[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14669
Non-Argument Calendar

D.C. Docket Nos. 1:17-cv-00512-KD,
1:14-cr-00116-KD-MU-1

LANCY WHITE, JR.,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

(April 2, 2021)

Before WILSON, ROSENBAUM, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Petitioner Lancy White, Jr., a federal prisoner serving a 132-month sentence for attempted online enticement of a minor, appeals the district court's denial of his

28 U.S.C. § 2255 motion to vacate his sentence. In his § 2255 motion, Petitioner asserted one claim of ineffective assistance of trial counsel, alleging that his trial attorney, Walter Honeycutt, failed to present testimony from a forensic computer examiner regarding apparent discrepancies in the Government's printed email evidence. The district court concluded, however, that Petitioner had failed to establish prejudice. We agree with the district court's prejudice determination and affirm the decision below.

I. BACKGROUND

A. Criminal Proceedings

As part of an online investigation into sexual exploitation of children in April 2013, undercover police officer Corporal James Morton placed a "personals" advertisement on Craigslist.org, using the name "Cindy Carmichael," who purported to be a 34-year-old mother of two daughters, ages 9 and 12. Petitioner responded to the ad and later sent emails expressing a desire to travel to Carmichael's residence to engage in sexual activity with her daughters. But when Petitioner arrived at the predetermined location, he did not meet "Carmichael" and her "girls." Instead, he found the authorities waiting to arrest him. After waiving his *Miranda* rights,[1] Petitioner made several incriminating statements. A federal

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

grand jury then indicted him on two counts of attempted online enticement of a minor, in violation of 18 U.S.C. § 2422. The case went to trial.

At trial, Corporal Morton testified that, as part of an undercover operation, he had placed an ad in the "Personal Encounters" section of Craigslist, posing as "Cindy Carmichael," a 34-year-old woman with 9-year-old and 12-year-old daughters. The ad consisted of nonsense song lyrics but contained coded language that would be meaningful to individuals seeking to sexually exploit children, including capitalized letters "P, T, H, C," an acronym for "preteen hard core," and the capitalized phrase "MOTHER FOR SAFETY," which Corporal Morton included to indicate that the mother would not be involved in any sexual activity. A few hours later, Corporal Morton received a response from Petitioner through Craigslist. Corporal Morton said that his communications were routed through Craigslist and saved on a Gmail account, younglove4u36571@gmail.com, which he was using for the investigation.

Referring to the Government's exhibit containing the email between Petitioner and "Carmichael," Corporal Morton testified that every email was present and that he did not insert the phrase "quoted text hidden" or hide or delete any emails. The emails showed that, after Petitioner expressed curiosity about the Craigslist ad, Corporal Morton, using the "Carmichael" pseudonym, asked him if he enjoyed "family fun." The following exchange then occurred:

Petitioner:	"Honestly. yes, I have always wanted to play but never got the chance."
Carmichael:	"What is your pleasure sir?"
Petitioner:	"Mother and daughter servicing me. I don't care who is around watching."
Carmichael:	"Actually I do not participate. I am there for safety only. I have 2 daughters."
Petitioner:	"nice. ages?"
Carmichael:	"What is your pleasure?"
Petitioner:	"I want young."
Carmichael:	"I have 2 daughters of different ages. The youngest is 9"
Petitioner:	"what age is the oldest? Are they both well-behaved?"
Carmichael:	"My oldest is 12. They are both well behaved and know that we are not allowed to talk about our friends with others. They have 3 years experience."
Petitioner:	"If I were to visit, what would I need?"
Carmichael:	"Protection. We do not keep any here."
Petitioner:	"Is that a requirement? Also, how do I become a friend?"
Carmichael:	"It is not a requirement if you are DD free."[2]

At that point, Petitioner expressed concern about being "put in a jeopardizing situation" and asked for Carmichael's "real email address."

After exchanging personal email addresses, Carmichael asked Petitioner if he would "like to meet [her] family," and Petitioner expressed hope that he would "get an invite." When Carmichael asked what Petitioner "would like to do with

[2] Corporal Morton testified that "DD" could mean "disease" or "drug and disease."

[her] girls," Petitioner described in detail how he wanted to engage in kissing, touching, oral sex, and penetration. Responding to a follow-up question about whether Petitioner would be able to do those things "with [her] girls and not leave bruising," Petitioner responded, "Yes of course. I won't bruise." They then arranged for Petitioner to meet Carmichael and her girls at an apartment the next night.

