kidnapped R.W. and directed R.W.'s mother to pay a ransom of \$20,000 to ensure R.W.'s safe release. Conley instructed R.W.'s family to start driving towards Toledo, OH, where she would receive additional instruction.

The FBI quickly became involved with R.W.'s family and FBI negotiators assisted R.W.'s family. FBI computer scientists were able to extract detail of text messages from R.W.'s parents' phones. The following are examples of violent SMS messages from R.W.'s phone ending 5512 to R.W.'s mother's phone ending 4651:

R.W. 5512: You have ten minutes to be on road or I sell her ass
 5512: One more lie she's dead
 5512: In 1 hour they will start raping her ass
 5512: You listen or I send you pic of her body

Conley told R.W.'s family that R.W. was being held at a residence in Toledo, Ohio, but later changed the location to Cincinnati, OH. Conley refused to allow R.W.'s mother to talk, but he sent a proof of life photograph at approximately 10:00 PM CST. The proof of life photograph depicted R.W. inside of an unknown vehicle with what appeared to be binding material around her mouth partially covered with a multi-colored blanket.

Conley and R.W.'s family agreed to a ransom of \$400 and jewelry. The FBI

documented the serial numbers for the ransom money and photographed the jewelry. R.W.'s father was instructed to start travelling towards Toledo, OH to drop off the newly negotiated ransom.

At approximately 8:54 AM, on January 29, 2019, someone attempted to log in to R.W.'s USAA bank account. The individual provided R.W.'s correct social security number but failed to correctly answer any of the security questions. At 11:31 AM there was a successful login to R.W.'s USAA bank account using her telephone number.

The telephone number associated with the first attempted login was telephone number ending 7423. An exigent request to Sprint Corporation revealed, 7423 was registered to Bryan Conley's wife. Conley's wife also had a gray 2014 Ford Taurus registered to her at a residence occupied by Bryan Conley in Tennessee. At the time of arrest, the FBI recovered a phone with telephone number ending 7423 in Conley's car.

On January 29, 2019, at approximately 12:02 AM, a witness at Walmart in Oak Grove, KY, advised that a white male attempted to use R.W.'s credit card. After having the credit card denied, the unidentified white male left in a grey Ford Taurus. A review of surveillance video by law enforcement confirmed that a white male left in a grey Ford Taurus.

During the initial communications between Conley and R.W.'s family, Conley offered as proof he had R.W. by providing an address where her Toyota Prius was left. Conley told R.W.'s family the R.W.'s Toyota Prius was parked at 185 Adam Shephard Parkway, Shepherdsville, KY. On January 30, 2019, the FBI located R.W.'s Toyota Prius was located at Kroger, located at 185 Adam Shephard Parkway, Shepherdsville, KY.

Emergency phone location orders were obtained for R.W.'s and the phone used by Bryan Conley. The phone information showed that Bryan Conley and R.W.'s telephones were in close

proximity throughout the duration of the pings and appeared to be traveling together.

At approximately 2:25 PM CST on January 30, 2019, while FBI Special Agents were with the father of R.W., in the state of Tennessee, the father received a text from R.W.'s phone with the following text, "One more lie she's dead". Location information provided by the cellular carrier, Verizon Wireless, placed R.W.'s phone at the following coordinates in the state of Kentucky at 2:25 PM CST on January 30, 2019: 36.96229889 LAT/-87.454605 LONG. These coordinates plot in vicinity of Hopkinsville, Kentucky.

On January 30, 2019, at approximately 3:30 PM CST, the FBI dropped a ransom payment in a McDonald's food bag and left it outside to the Tri-State International Trucks, Inc., located at 200 J W Dickson Drive, Oak Grove, KY 42262. The location of the drop was sent via text to R.W.'s phone.

On January 30, 2019, at approximately 5:00 PM CST, FBI Louisville Division observed Conley retrieve the ransom payment from behind a dumpster at the Tri-State International Trucks, Inc. in Oak Grove, KY. Conley then got into a Ford Taurus and left Tri-State International Trucks, Inc.

FBI Louisville Division followed Conley in the 2014 Ford Taurus to a Marathon Gas Station located at 802 South Main Street, Leitchfield, KY 42754. FBI arrested Conley at the Marathon Gas Station. At the time of Conley's arrest, FBI Special Agents removed R.W.'s phone from Conley's person. R.W. was also in the back seat of the Ford Taurus.

Verizon Short Message Service (SMS) detail records revealed all SMS sent from R.W.'s telephone number ending 5512 on January 29, 2019, through January 30, 2019, at 3:08 AM CST were traversed through Verizon switches located in or around Alpharetta, Georgia and Duluth, Georgia. Therefore, the ransom communications traveled in interstate commerce. The SMS

messages also traveled between two iPhones causing the transmission to be across Apple servers in interstate commerce. Finally, the communications between the phones also traveled across state lines to recipients located in states where the sender was not located.

The FBI executed a search of the Conley's Ford Taurus. Agents recovered duct tape, rope, condoms, zip ties, a red yeti mug, and Nyquil sleeping liquid. R.W.'s purse, social security card, identification cards, and credit card were also recovered. The FBI recovered R.W.'s phone from Conley. The FBI also recovered the ransom money and documented the serial numbers were the same that were left in McDonald's bag. The jewelry provided as the ransom was also recovered from the front seat of Conley's car. The FBI executed a search of Conley's phone and recovered two child sexual abuse material videos of A.Y., evidence of six POF accounts, internet search history and images probative of the charged conduct, evidence of Conley using multiple voice of internet protocol (VOIP) phone numbers, and evidence that Conley attempted to delete evidence from his phone.

C. A SEPARATE STATEMENT OF EACH UNRESOVLED SUBSTANTIVE ISSUE OF LAW, WITH DISCUSSION AND CITATIONS TO AUTHORITIES

None known at this time.

D. A STATEMENT OF EVIDENTIARY ISSUES WHICH IT IS REASONABLY BELIEVED WILL BE RAISED AT TRIAL TOGETHER WITH CITATIONS TO THE FRE AND AUTHORITIES IN SUPPORT OF POSITION TAKEN

The United States filed a motion to admit flight as substantive evidence of guilt. During the pendency of the prosecution and prior to a superseding arraignment date, Conley removed a GPS monitoring device attached to his ankle by U.S. Probation. FBI initiated a fugitive manhunt and Conley was arrested a few days later in Hamilton County, Ohio.

The United States also filed a FRE 404(b) notice to admit the following evidence and testimony: (1) that the defendant communicated through his cellular device using third party applications that created additional telephone numbers, in addition to his Mobile Station International Subscriber Directory Number (MSISDN) obtained through Verizon, and posed as people other than himself, and (2) that the defendant produced and possessed child sexual abuse material (“CSAM”) of victim A.Y.

E. A STATEMENT OF AN KNOWN OR REASONABLY ANTICIPATED POTENTIAL TRIAL PROBLEMS, OR OTHER ISSUES WHICH MAY ASSIST THE COURT IN TRYING THE CASE.

None known at this time.

F. PROPOSED SUBSTANTIVE AND SPECIAL JURY INSTRUCTIONS WITH CITATIONS TO AUTHORITIES.

COUNT 1 (INTERSTATE TRANSPORTATION FOR PROSTITUTION) (18 U.S.C. 2421(a)).

