

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 2:17-MJ-0825-NJK
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Las Vegas, Nevada
)	
MARCUS HUTCHINS,)	Friday, August 4, 2017
)	(3:00 p.m. to 3:22 p.m.)
Defendant.)	

CONTINUED INITIAL APPEARANCE IN RULE 5(c)(3) PROCEEDING

BEFORE THE HONORABLE NANCY J. KOPPE,
UNITED STATES MAGISTRATE JUDGE

Appearances: See Next Page

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APPEARANCES FOR:

Plaintiff: DANIEL J. COWHIG, ESQ.
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Defendant: ADRIAN LOBO, ESQ.
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Suite 500
Las Vegas, NV 89101

U.S. Pretrial Services: Kelly Bowen
Erin Oliver

1 Las Vegas, Nevada; Friday, August 4, 2017; 3:00 p.m.

2 Call to Order

3 **THE CLERK:** Your Honor, we're now calling *United*
4 *States of America versus Marcus Hutchins*, Case Number
5 2:17-mj-00825-NJK.

6 Counsel, please state your name for the record.

7 **MR. COWHIG:** Good afternoon. Dan Cowhig on behalf of
8 the United States.

9 **THE COURT:** Got you, Mr. Cowhig.

10 **MS. LOBO:** Adrian Lobo on behalf of Mr. Hutchins.

11 **THE COURT:** All right. Good afternoon, Ms. Lobo, and
12 good afternoon, Mr. Hutchins.

13 **THE DEFENDANT:** Good day.

14 **THE COURT:** This -- okay. And Mr. Hutchins, just
15 make sure you speak up --

16 **THE DEFENDANT:** Sorry.

17 **THE COURT:** -- into that microphone when you do talk,
18 okay?

19 **THE DEFENDANT:** Okay. Thanks.

20 **THE COURT:** That's okay. All right. So, we were
21 here yesterday. This case got continued in the middle of the
22 initial appearance regarding whether you had an attorney.

23 So, at this time, the Court has received the
24 designation of retained counsel for Adrian Lobo which the Court
25 will make a part of the record.

1 Now, Mr. Hutchins, you have the right to an identity
2 hearing in this district in which the Government will be
3 required to show that you are in fact the person named in the
4 indictment. This identity hearing is not merely to establish
5 that your name is Marcus Hutchins, but rather that you are in
6 fact the person named Marcus Hutchins who is charged in the
7 indictment.

8 Now, the Court has been provided a waiver of that
9 identity hearing and preliminary hearing, and it has your name
10 at the top and a signature at the bottom. Do you recognize
11 that?

12 **THE DEFENDANT:** I do.

13 **THE COURT:** Is that in fact your signature at the
14 bottom?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** And before you signed it, did you read
17 it?

18 **THE DEFENDANT:** I did.

19 **THE COURT:** And before -- Ari, are you picking him
20 up?

21 **THE CLERK:** He's a little low.

22 **THE COURT:** Okay. You're speaking a little softly,
23 but --

24 **THE DEFENDANT:** Sorry.

25 **THE COURT:** We're recording this, that's why I'm

1 asking. Okay?

2 Now, before you signed it, did you have an
3 opportunity to speak with your attorney so that she could
4 explain to you what an identity hearing is and what a
5 preliminary hearing is, as well as the pros and cons of waiving
6 those hearings in this district?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** And did you have an opportunity to ask
9 your attorney any questions you might have regarding what those
10 hearings are as well as the pros and cons of waiving those
11 hearings in this district?

12 **THE DEFENDANT:** I did.

13 **THE COURT:** And based on that discussion and based on
14 the questions you asked and then the answers to them you
15 received, is it your intent to knowingly waive your right to an
16 identity hearing in this district?

17 **THE DEFENDANT:** It is.

18 **THE COURT:** All right. So, the Court finds that the
19 Defendant has knowingly waived his right to an identity hearing
20 in this district, and he is identified as the named Defendant
21 in the indictment and held to answer in the Eastern District of
22 Wisconsin.

23 Now, Mr. Hutchins, did you have a chance to speak to
24 counsel today regarding what you are charged with in the
25 indictment?

1 **THE DEFENDANT:** A little bit.

2 **THE COURT:** Okay. Do you need more time to speak to
3 your attorney?