Corporal Morton testified that he arrested Petitioner when he arrived at the apartment. After waiving his *Miranda* rights, Petitioner engaged in a recorded interview with Corporal Morton. Corporal Morton testified that he discussed the emails one by one with Petitioner, and that Petitioner admitted he had used his home computer to write the emails, which he sent via Craigslist and his Gmail account. According to Corporal Morton, when asked what "family fun" meant, Petitioner responded that it referred to sexual activity with family members including children.

The Government then played for the jury two video clips from Petitioner's post-arrest interview. In the first, Corporal Morton asked why Petitioner had asked "Carmichael" for an email address other than Craigslist, and Petitioner responded that "[t]his is really dirty stuff" and that he was "worried about somebody finding out." In the second video clip, Corporal Morton asked Petitioner what he meant when he described the types of sex he wanted to have with the children, and

Petitioner explained that in "this part of the conversation" he was saying "it was going to be sex," "[v]aginal penetration," and "[o]ral sex." When Corporal Morton asked if there were "[a]ny other places that you would have penetrated the 9- and 12-year-old babies," Petitioner responded, "No, no, sir." Corporal Morton then asked whether Petitioner "wanted the 9- and 12-year-old to perform oral sex on [his] penis" and "wanted to perform oral sex or cunnilingus on the 9- and 12-year-old," to which Petitioner responded "Yes, sir" and "Yes."

On cross-examination, Honeycutt questioned the authenticity of the email exhibit. Corporal Morton testified, however, that he had "just clicked the 'print' button" from his Gmail account to create the Government's email exhibit, that the exhibit contained all of the emails with Petitioner, and that Petitioner had deleted from his own Gmail account some of the emails in the Government's exhibit. Honeycutt also pointed out several apparent discrepancies in the email printout, but Corporal Morton could not explain, among other things, why the emails switched between standard and military time, what explained the organization of the emails in the printout, what "quoted text hidden" meant, why the font changed within the email thread, or why an email present in one thread was missing from another. On redirect, Corporal Morton said that he had not altered the emails, which flowed sequentially, and that Petitioner did not indicate that emails were missing when he reviewed the emails with Petitioner during the post-arrest interview.

After the Government rested its case, Petitioner took the stand. Petitioner confirmed that he had written the emails in the Government's exhibit but contended that the emails shown were taken out of context and did not reveal the true nature of the conversation. According to Petitioner, some of the emails did not display the correct times and were shown out of order, making them erroneously appear incriminating. Petitioner further alleged that the Government's exhibit was incomplete because it did not show some of his emails, which would have shown he was seeking to have casual sex with Carmichael, not her daughters. The missing emails, Petitioner testified, might have been obscured by the phrase "Quoted text hidden," which appeared numerous times throughout the email printout. Petitioner claimed that he believed Carmichael was engaging in a fantasy involving imaginary daughters, that he never believed her daughters were real, and that he had "no interest in children whatsoever." Addressing his post-arrest statements, Petitioner testified that, in context, he was not admitting that he wanted to perform sexual acts with the children. Instead, Petitioner said, he was merely describing the emails he had sent, which referred to sexual acts he wished to perform with Carmichael. On cross-examination, Petitioner conceded that he had not mentioned during his post-arrest interview that emails were missing from the thread, and that he had deleted some of his emails before going to meet Carmichael.

After Petitioner testified, the Government announced its intention to call FBI Agent Candace Hunter as an expert witness in rebuttal. The court ruled that the Government could do so as long as Petitioner was also allowed to call an expert.[3] But when the court asked Honeycutt if he had an expert present, Honeycutt responded that he did not because "[w]e didn't plan on this whatsoever." Honeycutt further objected that allowing a rebuttal expert would be prejudicial because he did not have an expert, and he did not know whether an expert with whom he had consulted, Dr. George Kirkham, would qualify as a computer expert.[4] The court, however, permitted Agent Hunter to present limited rebuttal testimony.

[3] The court had excluded Agent Hunter from the Government's case-in-chief because the Government had not complied with Federal Rule of Criminal Procedure 16's notice requirements.

[4] Before trial, Honeycutt filed an untimely Rule 16 notice of intent to call Dr. Kirkham as an expert witness to testify about "well established undercover investigative procedures." Honeycutt later served an expert report from Dr. Kirkham that addressed Petitioner's entrapment defense. The Government moved *in limine* to exclude Dr. Kirkham's testimony, due to Petitioner's untimely disclosure and failure to comply with Rule 16. In responding to the Government's motions *in limine*, Honeycutt noted that "Defendant's expert" had identified "altered dates, times, and missing texts" in the proffered email evidence. Honeycutt then moved to dismiss the case because "[Corporal Morton] appears to have provided altered, manipulated and/or incomplete evidence." Responding to the motion to dismiss, the Government noted that Petitioner's proposed experts did not appear to have expertise in electronic evidence or offer any opinions on that topic. Honeycutt then served a supplemental expert report from Dr. Kirkham, which noted in cursory fashion that the printed email evidence "show[ed] evidence of having been tampered with and altered." In a supplemental response, the Government argued that Dr. Kirkham's resume did not establish any expertise regarding electronic evidence or email. After a pretrial hearing, the court granted the Government's motion to exclude Dr. Kirkham and denied Petitioner's motion to dismiss the case.