Count 1 of the indictment charges the defendant with transportation for prostitution or sexual activity for which the defendant or any other person identified in the indictment could have been charged with a criminal offense. In order for you to find the defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

1. The defendant knowingly transported or attempted to transport, the person identified in the indictment in interstate commerce; and

2. At the time of transportation or the attempted transportation, the defendant intended that the person identified in the indictment would engage in prostitution or sexual activity for which the defendant or any other person identified in the indictment could have been charged with a criminal offense.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

Authority: Fed. Crim. Jury Instr. 7th Cir. 2421 (2020 ed.)

COUNT 2 (TRANSPORTATION OF MINORS) (18 U.S.C. § 2423(a)) (Count 2)

Count 2 of the indictment charges the defendant with knowingly transporting a minor with intent that the minor engages in criminal sexual activity. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

1. That the defendant knowingly transported an individual.
2. That the individual transported was under 18 years of age.
3. That the defendant intended the individual to engage in prostitution or criminal sexual activity.
4. That the transportation was in interstate commerce.

Now I will give you more detailed instructions on some of these terms.

“Prostitution” means knowingly engaging in or offering to engage in a sexual act in exchange for money or other valuable consideration.

“Criminal sexual activity” includes soliciting or enticing a minor to engage in sexual activity for the purpose of producing or attempting to produce visual depictions of the minor engaging in sexual activity. That the defendant employed, used, persuaded, induced, enticed, coerced a minor to engage in assist another person to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct.

The term “in interstate commerce” means the defendant transported the individual across a state line.

The government is not required to prove the defendant knew that the person transported was a minor.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

Authority: Pattern Crim. Jury Instr. 6th Cir. 16.10 (2022)

COUNT 3 (KIDNAPPING BY INVEIGLE AND DECOY) (18 U.S.C. § 1201)

It’s a Federal crime for anyone to kidnap, seize, confine, inveigle, decoy, abduct, or carry away another person and then transport that person in interstate commerce.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

1. The Defendant knowingly and willfully kidnapped, seized, confined, inveigled, decoyed, abducted or carried away the victim, R.W.;
2. The Defendant kidnapped, seized, confined, inveigled, decoyed, abducted, or carried away the victim with the intent to collect a ransom, reward, or other benefit and held the victim for that reason; and
3. The victim was willfully:
 - a. transported in interstate or foreign commerce regardless of whether the person was alive when transported across a state boundary;
 - b. the defendant traveled in interstate or foreign commerce; or

- c. used the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense.

To “kidnap” a person means to forcibly and unlawfully hold, keep, detain, and confine that person against the person’s will. Involuntariness or coercion related to taking and keeping the victim is an essential part of the crime.

To “inveigle” a person means to lure, or entice, or lead the person to do something by making false representations or promises or using other deceitful means. *United States v. Lentz*, 383 F.3d 191, 202 (4th Cir. 2004)

To “decoy” means enticement or luring by means of some fraud, trick or temptation. *United States v. Hoog*, 504 F.2d 45, 51 (8th Cir. 1974)

Consent is not a defense to kidnapping by inveiglement, since inveigling necessarily contemplates that the victim's apparent consent was in fact obtained by deception. *U.S. v. Boone*, 959 F.2d 1550 (1992); *Wells v. United States*, No. 3:07cv1740 (JBA), 2010 U.S. Dist. LEXIS 5332, at *31-32 (D. Conn. Jan. 22, 2010); *United States v. Stands*, 105 F.3d 1565, 1576 (8th Cir. 1997)

A car and a phone are instrumentalities of interstate or foreign commerce. *United States v. Windham*, 2022 WL 17090506 (6th Cir. 2022)

The Government doesn’t have to prove that the Defendant committed the kidnapping for ransom or any kind of personal financial gain. It only has to prove that the Defendant intended to gain some benefit from the kidnapping.

The defendant need not use overt force to accomplish his purpose. He may use deceit and trickery. Inducing an individual by misrepresentation to do something can constitute interfering with and exercising control over another.

“Interstate commerce” means business or travel between one state and another.

A person is “transported in interstate commerce” if the person is moved from one state to another, in other words, if the person crosses a state line.

The Government does not have to prove that the Defendant knew he took the victim across a state line. It only has to prove the Defendant was intentionally transporting the victim.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

Authority: S3 Modern Federal Jury Instructions-Criminal 49 (2022)

COUNT 4 (BANK FRAUD) (18 U.S.C. § 1344)

The defendant is charged with the crime of bank fraud. For you to find the defendant guilty of bank fraud, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

1. That the defendant knowingly executed or attempted to execute a scheme to defraud a financial institution or knowingly executed or attempted to execute a scheme to defraud to obtain money or other property owned by or in the control of a financial institution by means of false or fraudulent pretenses, representations or promises;

2. That the scheme related to a material fact or included a material misrepresentation or concealment of a material fact;

3. That the defendant had the intent to defraud; and

4. That the financial institution was federally insured.

Now I will give you more detailed instructions on some of these terms.

A “scheme to defraud” includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

The term “false or fraudulent pretenses, representations or promises” means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They include actual, direct false statements as well as half-truths and the knowing concealment of material facts.

An act is “knowingly” done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

A misrepresentation or concealment is “material” if it has a natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

To act with “intent to defraud” means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself or to another person.

It is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone or that someone relied on the misrepresentation or false statement or that the

defendant benefitted personally from the scheme to defraud the financial institution or that the financial institution suffered a loss.

If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Authority: Pattern Crim. Jury Instr. 6th Cir. 10.03 (2022)

COUNT 5 (AGGRAVATED IDENTITY THEFT) (18 U.S.C. § 1028A)

Title 18, United States Code, Section 1028A makes it a crime to transfer, possess, or use a means of identification during and in relation to certain other crimes such as Bank Fraud. For you to find the defendant guilty, the government must prove each of the following beyond a reasonable doubt:

1. That the defendant transferred, possessed, or used,
2. Without lawful authority;
3. A means of identification of another person;
4. That the defendant did so during and in relation to Bank Fraud as alleged in Count 3;
- and
5. That the defendant did so knowingly.

The government must prove that the defendant knew the particular numbers (or identifiers) belonged to another individual.

“Means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any -

- (A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number,

government passport number, employer or taxpayer identification number;

(B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(C) unique electronic identification number, address, or routing code; or

(D) telecommunication identifying information or access device.

“Access device” means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument).

“Without lawful authority” means without a form of authorization recognized by law.

If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina* § 1028A (Emily Deck Harrill, ed., 2018 Online Edition).

COUNTS 6 – 15 (INTERSTATE THREATS) (18 U.S.C. § 875(c))

Title 18, United States Code, Section 875 makes it a crime to transmit in interstate commerce a threatening communication. For you to find the defendant guilty, the government must prove each of the following beyond a reasonable doubt:

1. That the defendant knowingly transmitted a communication in interstate or foreign commerce;
 2. That the defendant subjectively intended the communication as a threat;
- and
3. That the content of the communication contained a “true threat” to kidnap or injure.