4 **(Pause; Defendant confers with his attorney)**

5 **THE DEFENDANT:** No, thanks.

6 **THE COURT:** I'm sorry?

7 **THE DEFENDANT:** No, thanks. I don't need more time.

8 **THE COURT:** You do need more time?

9 **THE DEFENDANT:** No, I don't.

10 **THE COURT:** Okay.

11 **THE DEFENDANT:** Thanks.

12 **THE COURT:** Sorry, I'm having a little trouble
13 hearing you. You're a little soft-spoken.

14 **THE DEFENDANT:** Sorry.

15 **THE COURT:** No, that's okay. Do you understand the
16 nature of the charges against you?

17 **THE DEFENDANT:** I do.

18 **THE COURT:** Do you understand the purpose of this
19 hearing?

20 **THE DEFENDANT:** I do.

21 **THE COURT:** Ms. Lobo, do you have any reason to
22 question the competence of the Defendant to understand the
23 charges against him or to assist in his defense?

24 **MS. LOBO:** No, your Honor.

25 **THE COURT:** All right. Now, the Court has received a

1 supplemental memorandum from Pretrial Services in addition to
2 the report from yesterday. Have both parties received that
3 supplemental memorandum?

4 **MR. COWHIG:** Yes, your Honor.

5 **MS. LOBO:** Yes, your Honor.

6 **THE COURT:** Okay. And Mr. Cowhig, has that changed
7 the Government's request?

8 **MR. COWHIG:** It has not, your Honor.

9 **THE COURT:** All right. Is the Government ready to
10 proceed?

11 **MR. COWHIG:** Yes, your Honor.

12 **THE COURT:** And Ms. Lobo, is the Defense ready to
13 proceed on the detention hearing?

14 **MS. LOBO:** Yes, your Honor.

15 **THE COURT:** Okay. Mr. Cowhig.

16 **MR. COWHIG:** Thank you, your Honor. Based upon the
17 assessment yesterday from Pretrial Services, Mr. Hutchins, we
18 still believe, is a risk of nonappearance and a danger to the
19 community.

20 In his interview following his arrest, Mr. Hutchins
21 admitted that he was the author of the code that became the
22 Kronos malware and admitted that he had sold that code to
23 another.

24 Among the evidence that the Government will present
25 at his trial will be that there are chat logs in which

1 Mr. Hutchins discusses with an associate the sale of the Kronos
2 banking trojan through his associate splitting the proceeds of
3 the Kronos trojan with his associate, where he complains about
4 the amount of money that he received for the sale of the
5 banking trojan and where he received a request from that
6 associate to update the Kronos banking trojan. The associate
7 in these chats is the person from whom the law enforcement
8 agents purchased the Kronos trojan on AlphaBay as specified in
9 the indictment.

10 Mr. Hutchins is not -- not a local. He does not have
11 local ties. He does not have a residence here in the United
12 States. He is a foreign national; has a foreign passport. He
13 has financial means to travel outside the United States to flee
14 the jurisdiction. We don't have any ties that would place him
15 here in Las Vegas.

16 In addition to that, furthering the investigation as
17 -- the Eastern District of Wisconsin continued to look at what
18 has evolved since then. During his time here in Las Vegas,
19 Mr. Hutchins, according to tweets that he made to his Twitter
20 account under the handle of "Malwaretech", Mr. Hutchins
21 indicated that he had visited firearms ranges twice and used
22 firearms here.

23 As a foreign national who's not accepted under 18
24 U.S. Code 922(y), he is a prohibited person for purposes of 18
25 United States Code 922(g)(5)(B). That is not included on the

1 indictment; that's a new development in the case. But
2 nonetheless we point that out to your Honor to indicate other
3 developments in the case.

4 The hearing for Mr. Hutchins initial appearance in
5 the Eastern District of Wisconsin is set for August 8th. We
6 believe that detention based on these facts is most
7 appropriate. Were Mr. Hutchins to flee, we don't believe the
8 conditions that were set by Probation or proposed by Probation
9 in their recommendation today would be sufficient.

10 The Kronos banking trojan continues to exist out
11 there in the wild. If Mr. Hutchins were able to gain access to
12 the Internet, he may have the ability to take actions that
13 would either obfuscate some of the evidence related to that.
14 His other codefendant is still at large. We don't believe the
15 conditions that are set out would prevent Mr. Hutchins from
16 carrying out those acts if he were so inclined.