Agent Hunter testified that Gmail automatically inserted the phrase "Quoted text hidden" to avoid displaying every forwarded message in a thread, and that Corporal Morton was not responsible for that phrase appearing in the email exhibit. She further testified that Gmail created the timestamps when printing emails, that not all prior emails in a thread were timestamped, and that the five-hour differences between emails existed because the email server and computer were set to different time zones. On cross-examination, Agent Hunter explained that one would not expect all the email correspondence between Petitioner and "Carmichael" to be in a single thread because Petitioner had used two separate accounts (Gmail and Hotmail) when emailing Corporal Morton's younglove4u36571@gmail.com account.[5]

The jury found Petitioner guilty as charged. After denying Honeycutt's motions for acquittal, a new trial, and dismissal, the court sentenced Petitioner to concurrent terms of 132 months' imprisonment. On direct appeal, we affirmed Petitioner's convictions. In so doing, we ruled that the district court did not abuse its discretion in admitting the email evidence, in denying Petitioner's motion to dismiss the indictment, or in excluding Dr. Kirkham from testifying.

[5] During cross-examination, Petitioner said that he had initially contacted Carmichael through a Hotmail account but had switched over to Gmail when he learned that was what she was using.

B. Post-Conviction Proceedings

After retaining new counsel, Petitioner filed a 28 U.S.C. § 2255 motion to vacate, asserting one claim of ineffective assistance of counsel. Petitioner argued that his trial counsel, Honeycutt, had failed to investigate and present expert testimony regarding the Government's apparent manipulation of the printed email evidence introduced at trial. According to Petitioner, Honeycutt's performance was deficient because his workload (7 trials across 60 days) prevented him from completing a reasonable investigation of the email evidence and retaining a qualified expert to testify that the email evidence "showed signs of tampering and manipulation," that there remained "unexplained discrepancies in the emails introduced at trial," and that Agent Hunter was incorrect that the discrepancies could be easily explained away.[6] Petitioner further argued that he suffered prejudice because his defense relied on his own testimony that the email evidence was out of order and incomplete, and expert testimony about the unexplained inconsistencies would have bolstered his testimony that the email evidence did not accurately capture his correspondence with Carmichael.

[6] Because he was simultaneously representing other defendants in several criminal cases set for trial, Honeycutt moved for and received continuances of Petitioner's pretrial conference and trial, as well as extensions of time to file and respond to pretrial motions. From the record, it appears that Honeycutt first noticed discrepancies in the email evidence two weeks before trial, when he emailed the Government to ask what the phrase "quoted text hidden" in the email threads meant.

A magistrate judge ordered an evidentiary hearing, where dueling forensic computer experts testified about the email evidence presented at trial. Petitioner's expert, Steven Burgess, testified that he had compared two email threads in the printed email evidence admitted at trial—Thread B and Thread C—which generally contained the same group of emails but were timestamped with standard time and military time respectively.[7] According to Burgess, Craigslist masked individuals' true email addresses by forwarding emails through Craigslist alias accounts. Thread B showed messages between "Carmichael's" Gmail account and Petitioner's Craigslist alias, while Thread C showed messages between the two parties' Craigslist aliases.

Burgess concluded that the trial exhibit was not a fair and accurate representation of the communications between Petitioner and "Carmichael" because there were several unexplained "discrepancies" between Threads B and C: three emails in Thread B were missing from Thread C; one email in Thread C appeared to be missing from Thread B; there were two instances in which identical emails in the two threads showed different timestamps up to five minutes apart; an extra line appeared between the email address and the message content in one Thread B email; four Thread B emails appeared out of chronological order, based

[7] Although Burgess confirmed that he was granted unlimited access to the younglove4u36571 Gmail account, he testified that his opinions were based on a comparison of the printouts of Threads B and C that had been admitted at trial.

on their timestamps; and the "y" in "younglove4u36571" was inconsistently capitalized. According to Burgess, only the "Carmichael" account could have deleted the missing emails, and "it look[ed] like the timeline ha[d] been fiddled with somehow." He speculated that these discrepancies "could have been" the product of manipulation but admitted "I don't know how, however."