To prove the second element of a § 875(c) conviction, the Government “must establish that the defendant transmitted the communication ‘for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat,’ or, perhaps, with reckless disregard for the likelihood that the communication will be viewed as a threat.”

To prove the third element of a § 875(c) conviction, “the Government must show that an ordinary, reasonable recipient who is familiar with the context in which the statement is made would interpret it as a serious expression of an intent to do harm.”

While the government must prove that the communication was transmitted in interstate commerce, the government need not prove that the defendant knew the communication would be transmitted in interstate commerce.

While the government must prove that the communication was transmitted in interstate commerce, the government need not prove that the defendant knew the communication would be transmitted in interstate commerce.

Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina § 875 INTERSTATE THREATENING COMMUNICATIONS* 1028A (Emily Deck Harrill, ed., 2018 Online Edition).

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7.14 Evidence of Flight

(1) You have heard testimony that after the crime was supposed to have been committed, the defendant fled or attempted to flee from prosecution.

(2) If you believe that the defendant fled or attempted to flee from prosecution, then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that he committed the crime charged. This conduct may indicate that he thought he was guilty and was trying to avoid punishment. On the other hand, sometimes an innocent person may act for some other reason. The defendant has no obligation to prove that he had an innocent reason for his conduct.

Authority: Pattern Crim. Jury Instr. 6th Cir. 7.14 (2022)

G. PROPOSED VOIR DIRE QUESTIONS

1. This case was investigated by FBI, Texas Department of Public Safety, Tennessee Bureau of Investigation, Louisville Metro Police, Brentwood Tennessee Police, and the Hamilton County Ohio Sheriff's Office. Has anyone had any contact, one way or another, good or bad, with this or any other law enforcement agency?
2. There will be local law enforcement and federal agents testifying in this case. Has anyone had a really good or bad experience with the United States Attorney's office, a police officer, or federal agent-even something like getting a traffic ticket you did not think you deserved-that you think would affect your ability to listen to his or her testimony and give it the same weight as any other witness?

3. Has anyone served in law enforcement in his or her community or elsewhere? Family members?
4. Have any of you ever been the victim of crime, or do you have a friend or family member who has been the victim crime? Has anyone had an elderly loved one be the victim of theft by a domestic worker or senior health care provider? Has anyone invested or been the victim of investment fraud?
5. You will likely hear testimony from several witnesses who are government employees. Can you fairly evaluate the credibility of government witnesses by considering all available evidence in determining if those witnesses are truthful in their testimony?
6. At the end of the case the Court will instruct you on the elements of each offense. Those are the facts that the government must prove to you beyond a reasonable doubt. That is their burden. Will any of you hold the government to a different burden based on your expectations or require the government to prove to you something that is not in the instructions. In other words, can you convict someone if the government has proven all the elements of the crime, but has not proven something else that you may be wondering about?
7. Do all of you understand that you must set aside any personal feelings you may have about what the law ought to be if they conflict with the law contained in the Court's instructions? Is there anyone who thinks that they will not be able to follow the law that the Court gives you in the instructions?
8. Are any of you employed by a law enforcement agency, or do you have friends or family members employed by law enforcement agencies?
9. Have you or a close friend or family member ever been arrested or charged with a crime?

10. Have you or a close friend or family member ever testified for a defendant in a criminal trial?
11. Have you or a close friend or family member ever served time in a jail or prison?
12. Have any of you ever served on a jury before?
13. If you have served on a jury before, was it a civil or criminal case?
14. If you have served on a criminal jury before, did you deliberate and reach a verdict in the case?
15. If you did deliberate and reach a verdict, what was the verdict in the case?
16. If you served on either a criminal or civil jury before, did you serve as the foreperson?
17. If you served on either a criminal or civil jury before, is there anything about that experience that would prevent you from listening to the evidence in this case and bringing back a verdict based only on the evidence?
18. Do you understand that in federal court, the punishment a defendant receives, if any, is to be imposed by the Court and your verdict must in no way be affected by your concern for what punishment would be proper?
19. Does anyone work or have a family member that works for law enforcement?
19. Do you understand that the duty of the Government is to prove guilt to the exclusion of a reasonable doubt, but the government is not required to prove guilt beyond all possible doubt?
20. Do you understand that a defendant on trial is entitled to a presumption of innocence however, as with all presumptions, it may be overcome by competent evidence?
21. Do you understand the law makes no difference between direct and circumstantial evidence and the weight to be given to it; that the burden is one of proof beyond reasonable doubt. Direct evidence is simply evidence like the testimony of an eyewitness which, if you

believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining. Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you conclude that it was raining.

22. Are there any of you who, because of religious, philosophical, or any other reason, do not feel you could sit in judgment of these facts and vote to return a verdict of guilty regardless of the proof in this case?

23. Are there any of you who have difficulty hearing, seeing, or sitting for long periods of time?

24. Are there any of you that have events in your life presently that would distract you or divert your attention from the testimony and evidence of this case?

Respectfully submitted,

MICHAEL A. BENNETT
United States Attorney

s/ Joshua Judd
Joshua Judd
Assistant U.S. Attorney
717 West Broadway
Louisville, Kentucky 40202
PH: (502) 582-5911

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the counsel for Bryan Conley.

s/ Joshua Judd
Joshua Judd
Assistant U.S. Attorney

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

UNITED STATES OF AMERICA

PLAINTIFF

v.

NO. 3:23-CR-00014DJH
Electronically Filed

BRYAN DOUGLAS CONLEY

DEFENDANT

**RESPONSE TO DEFENDANT’S MOTION TO
DISMISS FOR VINDICTIVE PROSECUTION**

Defendant Conley has asked this Court to dismiss Count 2 of the Indictment returned by a federal grand jury pursuant to Federal Rule of Criminal Procedure 12(b)(3)(iv), asserting that it is a product of “vindictive prosecution.” The United States opposes the Defendant’s Motion. It is unsupported in law and fact, and the Court should deny it.

On January 17, 2023, Defendant Conley filed a Motion to Dismiss his previous case for speedy trial violations. The United States agreed with his motion. This Court granted that motion on February 1, 2023 and dismissed all 14 of the Defendant’s pending charges without prejudice. Subsequently, on February 7, 2023, the United States filed a new indictment against the Defendant. It reindicted him on the 14 dismissed charges and one additional charge for “transportation of minors,” in violation of 18 U.S.C 2423. The Defendant claims that the additional charge is a result of vindictive prosecution, brought in retaliation for exercising his rights under the Speedy Trial Act. He thus states a claim of prosecutorial vindictiveness and requests that the Court dismiss the additional charge.

ARGUMENT

I. Probable Cause Supports Defendant Conley’s Increased Charges.

A prosecutor is generally free to exercise discretion with regards to whether and what to prosecute, so long as he or she has probable cause to believe that the defendant has committed the statutorily defined offense. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). A prosecutor’s conscious exercise of discretion is not unconstitutional unless it rests on an “unjustifiable standard such as race, religion, or other arbitrary classification.” *Id.* at 668-669. In this case, the United States’ exercise of discretion rests on probable cause and evidence that shows that Defendant Conley transported a minor across state lines for purposes of prostitution, in violation of 18 U.S.C. 2423.