17 Your Honor, we ask that Mr. Hutchins be detained as a
18 risk of flight and a danger to the community, and directed to
19 be delivered to the Marshals in the Eastern District of
20 Wisconsin.

21 **THE COURT:** All right. Ms. Lobo.

22 **MS. LOBO:** Yes. Your Honor, today we are going to be
23 seeking the release of Mr. Hutchins and here's why. As far as
24 the Government's argument that he is a flight risk and a danger
25 to the community, that is just simply not true in this case.

1 Mr. Hutchins is not a danger to the community
2 contrary to presenting this 922(g)(5)(B) allegation. And I
3 received a copy of the tweets from the Government. And after
4 looking at them and talking to Mr. Hutchins, I am under the
5 impression that it -- this is only being sought for the
6 purposes of -- that this is a high-profile case and that they
7 are trying to do anything to keep him in the custody of the
8 Government.

9 That being said, Mr. Hutchins traveled to the United
10 States for purposes of a conference. He's rightfully gainfully
11 employed, and when he was in -- at this conference, he chose to
12 go to a gun range, as many tourists do when they're visiting
13 Las Vegas. He went to the gun range, he showed his passport.
14 That passport was a British passport. It contained his age
15 inside of that passport. He signed all of the paperwork
16 authorizing him to shoot the guns that were at that range. And
17 for the Government now to say that to be prosecuted or like
18 that this is now somehow a 922(g)(5)(B), you know, offense,
19 then leads me to believe that, well, I don't see that the
20 Government is going after and prosecuting business owners who
21 are marketing this for tourists in the international hub that
22 Las Vegas is.

23 That being said, he's not a danger to the community.
24 He doesn't have any substantial -- any criminal history for
25 that matter. And he's somebody who has never been in trouble

1 with the law here, obviously, in the United States or in
2 Britain as well.

3 He has contacts and tremendous community support
4 abroad, international, and locally here. I brought to the
5 Court, and if I may show these to the Court, there's at least
6 12 to 15 letters from family members, from other people in the
7 security community, and from, I believe, employers as well. If
8 I can have you --

9 **THE COURT:** You may. Has the Government seen that?

10 **MS. LOBO:** Yes, they have.

11 **THE COURT:** Yeah.

12 **MR. COWHIG:** We have, your Honor. We have no
13 objection.

14 **THE COURT:** Okay. Yes, you may.

15 **MS. LOBO:** Okay. Thank you.

16 As far as him being a flight risk. Yes, he does not
17 live here; he's not a citizen. He is a foreign national.
18 However, that being said, he does work as a contractor and the
19 individual who's identified in the Pretrial Services report,
20 I'm going to mess his last name up, Selene Ninuno (phonetic),
21 who as mentioned has said that he will procure housing and that
22 he will make sure that Mr. Hutchins, if he is granted release,
23 is given a place to stay and that he will comply with all of
24 the directives as ordered by this Court, and that he will make
25 his way to Wisconsin; that he will arrive there on time.

1 I spoke to family in the U.K. prior to coming to
2 Court today and they are looking at getting any sort of rental,
3 vacation rental, a short-term lease, so that way he can be out
4 of custody, whether it be here in Las Vegas or it's in
5 Wisconsin. He'll comply with whatever the Court deems
6 appropriate for his release.

7 And with that, your Honor, I'm going to submit it on
8 those conditions as outlined within the Pretrial Services
9 Investigation reports.

10 **THE COURT:** All right. I'm just taking a quick look
11 at these letters.

12 **(Pause)**

13 All right. Ari, if you can pass these down.

14 **MS. LOBO:** And if I may add one other -- if your
15 Honor is inclined or not inclined to release him for any
16 reason, your Honor, is that we were asking that if you won't
17 allow the family to procure a residence here, that he be
18 released to a halfway house pending his transport to Wisconsin.

19 **THE COURT:** Okay. All right. Anything else from the
20 Government?

21 **MR. COWHIG:** No, your Honor.

22 **THE COURT:** Okay. All right. The Court notes
23 initially that the indictment itself, the most recent charge in
24 the indictment is in July of 2015. That's two years ago. The
25 Defendant has been free to roam the world during that period of

1 time, and so, if he is a risk of non-appearance, the Court is
2 unsure as to why it took two years to -- and a danger to the
3 community, why it took two years to indict him. Additionally,
4 he has no criminal history.