On cross-examination, Burgess admitted that expertise was not required to identify the "obvious" discrepancies between Threads B and C, and that Gmail automatically inserted the phrase "quoted text hidden" to avoid displaying the entire email thread. Although he testified that the timestamp discrepancies could not be explained by Craigslist's forwarding function, he admitted that he had not investigated Craigslist's operations and merely assumed based on his knowledge of other systems that Craigslist instantaneously forwarded emails. He also admitted that the electronic version of Carmichael's Gmail account "was the same as" the printout of Thread B, and that the printout of Thread C "had the same content" as what he found in the Gmail account.

The Government's expert, Konstantinos Dimitrelos, disagreed with Burgess's assessment of the email evidence. Dimitrelos testified that Threads B and C accounted for all of the emails electronically available through the "younglove4u36571" Gmail account, and that the printing process, which created only a representation of the source emails, caused certain emails to show up in only

one of the threads. Based on his familiarity with the Craigslist messaging system, Dimitrelos testified that emails were not instantaneously forwarded, and that the forwarding process routed the emails through Craigslist's servers, which explained the timestamp lag and the use of different types of timestamps. He further said that emails deleted from Gmail were unrecoverable after 30 days and that there was no way to determine whether emails had been deleted.

Following post-hearing briefing, the magistrate judge issued a report and recommendation ("R&R"), recommending that the district court deny Petitioner's § 2255 motion. The magistrate judge concluded that Petitioner had not shown prejudice from Honeycutt's failure to present the testimony of a forensic computer expert similar to Burgess because the discrepancies Burgess had identified did not undermine the Government's principal evidence of guilt—namely, Petitioner post-arrest admissions that he had written the emails to "Carmichael" and had intended to engage in sexual activity with her minor daughters. The magistrate judge further found that Burgess's testimony was weak because he had speculated about the causes of the apparent discrepancies without being able to explain them, and Dimitrelos had credibly rebutted key aspects of Burgess's testimony. Over

Petitioner's objections, the district court adopted the R&R and denied Petitioner's § 2255 motion.[8]

II. DISCUSSION

On appeal, Petitioner challenges the district court's denial of his ineffective-assistance-of-counsel claim, arguing that he suffered prejudice from Honeycutt's failure to present a forensic computer examiner like Burgess to testify about discrepancies in the Government's email evidence. In reviewing the denial of a § 2255 motion, we review legal conclusions *de novo* and factual findings for clear error. *Spencer v. United States*, 773 F.3d 1132, 1137 (11th Cir. 2014) (*en banc*). The ultimate question of whether trial counsel was ineffective is a mixed question of law and fact that we review *de novo*. *United States v. Bender*, 290 F.3d 1279, 1284 (11th Cir. 2002).

The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685–86 (1984). To succeed on an ineffective-assistance-of-counsel claim, a § 2255 petitioner must show that (1) his attorney's performance was deficient, and (2) the deficient performance prejudiced his defense. *See Strickland*, 466 U.S. at 687. "The petitioner's burden of demonstrating prejudice is high." *Wellington v. Moore*, 314

[8] The district court did not adopt the R&R's findings regarding the deficient-performance prong of Petitioner's claim, which the magistrate judge had addressed briefly in a footnote.

F.3d 1256, 1260 (11th Cir. 2002). Prejudice exists only if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. To prove prejudice from counsel's failure to present an expert witness, a petitioner must demonstrate a reasonable likelihood both that ordinarily competent counsel "would have found an expert similar to the one eventually produced" and that such an expert's testimony would have affected the outcome of the proceedings. *Horsley v. Alabama*, 45 F.3d 1486, 1495 (11th Cir. 1995).

Here, Petitioner failed to establish prejudice because a forensic computer examiner's expert testimony about unexplained discrepancies in the email evidence would not have undermined the impact of Petitioner's post-arrest admissions, which served as the core of the Government's case and provided overwhelming evidence of his guilt. At trial, the Government played video clips from Petitioner's post-arrest interview in which Corporal Morton asked Petitioner about his email exchange with "Carmichael." In those clips, Petitioner admitted not only that he was responsible for sending the emails describing the various sex acts he would perform with Carmichael's minor children, but also that he in fact wanted to engage in sexual activity with the children. Petitioner further incriminated himself by admitting that he had asked Carmichael to correspond via her personal email

address rather than through Craigslist out of fear "about somebody finding out." Given the strength of these post-arrest admissions, which Burgess's testimony did not call into question, the district court did not err in concluding that testimony from an expert like Burgess would not have created a reasonable probability of a different verdict. *See Bester v. Warden*, 836 F.3d 1331, 1338–39 (11th Cir. 2016) (holding that the petitioner had not shown prejudice where "[t]he evidence against him was overwhelming").