Further, the grand jury found that Defendant Conley should be indicted on the charge. In *United States v. Roach*, 502 F.3d at 445, the issuance of new charges approved by a grand jury were “presumed to have rested on probable cause.” Like the Defendant in *Roach*, Defendant Conley does not allege that the grand jury was manipulated or otherwise prejudiced against him. Nor does he dispute the evidence or charges. Instead, he claims that when the United States brought valid charges against him supported by evidence, it did so vindictively. The United States acted constitutionally and within the bounds of its discretion when it charged Defendant Conley with transportation of minor.

II. Defendant Conley Cannot Show Prosecutorial Vindictiveness.

The Supreme Court has held that due process prohibits an individual from being “punished for exercising a protected statutory or constitutional right.” *United States v. Goodwin*, 457 U.S. 368, 372 (1982). But the mere “presence of a punitive motivation. . . does not provide an adequate basis for distinguishing governmental action that is fully justified as a legitimate response to perceived criminal conduct from governmental action that is an impermissible

response to noncriminal, protected activity.” *Goodwin*, 457 U.S. 368, 372–73.

“The imposition of punishment is the very purpose of virtually all criminal proceedings.” *Goodwin*, 457 U.S. 368, 372. A punitive motive is not sufficient. There are only two ways to prove vindictive prosecution. *Bragan v. Poindexter*, 249 F.3d 476, 481 (6th Cir. 2001). A defendant may establish vindictive prosecution by proving “actual vindictiveness,” or the court can find a presumption of by applying the “realistic likelihood of vindictiveness test.” *United States v. Poole*, 407 F.3d 767, 774 (6th Cir. 2005).

A. Actual Vindictiveness

Though “exceedingly difficult,” a defendant can prove actual vindictiveness with “objective evidence that a prosecutor acted in order to punish the defendant for standing on his legal rights.” *Bragan*. at 481. In *Bordenkircher v. Hayes*, 434 U.S. 357, the Court for the first time considered an allegation of vindictiveness that arose in a pretrial setting. In rejecting a presumption of vindictiveness, the Court acknowledged that a defendant could prove an improper prosecutorial motive with objective evidence. *Goodwin*, 456 U.S. 368, 380 at n. 12. There, the prosecutor carried out a threat, made during plea negotiations, to bring additional charges against a defendant who refused to plead guilty to his original charge. *Id.* at 377. “It was not disputed that the additional charge was justified by the evidence, that the prosecutor was in possession of this evidence at the time the original indictment was obtained, and that the prosecutor sought the additional charge because of the accused's refusal to plead guilty to the original charge.” *Id.* at 377. The defendant argued instead that the prosecutor’s conduct was vindictive. *Id.* at 377. But the Court found that the additional charges were not brought solely to ‘penalize’ the defendant and were, thus, justified as a proper exercise of prosecutorial discretion. *Id.* at n. 12.

Defendant Conley argues that the Superseding Indictments and charges themselves are objective evidence of actual vindictiveness because the United States possessed the relevant evidence at the time of the initial indictment. In *Bordenkircher*, the prosecutor expressly threatened additional charges based on evidence from the original indictment, and that did not sufficiently prove actual vindictiveness. That the United States previously had probable cause to charge Defendant Conley with Count 2 initially and did not, is not proof of actual vindictiveness.

B. Presumption of Vindictiveness

Second, “the court can find a presumption of vindictiveness by applying the realistic likelihood of vindictiveness standard, which focuses on the prosecutor's stake in deterring the exercise of a protected right and the unreasonableness of his actions.” *United States v. Poole*, 407 F.3d 767, 774 (6th Cir. 2005). “To prove a reasonable likelihood of vindictiveness, the petitioner must establish that (1) the prosecutor has some ‘stake’ in deterring the petitioner's exercise of his rights and (2) the prosecutor's conduct was somehow ‘unreasonable’.” *United States v. Andrews*, 633 F.2d 449, 454 (6th Cir. 1980).

1. *The United States Had No Stake in Deterring Defendant Conley from Exercising His Rights Under the Speedy Trial Act.*

In *Goodwin*, the Court addressed prosecutorial vindictiveness in a pretrial setting. In that case, a prosecutor raised a defendant's previous misdemeanor charge to a felony. Even though the case changed hands from a prosecutor who could not charge felony crimes to one that could, the Defendant still alleged that the increased charges were retaliation for requesting the trial. *Id.* He argued that there should be a presumption of vindictiveness and his conviction set aside. *Id.* The Court disagreed and refused to adopt a bright line presumption of vindictiveness in the pretrial

setting. *Id.*

The Court distinguished the pretrial from the posttrial setting, observing that because convictions are reviewed *de novo*, prosecutors have a “considerable stake” in discouraging defendants from appealing their convictions. *Goodwin*. at 376. The “increased expenditures of prosecutorial resources” required to prepare for a *de novo* retrial justify a presumption of prosecutorial vindictiveness, so that a fear of retaliation does not “unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction.” *Id.* at 376, 373, citing *North Carolina v. Pearce*, 395 U.S., at 723–724 (1969).

No similar motive to deter a defendant from exercising a right exists prior to trial. Thus, “a change in the charging decision made after an initial trial is completed is much more likely to be improperly motivated than is a pretrial decision.” *Goodwin*. at 381. Further, pretrial charging changes are to be expected. The Court stressed that “[a] prosecutor should remain free before trial to exercise the broad discretion entrusted to him . . . [and that a]n initial decision should not freeze future conduct.” *Id.* at 382.

The Court also recognized that the “institutional bias inherent in the judicial system against the retrial of issues that have already been decided” justifies a presumption of prosecutorial vindictiveness in posttrial settings. *Goodwin*. at 376. It acknowledged that such a bias might “subconsciously motivate a vindictive prosecutorial . . . response to a defendant's exercise of his right to obtain a retrial of a decided question.” *Id.* at 377.

In a pretrial setting, that bias does not exist. In fact, prior to trial, a defendant “is expected to invoke procedural rights that inevitably impose some ‘burden’ on the prosecutor.” *Goodwin*. at 381. It would be unrealistic to presume that a prosecutor’s probable response to pretrial motions

is to seek to penalize and to deter, especially considering that the “invocation of procedural rights is an integral part of the adversary process in which our criminal justice system operates.” *Id.* at 381.

In *Goodwin*, the Court observed that a defendant may prove prosecutorial vindictiveness prior to by trial with an objective showing that the “prosecutor's charging decision was motivated by a desire to punish him for doing something that the law plainly allowed him to do.” *Goodwin*. at 384. But the “[m]ere possibility that prosecutorial or judicial conduct may be vindictive is insufficient to trigger judicial sanctions.” *United States v. Andrews*, 633 F.2d. 449, 455 (6th Cir. 1980).

Ultimately, the Sixth Circuit held, in *Andrews* that a “near per se appearance of vindictiveness standard . . . is too harsh.” The court elaborated. To say that “where the prosecutor adds charges after the defendant's exercise of a procedural right, there arises an appearance of vindictiveness which the government has the ‘heavy burden’ to rebut . . . operates to unduly limit prosecutorial discretion.” *Id.* at 455.

