

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

WAYDE McKELVY

CRIMINAL No. 15-398-3

ORDER

AND NOW, this _____ day of July, 2017, upon consideration of Defendant's Motion to Compel the Production of Documents, and any response thereto, it is hereby **ORDERED** that the Motion is **GRANTED**. The government shall produce all the emails of Troy Wragg, Amanda Knorr, Daniel Rink, and Chris Flannery in its possession and make a copy of Troy Wragg's hard drive available to McKelvy's attorneys by August __, 2017.

BY THE COURT:

THE HONORABLE JOEL H. SLOMSKY, J.

**IN THE UNITED STATES DISTRICT COURT
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v.

WAYDE McKELVY

CRIMINAL No. 15-398-3

MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS

Defendant Wayde McKelvy (“McKelvy”), by and through his attorneys, Walter S. Batty, Jr. and William J. Murray, Jr., hereby respectfully moves this Court for an Order compelling the government to produce the emails of Troy Wragg, Amanda Knorr, Dan Rink and Chris Flannery. In addition, McKelvy requests that government make a copy of Troy Wragg’s hard drive available to his attorneys. McKelvy relies upon the memorandum of law in support of his motion to compel the production of documents.

WHEREFORE, for the above reasons and the reasons set forth in the memorandum of law in support hereof, it is respectfully requested that the Court order the government to produce all emails of Troy Wragg, Amanda, Knorr, Dan Rink and Chris Flannery. In the event the government does not possess the emails of Wragg, Knorr, Rink and Flannery, and cannot

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S
MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS**

Defendant Wayde McKelvy (“McKelvy”), by and through his attorneys Walter S. Batty, Jr. and William J. Murray, Jr., hereby submits this memorandum of law in support of his motion to compel the production of documents.

BACKGROUND

On September 2, 2015, a grand jury sitting in the Eastern District of Pennsylvania returned an indictment charging McKelvy and co-defendants, Troy Wragg (“Wragg”) and Amanda Knorr (“Knorr”), with conspiracy to commit securities fraud, wire fraud and securities fraud. The charges are based upon the defendants’ alleged involvement in a Ponzi scheme relating to Mantria Corporation (“Mantria”).

Defendant Wragg was the founder and CEO of Mantria, the company at the center of the alleged fraudulent scheme, and Knorr served as president and COO of Mantria. McKelvy was the founder and operator of Speed of Wealth, a company that pooled investor money and invested in Mantria ventures. The indictment alleges that the defendants defrauded more than 300 investors of approximately \$54 million through misleading them into believing Mantria’s business ventures – primarily a large real estate project in Tennessee and green energy projects utilizing technology referred to as “carbon diversion” – were hugely profitable when, as alleged in the indictment, they were losing money.

Wragg and Knorr have both plead guilty and agreed to cooperate against McKelvy. In a September 2016 proffer session with the government, Wragg told the government that during the second quarter of 2008, he and McKelvy had conversations about Mantria's financials and that Wragg told McKelvy that things were not good financially with Mantria. This was the first time Wragg said that McKelvy knew of Mantria's true financial picture; Wragg never said this during his deposition by the SEC in 2009 or during his prior proffer session with the government in 2011. McKelvy disputes this claim by Wragg.

The discovery in this matter is immense. This case was designated as a "mega case" because of the government's statement that it involves at least 1 million documents, over 300 investor victims, and about 25 other potential government witnesses. In its Complex Case Motion, the government represented that the underlying facts had been investigated by the FBI and SEC since October 2009, and that those agencies obtained voluminous financial, legal and business records from all entities involved that could exceed 1 million pages. (Dkt. #27, ¶ 2). The government has produced documents including documents from the SEC's investigation and litigation of its claims against Mantria, Wragg, Knorr and McKelvy and the investigation of this matter by the U.S. Attorney's Office out of Denver Colorado. Moreover, the government has continued to provide additional discovery to McKelvy based upon its continuing investigation of this matter. In approximately March 2017, the government produced three disks of documents including emails from Mantria. The vast majority of those emails are the emails of Jadah Hill, the Director of Operations of Mantria Capital Advisors, LLC, whose duties appear to include liaison with investors of Mantria. During the course of the review of those emails, it became clear that the government has not produced emails of Wragg, Knorr, Dan Rink or Chris Flannery.

Counsel for McKelvy have reviewed thousands of documents produced by the government. To date, while we have located a large number of documents containing the emails of McKelvy, Donna Jarock McKelvy, Jadah Hill, and certain other Mantria employees, we have not located emails from Wragg, Knorr, Rink or Flannery (other than those emails from Wragg and Knorr etc. that were part of the McKelvy, Donna Jarock McKelvy, or Jadah Hill emails). Moreover, an index of documents produced by the government contains a footnote that provides “WE APPEAR TO BE MISSING INTERNAL CORRESPONDENCE – ALMOST ALL EMAILS ARE WITH OUTSIDE PEOPLE. ALSO MISSING TROY/AMANDA AND DAN EMAILS.” A copy of the first page of that index is attached hereto as Exhibit A.

Counsel for McKelvy on several occasions discussed the importance of the emails of McKelvy, Wragg and Knorr with AUSA Livermore and requested that the government produce all relevant emails. Counsel for McKelvy recently expressed the importance of Wragg’s emails and questioned whether Wragg had deleted emails during the SEC investigation. Counsel for McKelvy also asked AUSA Livermore about the location of Wragg’s hard drive. AUSA Livermore advised counsel for McKelvy that he does not believe that law enforcement or the receiver seized Wragg’s Mantria laptop.