5 Regarding the gun range, the Court agrees with
6 Ms. Lobo. People -- there are advertisements in the airport
7 about shooting at the range. And he showed his passport.
8 People are, of course, charged with knowing the law. However,
9 shooting guns at a range in Las Vegas is very different from
10 carrying guns on the street in Las Vegas.

11 The Court does not find that that means this
12 Defendant is a danger to the community, and the Court is
13 persuaded by the lack of criminal history, the fact that the
14 indictment -- the activities alleged in the indictment occurred
15 two years ago, more than two years ago.

16 At this point, and before that, he does seem to have
17 a great deal of family support and support from friends.
18 Therefore, the Court finds that conditions can be fashioned.

19 Now, Mr. Hutchins, I want you to listen very
20 carefully to all of the conditions that the Court is going to
21 impose on you.

22 **THE DEFENDANT:** Yes, your Honor.

23 **THE COURT:** It is very important that you follow each
24 and every one of these conditions exactly as it is imposed on
25 you. If you violate even one of these conditions, you could be

1 brought back before the Court and you could face ramifications
2 including detention pending trial. Do you understand that?

3 **THE DEFENDANT:** I understand, your Honor.

4 **THE COURT:** All right. So, the Court is going to
5 order that Mr. Hutchins is released on a \$30,000 bond secured
6 by cash with these conditions of release.

7 You are subject to Pretrial Services supervision.
8 You shall use your true name only, and you shall not use any
9 false identifiers. You shall not possess or use any false or
10 fraudulent access devices.

11 **THE DEFENDANT:** Ma'am, I'm not really sure what that
12 means. Could you elaborate, please?

13 **THE COURT:** All right. You can -- you can speak to
14 your attorney, and if you have any questions about it, you can
15 speak to the Pretrial Services officer to make sure, because
16 the Pretrial Services officer will go over this again with you,
17 and will go over it so that you understand exactly. All right?

18 **THE DEFENDANT:** Thank you.

19 **THE COURT:** But you do understand that that is a
20 condition, correct?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** All right. You shall surrender any
23 passport and/or passport card to Pretrial Services or your
24 supervising officer. You shall not obtain a new passport or
25 passport card.

1 You shall abide by the following restriction on your
2 travel. And this is a condition that may be modified depending
3 on where the residence is located, but for the moment, your
4 travel is restricted to Clark County, Nevada, which is where we
5 are right now. And you may travel to the Eastern District of
6 Wisconsin for court purposes.

7 Now, the Court will modify that condition depending
8 on where this residence will be once the residence is secured
9 if it is not in Clark County. If, for example, it is in
10 Wisconsin, then the Court will restrict your travel to the
11 Eastern District of Wisconsin. But for right now, this is the
12 condition.

13 You shall maintain your residence at a halfway house
14 until that residence is secured and the residence is approved
15 by Pretrial Services.

16 You shall pay all or part of the cost of residing in
17 the halfway house based upon your ability to pay as Pretrial
18 Services or the supervising officer determines.

19 You shall avoid all contact directly or indirectly
20 with any codefendants unless it is in the presence of counsel.

21 You shall participate in home detention. You are
22 restricted to your residence at all times except for
23 employment, education, religious services, medical, substance
24 abuse or mental health treatment, attorney visits, court
25 appearances, court ordered obligations, or other activities

1 preapproved by Pretrial Services or the supervising officer.

2 You shall submit to GPS monitoring technology and
3 abide by all of the program requirements and instructions
4 provided by Pretrial Services or the supervising officer
5 related to the proper operation of that technology.

6 You shall not tamper with, damage, or remove the
7 monitoring device, and you shall charge the equipment according
8 to the instructions provided by Pretrial Services or the
9 supervising officer.

10 You shall pay all or part of the cost of the location
11 monitoring program based upon your ability to pay as determined
12 by Pretrial Services or the supervising officer.

13 And you shall not have access to computers or
14 connecting devices which have Internet, instant messaging, IRC
15 servers, and/or the worldwide web including but not limited to
16 PDAs, cellphones, iPods, iPads, tablets, ereaders, Wii
17 PlayStation, Xbox, or any such devices at home, your place of
18 employment, or in the community.