Conley has failed to demonstrate a 'realistic likelihood of vindictiveness.' The United States does not have a stake in deterring Conley's exercise of his statutory or constitutional rights. It is well established that the addition of new charges to deter a defendant from going to trial is an insufficient basis for a vindictive prosecution claim. *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); *U.S. v. Goodwin*, 457 U.S. 380 (1982); *U.S. v. Walls*, 293 F.3d 959, 970 (6th Cir. 2002). Moreover, courts have generally held that prosecutors do not have a stake in limiting "garden-variety pretrial motions." *U.S. v. Suarez*, 263 F.3d 468 (6th Cir. 2001) (holding that the defendant's motions to suppress and to dismiss posed only a minimal burden on the prosecution); *U.S. v. Rosse*,

2017 WL 5625719 (6th Cir. 2017) (holding that the defendant's motions contesting detention and alleging speedy trial violations imposed only a minimal burden on the prosecution). The United States has no stake in Defendant Conley's lack of speedy trial motion. In fact, the United States did not object to the defendant's motion to dismiss. The motion and dismissal of his previous case without prejudice imposed a minimal burden on the United States.

2. *The United States Acted Reasonably in Indicting Defendant Conley for Interstate Transportation of a Minor*

In *United States v. Rosse*, 716 F. App'x 453, after a defendant's case was dismissed without prejudice for statutory speedy trial violations, a presumption of vindictiveness did not apply when a prosecutor sought a superseding indictment, which exposed the defendant to harsher penalties. The Court found that the prosecutor's decision to bring the indictment was not unreasonable, even though evidence of more severe charges was available and known to the government at the time of the original indictment and did not demonstrate a reasonable likelihood of prosecutorial vindictiveness. *Id.* at 458.

The facts of Conley's case are nearly identical to this case. Just like in *Rosse*, the United States' decision to file a superseding indictment against Defendant Conley exposing him to harsher penalties is not unreasonable, even though it is based on evidence available and known at the time of the original indictment; especially because that evidence has since been bolstered by minor victim.¹ Prior to the new indictment, Conley faced a maximum penalty of life with a consecutive

¹ During a February 2023 interview, the minor victim confirmed herself in sexually explicit video recovered from Conley's phone. This confirms that Defendant Conley participated in "other criminal activity," referenced in Count 2 of the Indictment, when he transported the minor victim to Tennessee to engage in illegal sexual activity. She also confirmed the profile depicting a pig that Conley used to pose as Bryant taken from Conley's phone.

two-year sentence to that sentence. Although, there is now a minimum penalty of ten years, Conley still faces the same maximum penalty of life.

CONCLUSION

The United States did not vindictively file a superseding indictment with harsher penalties. The Sixth Circuit has noted that the “vindictive prosecution” doctrine was designed to prevent retaliation against the defendant for the assertion of his protected rights. *United States v. Rosse*, 34 F. Supp. 3d 862, 872 (W.D. Tenn. 2014), *vacated and remanded* (July 29, 2015). In this case, Defendant Conley was not prevented from asserting his right to a dismissal for Speedy Trial Act violations. Further, all of the charges filed against Defendant Conley after the dismissal of his case are supported by probable cause and evidence. A grand jury reaffirmed that finding of probable cause and recommended indicting him on these charges. The United States had no stake in deterring Defendant Conley from exercising rights and acted reasonably in charging him with interstate transportation of a minor. The Court should deny Defendant Conley’s motion.

Respectfully submitted,

JOSHUA JUDD
United States Attorney

s/Joshua Judd
Assistant U.S. Attorney
717 West Broadway
Louisville, Kentucky 40202
PH: (502) 582-5911

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the defendant.

s/Joshua Judd
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:23-CR-00014DJH

BRYAN DOUGLAS CONLEY

DEFENDANT

PROPOSED ORDER

The Defendant Bryan Douglas Conley moved to dismiss Count 2 arguing prosecutorial vindictiveness. The United States responded. The Defendant's motion is denied.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:23-CR-00014-L-DJH

BRYAN CONLEY

DEFENDANTS

UNITED STATES' PROPOSED EXHIBIT LIST

Comes the United States, by counsel, and submits the following exhibit list:

Exhibit No.	Description	Bates
1	Audio of Bryan Conley Interview 1/30/2019 Part 1 (1:06:39)	USA-000001
2	Transcript Part 1 from audio of Bryan Conley Interview 1/30/2019	USA-000886- USA-000967
3	Audio of Bryan Conley Interview 1/30/2019 Part 2 (56:36)	USA-000002
4	Transcript Part 2 from audio of Bryan Conley Interview 1/30/2019	USA-002046- USA-002107
5	Extended Stay Hotel Receipt-Bryan Conley 1/27-28/19 9020 Church Street Brentwood, TN	USA-000624- USA-000626
6	Photos gag pic from R.W. phone	USA-000020
7-A	Photo of threatening text messages sent to R.W.'s parents "You have ten minutes to be on road or I sell her ass"	USA-000021
7-B	Photo of threatening text messages sent to R.W.'s parents "One more lie she's dead"	USA-000022
7-C	Photo of threatening text messages sent to R.W.'s parents "in 1 hour they will start raping her ass"	USA-000025
7-D	Photo of threatening text messages sent to R.W.'s parents "You listen or I send you pic of her body"	USA-000027

Exhibit No.	Description	Bates
8	Photo of Kroger Fuel Receipt (Shepherdsville, KY 1/29/19 1:47 pm) found on Bryan Conley	USA-000036
9	Handwritten list of items seized and currency count from Bryan Conley's person at time of arrest on 1/30/19	USA-000037- USA-000039 USA-001411- USA-001413
10-A	Photo of money, credit cards, and receipts found on Bryan Conley after arrest	USA-000031
10-B	Photo of money found on Bryan Conley after arrest	USA-000032
10-C	Photo of money found on Bryan Conley after arrest	USA-000033
10-D	Photo of cards found on Bryan Conley after arrest	USA-000034
10-E	Photo of Kroger Receipt found on Bryan Conley after arrest	USA-000036
11	Kroger "PVM" CCTV Surveillance Video located at 185 Adam Shepherd Parkway Shepherdsville, KY 1/29/19 1:31:59 PM to 1:54:54 full video (Made available to defense for viewing) Certified on 4/8/2019 USA-002300	USA-000616- USA-000617
11-A	Clip Kroger "PVM" CCTV Surveillance Video located at 185 Adam Shepherd Parkway Shepherdsville, KY 1/29/19 1:46:20 to 1:47:10	
11-B	Still shot photo of Conley from Kroger CCTV located at 185 Adam Shepherd Parkway Shepherdsville, KY on 1/29/19 01:46:52 pm Certified on 4/8/2019 USA-002300	USA-000615
12	Pin drop map texted to Conley showing where the money and jewelry was dropped on 1/30/2019	USA-000046
13-A	Photo of drop money (4 x \$20, 1 x \$10)	USA-000041
13-B	Photo of drop money (5 x \$20)	USA-000042
13-C	Photo of drop money (5 x \$20)	USA-000043
13-D	Photo of drop money (5 x \$20)	USA-000044
13-E	Photo of drop money (3 x \$5)	USA-000045
13-F	Photo of Jewelry for drop on 1/30/2019	USA-000620 USA-001458