ARGUMENT

The discovery obligations of federal prosecutors are generally established by Federal Rule of Criminal Procedure 16, 18 U.S.C. § 3500 (the Jenks Act), Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972). In addition, the United States Attorney’s Manual describes the Department’s policy for disclosure of exculpatory and impeachment information. See USAM § 9-5.001. Rule 16(a)(1)(E) provides that “the

government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, . . . if the item is within the government's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

Moreover, pursuant to the holding of the Supreme Court in the case of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, the government is required to produce for inspection and copying any and all information known to (or which by the exercise of due diligence may become known to), or in the possession of, the government or any of its employees, agents, investigators, law enforcement officers, informants, or witnesses which tends to or may exculpate the defendant either through an indication of his innocence or through potential impeachment of any prosecution witness or informant, or information which may lead to such evidence through further investigation. Due process also requires disclosure of any evidence that provides for the defense to attach the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks. Kyles v. Whitley, 514 U.S. 419, 442 n. 134, 445-51 (1995). See also, Youngblood v. West Virginia, 547 U.S. 867 (2006)(Impeachment material falls under Brady and must be disclosed, even if it does not directly go to innocence); see also, United States v. Starusko, 729 F.2d 256, 261 (3d Cir. 1984) (Noting that Brady information which will require defense investigation or more extensive defense preparation should be disclosed at an early stage of the case.). The government has an affirmative duty to seek out and learn of any exculpatory material in the possession of anyone else acting on the government's behalf. See Youngblood, 547 U.S. at 867; Kyles v. Whitley, 514 U.S. 419, 437-38 (1995).

It is clear that the emails of Wragg, Knorr and Rink are material in preparing the defense given that the government alleges that McKelvy engaged in a conspiracy with Wragg and Knorr to commit securities fraud and wire fraud and specifically “to mislead investors as to the true financial status of Mantria.” Indictment ¶ 10. In order to afford McKelvy a meaningful opportunity to contest the charges against him by confronting his accusers with the effective assistance of counsel in a fashion which will not jeopardize his standing before the jury, McKelvy requests that the government be ordered to produce all Mantria Corporation emails in particular the emails of Wragg, Knorr, Rink and Flannery immediately. Wragg’s emails are particularly important and material because Wragg has plead guilty, agreed to cooperate against McKelvy, and in September 2016, informed the government that during the second quarter of 2008, he and McKelvy had conversations about Mantria’s financials and that Wragg told McKelvy that things were not good financially with Mantria. Wragg’s emails to McKelvy may contain information that contradicts what Wragg is now saying about his discussions with McKelvy and McKelvy’s understanding of Mantria’s true financial condition. In addition, Knorr has also plead guilty and agreed to cooperate against McKelvy. Her emails also are likely to contain information that is material to the defense. Therefore, the emails of Wragg, Knorr and Ring must be produced pursuant to Rule 16 of the Federal Rules of Criminal Procedure and *Brady v. Maryland*.

CONCLUSION

WHEREFORE, for the above reasons, it is respectfully requested that the Court order the government to produce all emails of Troy Wragg, Amanda, Knorr, Dan Rink and Chris Flannery. In the event the government does not possess the emails of Wragg, Knorr, Rink and Flannery,

McKelvy and cannot produce those emails, McKelvy requests that the Court hold a hearing during which the government explains what resources it has used to locate those emails.

Dated: July 24, 2017

Respectfully submitted,

/s/ wjm 409

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Counsel for Defendant Wayde McKelvy

Mantria / Speed of Wealth: Index of Mantria Notebooks 24 – 78

May/June 2010

INDEX**Mantria Binders 24 - 78**

BINDER	DESCRIPTION	NOTES
24	Courtney Davis Emails ¹ , maybe some from IR@mantria.com April, May 2009	
25	Courtney Davis Emails maybe some from IR@mantria.com May 2009	
26	Courtney Davis Emails, maybe some from IR@mantria.com April, May 2009	
27	Jadah Hill Emails Nov 08 – Jan 09	Jadah often had phone calls with investors to answer their questions. If deposed, can pull some examples out of here.
28	Jadah Hill Emails Nov 08 – Jan 09	Includes some emails about a dispute with Carbon Diversion Solutions, LLC. Some of these emails are impossible to read – they did not print properly. Some mass emails about new renewable energy opportunities.
29	Jadah Hill Emails Dec 08	
30	Jadah Hill Emails Dec 08 – March 09	
31	Jadah Hill Emails March 09 – July 09	
32	Jadah Hill Emails July 09 – Aug 09	
33	Jadah Hill Emails Aug 09	
34	Jadah Hill Emails Jan 09 - March 09	
35	Jadah Hill Emails Jan 09 - March 09	
36	Jadah Hill Emails March 09 – Aug 09	
37	Jadah Hill Emails	

¹ We don't seem to have attachments to these emails. Investment info was sent as attachments to emails. See 13821, 13845, 13922, 13926, 13944. WE APPEAR TO BE MISSING INTERNAL CORRESPONDENCE – ALMOST ALL EMAILS ARE WITH OUTSIDE PEOPLE. ALSO MISSING TROY/AMANDA AND DAN EMAILS.