

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

UNITED STATES OF AMERICA,

v.

WAYDE MCKELVY,

Defendant.

CRIMINAL ACTION
NO. 15-398-3

ORDER

AND NOW, this 15th day of September 2017, upon consideration of Defendant's Motion to Compel the Production of Documents (Doc. No. 110), the Government's Response to Defendant's Motion (Doc. No. 112), and Defendant's reply brief in support of Defendant's Motion (Doc. No. 120), it is **ORDERED** that Defendant's Motion (Doc. No. 110) is **DENIED**.¹

¹ In his Motion to Compel the Production of Documents (Doc. No. 110), Defendant requests the Government to produce emails of Troy Wragg, Amanda Knorr, Daniel Rink, and Chris Flannery, as well as to make a copy of Troy Wragg's hard drive and make it available to Defendant's counsel. Defendant's Motion to Compel (Doc. No. 110) also requests the Court to hold a hearing at which the Government would explain the resources it used to locate the emails and Troy Wragg's hard drive, in the event that the Government does not possess the requested items.

In its response (Doc. No. 112), the Government notes that there was an abbreviated SEC investigation of Mantria, Troy Wragg's company, and an FBI investigation of Mantria in Denver, before the criminal investigation was transferred to the FBI in Philadelphia in late 2014. By the time the criminal investigation was transferred to the FBI in Philadelphia, the Government was unable to obtain the emails now being requested by Defendant. Despite being unable to do so, the Government represents that it has provided to the defense the bulk of data from the SEC and Colorado Division of Securities investigation, the FBI investigation in Denver, and the FBI investigation in Philadelphia, in addition to all materials obtained from any other source. (*Id.* at 3). Moreover, the FBI informed the prosecutor that after analyzing a hard drive recovered from Mantria's storage unit, no emails were found. (*Id.* at 4). The Government also notes that Wragg had discarded his laptop sometime in 2011 and, therefore, was not in possession of the hard drive and his relevant emails. (*Id.* at 5). In sum, the Government does not possess the requested items at issue.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

Fed R. Crim. P. 16(a)(1)(E) provides that “upon a defendant’s request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, 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.

Here, the Government has explained that it does not possess the items Defendant is requesting and the reasons why it does not possess them. Thus, Defendant’s Motion to Compel the Production of Documents will be denied. Because the Government provided information as to why the emails and the hard drive are unavailable, Defendant’s request for a hearing at which the government would explain what resources it used to locate the emails will also be denied. Defendant does not cite any law to support the proposition that he is entitled to such a hearing.