Exhibit No.	Description	Bates
13-G	Photo of money for drop on 1/30/2019	USA-000621 USA-001459
14	Serial number comparison of drop money vs money on Bryan Conley at arrest	USA-000968
	Photos of Conley's Ford Taurus from 2/6/2019 (96 total photos)	USA-00640- USA-00735
16	Photo of Clarksville, TN Walmart receipt dated 1/28/19 found during the search of Conley's Taurus on 2/6/2019. Receipt lists the purchase of rope and zip ties	USA-002044
17	Walmart (Clarksville, TN) Transaction Record Certified on 4/18/2019 USA-002343	USA-002344
18	Still shots from checkout from 1/28/19 17:02 Walmart purchase of rope and zip ties Certified on 4/18/2019 USA-002343	USA-002345
19	R.W. (dad) phone chat log	
20	M.W. (mom) phone chat log	
21	2023 Cellebrite Forensic Extraction Reports of R.W.'s Apple iPhone 8 (615) 636-5512 (Made available to defense)	
22	Subscriber Information from R.W. (615) 636-5512 Certification on 3/11/2019 USA-002227	USA-002232
23	GPS Location data for R.W.'s iPhone from Verizon (615) 636-5512	USA-001612-USA-001712
24-A	Photo of McDonalds receipt from SA Phillips review of physical evidence on 3/15/2019	USA-002041
24-B	Photo of notebook from SA Phillips review of physical evidence on 3/15/2019	USA-002042
24-C	Photo Conley resume from SA Phillips review of physical evidence on 3/15/2019	USA-002043
24-D	Photo of Walmart receipt from SA Phillips review of physical evidence on 3/15/2019	USA-002044

Exhibit No.	Description	Bates
25	Still photo of Conley walking into Walmart on 1/28/2019	USA-001235
26-A	Surveillance video at door of Walmart of Conley walking in from 1/28/2019 11:50:57 to 11:52:42	USA-000030
26-B	Still photo of Conley walking into Walmart on 1/28/2019 11:52:25	
26-C	Still photo at door of Walmart on 1/29/2019	USA-001234
27-A	Walmart overhead video of Conley's declined transaction of purchase from 1/28/2019 11:59:52 to 1/29/2019 12:08:34	USA-000028
27-B	Still overhead photo of Walmart checkout 1/29/2019 12:00.10	
27-C	Still overhead photo of Walmart checkout on 1/29/2019	USA-001230 USA-001397
28-A	Surveillance video outside Walmart of grey Ford Taurus on 1/29/2019 from 12:02:47 to 12:04:50	USA-000029
28-B	Still Photo of outdoor Walmart Surveillance on 1/29/2019 showing Grey Ford Taurus	USA-001232 USA-001399
29	Walmart Credit Card Records from failed transaction on 1/29/2019 Certification 4/12/2019 USA-001234	USA-001241
30	2023 Cellebrite Forensic Extraction Report of Bryan Conley's Samsung Galaxy (Made available to defense)	
31	Subscriber Information for phone (915) 241-7423 Certification USA-002302	USA-002293-USA-002295
32	Toll analysis and Call Detail Report from Sprint for Brian Conley's Galaxy (915) 241-7423 Certification on 2/22/2019 USA-002302	USA-002213
33	Ankle bracelet tracking map 6/21/2019	USA-002181
34-A	Photo of field with cut ankle bracelet 6/21/2019	USA-002182

Exhibit No.	Description	Bates
34-B	Photo of grass with cut ankle bracelet 6/21/2019	USA-002183
34-C	Photo of cut ankle bracelet 6/21/2019	USA-002184
34-D	Photo of cut ankle bracelet 6/21/2019	USA-002185
34-E	Closeup photo of cut ankle bracelet 6/21/2019	USA-002186
34-F	Photo of cut ankle bracelet 6/21/2019	USA-002187
34-G	Closeup photo of cut ankle bracelet 6/21/2019	USA-002188
35	USAA report showing failed attempts to login on 1/29/2019 at 8:54:55 am	USA002559-USA-002563
36	FDIC certification for USAA (Sent to Defense)	
37	Photo of Office Items given to R.W.	USA-000970
38	Account subscriber information from google for loveiseasy2862@gmail.com Certification on 5/31/19 USA-002360	USA-002362
39	Account subscriber information from google for bhtown101b@gmail.com Certification on 7/2/19 USA-002368	USA-002366
40	Receipt and Confirmation from Bryan Conley's Super8 stay on 11/10/2018 Certification USA-002591	USA-002364-USA-002365
41	TextNow subscriber information for loveiseasy2862 and 9157773617 Certification USA-002704	USA-002350-USA-002351
42	Plenty of Fish Account Information for R.W. Certification on USA-002555	USA-002554-USA-002557
43	Bryan Conley Waiver of Appearance for Arraignment and Entry of Plea for 3:19CR00019 (Docket Entry 26,26-1, & 26-2)	
44	Photo of Chase Checking account x4417 available balance (Sent to Defense)	
45	Photo POF profile account Loveiseasy1198 with pig photo (Sent to Defense)	
46	Erik Vokoun PowerPoint Presentation	

Respectfully submitted,

MICHAEL A. BENNETT
United States Attorney

s/Joshua Judd
Joshua Judd
Assistant U.S. Attorney
717 West Broadway
Louisville, Kentucky 40202
PH: (502) 582-5911

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the counsel for Bryan Conley.

s/Joshua Judd
Joshua Judd
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:23-CR-00014-L-DJH

BRYAN CONLEY

DEFENDANTS

UNITED STATES' PROPOSED EXHIBIT LIST

Comes the United States, by counsel, and submits the following exhibit list:

Exhibit No.	Description	Bates
1	Audio of Bryan Conley Interview 1/30/2019 Part 1 (1:06:39)	USA-000001
2	Transcript Part 1 from audio of Bryan Conley Interview 1/30/2019	USA-000886- USA-000967
3	Audio of Bryan Conley Interview 1/30/2019 Part 2 (56:36)	USA-000002
4	Transcript Part 2 from audio of Bryan Conley Interview 1/30/2019	USA-002046- USA-002107
5	Extended Stay Hotel Receipt-Bryan Conley 1/27-28/19 9020 Church Street Brentwood, TN	USA-000624- USA-000626
6	Photos gag pic from R.W. phone	USA-000020
7-A	Photo of threatening text messages sent to R.W.'s parents "You have ten minutes to be on road or I sell her ass"	USA-000021
7-B	Photo of threatening text messages sent to R.W.'s parents "One more lie she's dead"	USA-000022
7-C	Photo of threatening text messages sent to R.W.'s parents "in 1 hour they will start raping her ass"	USA-000025
7-D	Photo of threatening text messages sent to R.W.'s parents "You listen or I send you pic of her body"	USA-000027