We reject Petitioner's contention that he suffered prejudice because a forensic computer examiner like Burgess could have bolstered his allegation that the email threads had been manipulated and were incomplete.[9] For starters, Petitioner's theory that the emails had been manipulated lacked credibility because Petitioner's post-arrest statements supported the authenticity of the email evidence presented at trial. Specifically, in his post-arrest interview, Corporal Morton discussed with Petitioner many of the emails ultimately presented at trial. Rather than objecting that the email threads did not accurately represent his correspondence with "Carmichael," Petitioner took responsibility for his emails

[9] For the purposes of this appeal, we assume that an expert like Burgess would have been permitted to testify. Notably, however, Burgess testified that no expertise was required for him to identify the "obvious" discrepancies in the email evidence. *See* Fed. R. Evid. 702(a) (permitting a qualified expert to testify only if "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue").

and explained his understanding of the correspondence. Indeed, at trial, Petitioner admitted that during his post-arrest interview he never objected that Corporal Morton was missing emails necessary to provide context for the exchange. Given that Petitioner's post-arrest statements implicitly authenticated the content of email exchange ultimately presented at trial, his "manipulation" theory had little chance of success.

Further, Burgess's weak testimony did little to advance Petitioner's theory.[10] Burgess was unable to definitively state whether the email evidence had been manipulated, how the email threads could have been manipulated, or whether emails were missing from the Government's trial exhibit. He could only identify "obvious" discrepancies and speculate that the unexplained irregularities "could have been" the product of manipulation. Noting the presence of minor discrepancies in the email threads, however, could not have shown, as Petitioner alleged in his testimony, that the email exhibit did not capture the true context of the exchange or include all of the correspondence between the parties. Thus, to the

[10] Because Burgess's testimony would not have impacted the outcome of the trial even if he had been the only expert to testify and had done so credibly, we need not address Petitioner's argument that the district court erred in finding Burgess less credible than the Government's expert witness.

extent that an expert like Burgess could have provided any support for Petitioner's "manipulation" theory, that support would have been minimal at best.[11]

Finally, the failure to present expert testimony similar to Burgess's did not prejudice Petitioner because trial counsel in fact highlighted for the jury multiple discrepancies in the email evidence and the jury nevertheless rejected Petitioner's theory that the emails had been manipulated or deleted. For example, Honeycutt highlighted inconsistencies in the timestamps, as well as the repeated use of the phrase "quoted text hidden" throughout the email exchange. Further, like Burgess, Honeycutt identified the discrepancy with the highest chance of bolstering Petitioner's "manipulation" theory. Specifically, Honeycutt noted that, although Threads B and C appeared to show the same group of messages, at least one email present in one thread was not present in the other. Drawing the jury's attention to this discrepancy, Honeycutt cross-examined Corporal Morton about the missing email. Like Burgess, however, Corporal Morton had no explanation for the apparent discrepancy. The jury therefore considered and rejected the gist of the testimony that Petitioner contends a forensic computer expert would have

[11] Petitioner's argument first raised on appeal that he might not have taken the stand if a computer expert had testified lacks credibility. As Petitioner notes on appeal, neither expert found any deleted or missing emails from the Government's trial exhibit. Accordingly, an expert like Burgess could not have presented the core of Petitioner's "manipulation" theory—his allegation that additional emails not present in the email exhibit showed that he was talking about having sex with Carmichael rather than her children.

offered—that unexplained discrepancies might have resulted from manipulation of the email evidence.

In sum, we cannot say that the district court erred in concluding that Petitioner failed to prove prejudice from trial counsel's failure to present a forensic computer expert, given that (1) Petitioner's post-arrest statements provided overwhelming evidence of his guilt, (2) Burgess's weak testimony did little to support Petitioner's theory regarding deleted emails, and (3) the jury rejected Petitioner's "manipulation" theory after considering similar evidence of apparent discrepancies in the printed email evidence. Having concluded that Petitioner failed to establish the prejudice prong of his ineffective-assistance claim, we need not address his arguments regarding the deficient-performance prong. *Strickland*, 466 U.S. at 697.

III. CONCLUSION

Because Petitioner failed to establish prejudice from his trial counsel's failure to produce expert testimony from a forensic computer examiner, the district court did not err in rejecting his ineffective-assistance-of-counsel claim. Accordingly, we affirm the court's denial of Petitioner's § 2255 motion.

AFFIRMED.