19 Do you understand those conditions?

20 **THE DEFENDANT:** I understand.

21 **THE COURT:** All right. And the next hearing is set
22 for August 8th in the Eastern District of Wisconsin. Do you
23 have an address of that courthouse, Mr. Cowhig?

24 **MR. COWHIG:** Yes, your Honor. August 8th at
25 9:30 a.m. before Magistrate Judge William E. Duffin, in

1 Courtroom 242. The U.S. District Court is located 517 East
2 Wisconsin Avenue, Milwaukee, Wisconsin.

3 **THE COURT:** All right. You will be required to be
4 there for that hearing. Do you understand that?

5 **THE DEFENDANT:** I understand.

6 **THE COURT:** All right. Is there anything else on
7 this matter?

8 **MR. COWHIG:** No, your Honor.

9 **MS. LOBO:** No, your Honor.

10 **THE COURT:** All right. Thank you everyone.

11 **(Pause)**

12 **MS. LOBO:** Judge?

13 **THE DEFENDANT:** Sorry.

14 **MS. LOBO:** If we could recall, briefly. He doesn't
15 have I.D. to travel to U.S. because his passport has been -- to
16 Wisconsin.

17 **THE COURT:** Oh.

18 **MR. SPEAKER:** Three days to get there should be --

19 **MS. LOBO:** It'd take, yeah.

20 **THE COURT:** Right.

21 **MS. LOBO:** But he's going to need that to fly to
22 Wisconsin.

23 **THE COURT:** Okay. Let's recall this.

24 **MS. LOBO:** Sorry.

25 **(Pause from 3:19 to 3:20 p.m.)**

1 **THE COURT:** Mr. Cowhig.

2 **THE CLERK:** Mr. Cowhig.

3 **THE COURT:** We're going to recall the last case.

4 **THE CLERK:** Your Honor, we're now recalling *United*
5 *States of America versus Marcus Hutchins*, Case Number 2:17-mj-
6 00825-NJK.

7 Counsel, please state your name for the record.

8 **MR. COWHIG:** Dan Cowhig, your Honor, on behalf of the
9 United States.

10 **THE COURT:** All right, Mr. Cowhig.

11 **MS. LOBO:** Adrian Lobo on behalf of Mr. Hutchins.

12 **THE COURT:** Ms. Lobo.

13 **MS. LOBO:** Your Honor, I asked that the case be
14 recalled to address the issue of his I.D. He only has a
15 British passport, and he is going to be -- presumably he's
16 going to be purchasing tickets to fly to Wisconsin and set up
17 residence there as well. So, if there is any sort of
18 stipulation that the passport only be used for purposes of
19 domestic flights and procuring the residence here, I would ask
20 that the Court reconsider that option.

21 **THE COURT:** Does Mr. Hutchins have any sort of U.K.
22 Driver's License that could be used?

23 **THE DEFENDANT:** Yeah, I did have one, but it was
24 stolen last week.

25 **THE COURT:** All right.

1 **THE DEFENDANT:** I may be able to get a new one mailed
2 out, but I'm not sure yet.

3 **MR. COWHIG:** Your Honor, assuming Mr. Hutchins will
4 be flying to Wisconsin, there are -- there are ways to get him
5 on that aircraft without the passport.

6 **THE COURT:** There are ways; however, he's going to
7 have to leave pretty quickly for this particular flight.

8 **MR. COWHIG:** Yes, your Honor. The passport will not
9 be required for his flight to -- within destinations within
10 CONUS.

11 Without going into too much detail on the record,
12 this is something we discussed already with TSA and the
13 immigration folks. Mr. Hutchins will be able to board an
14 aircraft and fly to Wisconsin.

15 **THE COURT:** Without his identification.

16 **MR. COWHIG:** Without the British passport. Yes, your
17 Honor.

18 **MS. LOBO:** Okay. Very well.

19 **THE COURT:** All right. Then that will -- then the
20 conditions will remain as they were stated before.

21 **MS. LOBO:** All right. Thank you.

22 **THE COURT:** All right.

23 **(This proceeding was adjourned at 3:22 p.m.)**

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



August 10, 2017

TONI HUDSON, TRANSCRIBER



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