Exhibit No.	Description	Bates
8	Photo of Kroger Fuel Receipt (Shepherdsville, KY 1/29/19 1:47 pm) found on Bryan Conley	USA-000036
9	Handwritten list of items seized and currency count from Bryan Conley's person at time of arrest on 1/30/19	USA-000037- USA-000039 USA-001411- USA-001413
10-A	Photo of money, credit cards, and receipts found on Bryan Conley after arrest	USA-000031
10-B	Photo of money found on Bryan Conley after arrest	USA-000032
10-C	Photo of money found on Bryan Conley after arrest	USA-000033
10-D	Photo of cards found on Bryan Conley after arrest	USA-000034
10-E	Photo of Kroger Receipt found on Bryan Conley after arrest	USA-000036
11	Kroger "PVM" CCTV Surveillance Video located at 185 Adam Shepherd Parkway Shepherdsville, KY 1/29/19 1:31:59 PM to 1:54:54 full video (Made available to defense for viewing) Certified on 4/8/2019 USA-002300	USA-000616- USA-000617
11-A	Clip Kroger "PVM" CCTV Surveillance Video located at 185 Adam Shepherd Parkway Shepherdsville, KY 1/29/19 1:46:20 to 1:47:10	
11-B	Still shot photo of Conley from Kroger CCTV located at 185 Adam Shepherd Parkway Shepherdsville, KY on 1/29/19 01:46:52 pm Certified on 4/8/2019 USA-002300	USA-000615
12	Pin drop map texted to Conley showing where the money and jewelry was dropped on 1/30/2019	USA-000046
13-A	Photo of drop money (4 x \$20, 1 x \$10)	USA-000041
13-B	Photo of drop money (5 x \$20)	USA-000042
13-C	Photo of drop money (5 x \$20)	USA-000043
13-D	Photo of drop money (5 x \$20)	USA-000044
13-E	Photo of drop money (3 x \$5)	USA-000045
13-F	Photo of Jewelry for drop on 1/30/2019	USA-000620 USA-001458

Exhibit No.	Description	Bates
13-G	Photo of money for drop on 1/30/2019	USA-000621 USA-001459
14	Serial number comparison of drop money vs money on Bryan Conley at arrest	USA-000968
	Photos of Conley's Ford Taurus from 2/6/2019 (96 total photos)	USA-00640- USA-00735
16	Photo of Clarksville, TN Walmart receipt dated 1/28/19 found during the search of Conley's Taurus on 2/6/2019. Receipt lists the purchase of rope and zip ties	USA-002044
17	Walmart (Clarksville, TN) Transaction Record Certified on 4/18/2019 USA-002343	USA-002344
18	Still shots from checkout from 1/28/19 17:02 Walmart purchase of rope and zip ties Certified on 4/18/2019 USA-002343	USA-002345
19	R.W. (dad) phone chat log	
20	M.W. (mom) phone chat log	
21	2023 Cellebrite Forensic Extraction Reports of R.W.'s Apple iPhone 8 (615) 636-5512 (Made available to defense)	
22	Subscriber Information from R.W. (615) 636-5512 Certification on 3/11/2019 USA-002227	USA-002232
23	GPS Location data for R.W.'s iPhone from Verizon (615) 636-5512	USA-001612-USA-001712
24-A	Photo of McDonalds receipt from SA Phillips review of physical evidence on 3/15/2019	USA-002041
24-B	Photo of notebook from SA Phillips review of physical evidence on 3/15/2019	USA-002042
24-C	Photo Conley resume from SA Phillips review of physical evidence on 3/15/2019	USA-002043
24-D	Photo of Walmart receipt from SA Phillips review of physical evidence on 3/15/2019	USA-002044

Exhibit No.	Description	Bates
25	Still photo of Conley walking into Walmart on 1/28/2019	USA-001235
26-A	Surveillance video at door of Walmart of Conley walking in from 1/28/2019 11:50:57 to 11:52:42	USA-000030
26-B	Still photo of Conley walking into Walmart on 1/28/2019 11:52:25	
26-C	Still photo at door of Walmart on 1/29/2019	USA-001234
27-A	Walmart overhead video of Conley's declined transaction of purchase from 1/28/2019 11:59:52 to 1/29/2019 12:08:34	USA-000028
27-B	Still overhead photo of Walmart checkout 1/29/2019 12:00.10	
27-C	Still overhead photo of Walmart checkout on 1/29/2019	USA-001230 USA-001397
28-A	Surveillance video outside Walmart of grey Ford Taurus on 1/29/2019 from 12:02:47 to 12:04:50	USA-000029
28-B	Still Photo of outdoor Walmart Surveillance on 1/29/2019 showing Grey Ford Taurus	USA-001232 USA-001399
29	Walmart Credit Card Records from failed transaction on 1/29/2019 Certification 4/12/2019 USA-001234	USA-001241
30	2023 Cellebrite Forensic Extraction Report of Bryan Conley's Samsung Galaxy (Made available to defense)	
31	Subscriber Information for phone (915) 241-7423 Certification USA-002302	USA-002293-USA-002295
32	Toll analysis and Call Detail Report from Sprint for Brian Conley's Galaxy (915) 241-7423 Certification on 2/22/2019 USA-002302	USA-002213
33	Ankle bracelet tracking map 6/21/2019	USA-002181
34-A	Photo of field with cut ankle bracelet 6/21/2019	USA-002182

Exhibit No.	Description	Bates
34-B	Photo of grass with cut ankle bracelet 6/21/2019	USA-002183
34-C	Photo of cut ankle bracelet 6/21/2019	USA-002184
34-D	Photo of cut ankle bracelet 6/21/2019	USA-002185
34-E	Closeup photo of cut ankle bracelet 6/21/2019	USA-002186
34-F	Photo of cut ankle bracelet 6/21/2019	USA-002187
34-G	Closeup photo of cut ankle bracelet 6/21/2019	USA-002188
35	USAA report showing failed attempts to login on 1/29/2019 at 8:54:55 am	USA002559-USA-002563
36	FDIC certification for USAA (Sent to Defense)	
37	Photo of Office Items given to R.W.	USA-000970
38	Account subscriber information from google for loveiseasy2862@gmail.com Certification on 5/31/19 USA-002360	USA-002362
39	Account subscriber information from google for bhtown101b@gmail.com Certification on 7/2/19 USA-002368	USA-002366
40	Receipt and Confirmation from Bryan Conley's Super8 stay on 11/10/2018 Certification USA-002591	USA-002364-USA-002365
41	TextNow subscriber information for loveiseasy2862 and 9157773617 Certification USA-002704	USA-002350-USA-002351
42	Plenty of Fish Account Information for R.W. Certification on USA-002555	USA-002554-USA-002557
43	Bryan Conley Waiver of Appearance for Arraignment and Entry of Plea for 3:19CR00019 (Docket Entry 26,26-1, & 26-2)	
44	Photo of Chase Checking account x4417 available balance (Sent to Defense)	
45	Photo POF profile account Loveiseasy1198 with pig photo (Sent to Defense)	
46	Erik Vokoun Composite Exhibit from Phone Forensic Exam	

Respectfully submitted,

MICHAEL A. BENNETT
United States Attorney

s/ Joshua Judd
Joshua Judd
Assistant U.S. Attorney
717 West Broadway
Louisville, Kentucky 40202
PH: (502) 582-5911

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the counsel for Bryan Conley.

s/Joshua Judd
Joshua Judd
Assistant U.S. Attorney

MIME-Version:1.0
From:kywd-ecf-notice@kywd.uscourts.gov
To:kywd-ecf-notice@kywd.uscourts.gov
Bcc:
--Case Participants: Joel King (caseview.ecf@usdoj.gov, joel.king@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Joshua D. Judd (caseview.ecf@usdoj.gov, joshua.judd@usdoj.gov, lasonya.brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Joshua F. Barnette (bcampbell@stites.com, cbrown@stites.com, jbarnette@stites.com), Judge David J. Hale (jaylen_amaker@kywd.uscourts.gov, megan_renwick@kywd.uscourts.gov, nthompson@kywd.uscourts.gov, victoria_clark@kywd.uscourts.gov)
--Non Case Participants: US Probation - LOU (duty-kywp-louisville@kywp.uscourts.gov)
--No Notice Sent:

Message-Id:4331009@kywd.uscourts.gov
Subject:Activity in Case 3:23-cr-00014-DJH USA v. Conley Order
Content-Type: text/html

U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was entered on 3/29/2023 at 12:50 PM EDT and filed on 3/29/2023

Case Name: USA v. Conley
Case Number: 3:23-cr-00014-DJH
Filer:
Document Number: 36(No document attached)

Docket Text:

TEXT ORDER by Judge David J. Hale on 3/29/2023; as to Bryan Douglas Conley. On the Court's own motion, the final pretrial conference scheduled for March 30, 2023, is necessarily CANCELED and REMANDED. The Court anticipates setting a new final pretrial conference by subsequent Order.

This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

cc:counsel (NWT)

3:23-cr-00014-DJH-1 Notice has been electronically mailed to:

Joshua D. Judd joshua.judd@usdoj.gov, CaseView.ECF@usdoj.gov, LaSonya.Brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

Joshua F. Barnette jbarnette@stites.com, bcampbell@stites.com, cbrown@stites.com

Joel King joel.king@usdoj.gov, CaseView.ECF@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

3:23-cr-00014-DJH-1 Notice will not be electronically mailed to.:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CRIMINAL ACTION NO. 3:23-CR-14-DJH

BRYAN DOUGLAS CONLEY

DEFENDANT

ORDER ON *EX PARTE* HEARING

An *ex parte* hearing was held on March 29, 2023 regarding defense counsel's motion to withdraw as attorney (DN 20). Defendant Conley was present, in custody, with Joshua F. Barnette, appointed counsel. The proceeding was digitally recorded.

The Court discussed with the defendant the issues that exist between him and defense counsel and for the reasons fully stated on the record;

IT IS HEREBY ORDERED that Joshua F. Barnette is **WITHDRAWN** as counsel of record for the defendant. Larry D. Simon from the Criminal Justice Act attorney panel is appointed to represent the defendant.

IT IS FURTHER ORDERED that the official recording of these proceedings shall be **SEALED**.

cc: United States Attorney
Counsel of Record

0/40

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

BRYAN DOUGLAS CONLEY,

Defendant.

Case No. 3:23-CR-00014-DJH

Electronically Filed

MOTION FOR HEARING TRANSCRIPT

Comes now the undersigned attorney as former CJA appointed counsel for Mr. Conley. Previously, on March 17, 2023, Mr. Conley, through undersigned counsel, filed an *ex parte* motion. (R. 20.) On March 29, 2023, an *ex parte* hearing was held before the Honorable Regina S. Edwards, United States Magistrate Judge for the Western District of Kentucky. (See R. 37.) During that hearing Judge Edwards indicated that while the hearing was held *ex parte*, and the transcript will remain under seal, the transcript would be available if needed. At this time, the undersigned hereby requests a copy of the transcript of the *ex parte* hearing that was held on March 29, 2023.

Respectfully submitted,

/s/ Joshua F. Barnette

Joshua F. Barnette

STITES & HARBISON PLLC

400 West Main Street, Suite 1800

Louisville, KY 40202

859.226.2318

jbarnette@stites.com

CERTIFICATE OF SERVICE

I hereby certify that on 24th day of April, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Joshua F. Barnette

Joshua F. Barnette

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 3:23-CR-00014-DJH

BRYAN DOUGLAS CONLEY,

Defendant.

ORDER

This matter is before the Court on a motion for hearing transcript filed by previous counsel for Defendant Bryan Douglas Conley. (R. 41.) The Court being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Motion for Hearing Transcript (R. 41) is **GRANTED**;
2. The Clerk's Office is hereby directed to provide Mr. Conley's previous counsel, Joshua F. Barnette, with a copy of the transcript from the *ex parte* hearing held of March 29, 2023; and
3. The transcript of the *ex parte* hearing held on March 29, 2023, shall otherwise remain under seal and shall not be provided to any other person or entity without subsequent orders from the Court.

This the ____ day of _____, 20__.

MIME-Version:1.0
From:kywd-ecf-notice@kywd.uscourts.gov
To:kywd-ecf-notice@kywd.uscourts.gov
Bcc:
--Case Participants: Joshua F. Barnette (bcampbell@stites.com, cbrown@stites.com, jbarnette@stites.com), Joshua D. Judd (caseview.ecf@usdoj.gov, joshua.judd@usdoj.gov, lasonya.brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Joel King (caseview.ecf@usdoj.gov, joel.king@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov), Larry D. Simon (larrylawyerguy@aol.com, larrysimonlawoffice@gmail.com), Judge David J. Hale (jaylen_amaker@kywd.uscourts.gov, megan_renwick@kywd.uscourts.gov, nthompson@kywd.uscourts.gov, victoria_clark@kywd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:4360372@kywd.uscourts.gov
Subject:Activity in Case 3:23-cr-00014-DJH USA v. Conley Order Referring Motion
Content-Type: text/html

U.S. District Court

Western District of Kentucky

Notice of Electronic Filing

The following transaction was entered on 5/12/2023 at 12:25 PM EDT and filed on 5/12/2023

Case Name: USA v. Conley
Case Number: 3:23-cr-00014-DJH
Filer:
Document Number: 43(No document attached)

Docket Text:

TEXT ORDER by Judge David J. Hale on 5/12/2023; Prior counsel for the defendant having filed a motion for transcript of ex parte hearing held 3/29/23 (Docket No. [41]). The Court being sufficiently advised, IT IS HEREBY ORDERED that pursuant to Title 28, Section 636(b)(1)(A)(B), U.S. Code, this motion is referred to Magistrate Judge Regina S. Edwards for a hearing, if necessary, and disposition.

This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

cc:counsel (NWT)

3:23-cr-00014-DJH-1 Notice has been electronically mailed to:

Larry D. Simon larrysimonlawoffice@gmail.com, larrylawyerguy@aol.com

Joshua D. Judd joshua.judd@usdoj.gov, CaseView.ECF@usdoj.gov, LaSonya.Brown@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

Joshua F. Barnette (Terminated) jbarnette@stites.com, bcampbell@stites.com, cbrown@stites.com

Joel King joel.king@usdoj.gov, CaseView.ECF@usdoj.gov, kelly.mcbride@usdoj.gov, usakyw.assetfor@usdoj.gov, usakyw.ecfcriminal@usdoj.gov, usakyw.vwu@usdoj.gov

3:23-cr-00014-DJH-1 Notice will not be electronically mailed to.: