

No. _____

***IN THE
SUPREME COURT OF THE UNITED STATES***

ERNEST KYLE DYER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari To
the United States Court of Appeals for the Third Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3087

United States of America

v.

Ernest Kyle Dyer,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No.: 1:17-cr-00226-001)
District Judge: Hon. Sylvia H. Rambo

Submitted: September 16, 2022

(Filed: November 29, 2022)

Before: KRAUSE, BIBAS, RENDELL, Circuit Judges.

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OPINION OF THE COURT

RENDELL, *Circuit Judge*.

Ernest Dyer pleaded guilty to one count of possession of a firearm as a convicted felon under 18 U.S.C. § 922(g), preserving the right to challenge on appeal the District Court's refusal to suppress certain evidence under Federal Rule of Criminal Procedure 11.

Because the only evidence Dyer contends should have been suppressed was immaterial to his case, and admitting it was at most harmless error, we will affirm the District Court's suppression ruling. Therefore, we hold that Dyer has not prevailed on appeal for the purposes of Rule 11(a)(2) and will not be entitled to withdraw his plea. We will affirm.

I. Facts

Over the course of several weeks in the summer of 2017, a York, Pennsylvania woman told local officers and federal agents that her boyfriend, Ernest Dyer, had attacked her with a handgun, trafficked women, and sold drugs from the house both she and Dyer lived in, on Queen Street in York, Pennsylvania.

Based on these statements, Detective Mark Baker of the Northern York County Regional Police Department applied for a warrant to search Dyer's home for "[f]irearms, illegal drugs, [and] cell phones possessed or belonging to Ernest Dyer" after a search of his criminal history revealed that he, a felon, may have possessed a firearm in violation of 18 Pa. Cons. Stat. § 6105. App. 257-59. In the affidavit supporting the application, Detective Baker listed the information Dyer's purported girlfriend had provided to police about her altercation with Dyer, including the description of the firearm used to strike her. He also noted that, "during [the girlfriend's] interview [with the agents, the woman] disclosed there may be illegal drugs located in the residence." App. 259. A magisterial district court judge approved the search warrant for the aforementioned items.

Detective Baker and other law enforcement officers executed the search warrant the following day. In the

residence, they found Dyer, along with an alleged victim of Dyer's sex trafficking, Dyer's mother, and Dyer's son or stepson. The officers arrested Dyer, and, after some initial questioning, he directed the officers to a firearm that matched the description the girlfriend had provided. The officers continued to search the residence and seized, among other things, a "[b]ox containing green pills, drug packing material and ID" found on a shelf in Dyer's son's bedroom¹ (the "Box"). App. 297.

A few days later, based on information obtained during an interview with the alleged trafficking victim, Special Agent Ryan Anderson of the Bureau of Alcohol, Tobacco, Firearms and Explosives applied for and obtained another search warrant for Dyer's residence, garage, and the surrounding curtilage for drugs and drug paraphernalia, among other things. During the search, Special Agent Anderson found an unlabeled pill bottle that contained capsules, which were later identified as bath salts, in the location previously described to them. He searched the garage and seized digital scales with residue, which was later identified as cocaine, and plastic bags commonly used to package narcotics.

A few weeks after the second search, a grand jury returned a one-count indictment against Dyer for knowingly possessing a firearm as a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Several months later, the grand jury returned a superseding indictment that charged Dyer with three additional counts: possession of a firearm in

¹ Although neither the police nor FBI ever identified the nature of these pills, the trafficking victim told local and federal law enforcement officials that she believed they were iron supplements.

furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A); criminal conspiracy to distribute and possess pentylone² with the intent to distribute in violation of 21 U.S.C. § 846; and possession of pentylone with the intent to distribute in violation of 21 U.S.C. § 841(a)(1).

Before trial, Dyer moved to suppress the evidence seized during both searches of his residence. He claimed that these searches violated the Fourth Amendment because Detective Baker's and Special Agent Anderson's affidavits did not provide a sufficient basis for the magistrates to issue the respective warrants. After the District Court conducted an evidentiary hearing on the motion, it granted the motion in part and denied it in part.

Considering the first search, the District Court held that, although Detective Baker's initial affidavit provided probable cause to search Dyer's residence for firearms and cell phones, it did not establish probable cause to search for drugs. Accordingly, the Court determined that the warrant did not authorize the seizure of several pieces of evidence, including the Box. It next concluded that the Government could not invoke the good-faith exception to the warrant requirement because Detective Baker's affidavit was so devoid of facts suggesting the house contained drugs that the officers could not have reasonably relied on the warrant. Finally, the District Court considered whether the officers could have seized any of this evidence under the plain view doctrine. Although it

² Pentylone is a type of synthetic cathinone, a category of narcotics often called "bath salts." See Joseph A. Cohen, *The Highs of Tomorrow: Why New Laws and Policies Are Needed to Meet the Unique Challenges of Synthetic Drugs*, 27 J.L. & HEALTH 164, 165 (2014).

determined that this doctrine did not permit the officers to seize several pieces of evidence during the first search, the seizure of the Box did fall under the plain view doctrine, and so the officers' seizure of it was lawful.

The District Court declined to suppress any evidence seized during the second search, concluding that Special Agent Anderson's affidavit provided probable cause for the search, and that this affidavit did not rely on any of the excluded evidence from the first search, as it was based on an interview with a victim. Accordingly, the District Court refused to exclude the firearm and firearm accessories properly seized during the first search as well as the drugs, digital scales, and drug packaging material seized during the second search.

After the District Court's resolution of his motion to suppress, Dyer agreed to plead guilty. Under the plea agreement, he would plead guilty to the first count of his indictment, the violation of 18 U.S.C. § 922(g) (felon in possession of a firearm), and the Government would move to dismiss his indictment's remaining counts. Dyer also agreed to "waive[] the right to appeal [his] conviction and sentence, on the express condition that [he] reserve[d] the right to appeal the adverse suppression ruling issued by [the District Court]." App. 210.

The District Court accepted Dyer's conditional guilty plea and entered a judgment of guilty on the indictment's first count. After conducting a sentencing hearing, it sentenced Dyer to a term of imprisonment of 110 months on this count and dismissed the remaining charges.

Dyer timely appealed. The parties' initial briefing focused primarily on the propriety of the admission of the Box,

and we then requested, and the parties filed, supplemental briefing on the issues of materiality and harmless error.

II. Jurisdiction

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. §§ 1291 and 3742(a). We review a district court’s order denying a motion to suppress under a mixed standard of review. *United States v. Tracey*, 597 F.3d 140, 146 (3d Cir. 2010). We review findings of fact for clear error, but exercise plenary review over legal determinations. *Id.* “Because the District Court denied the suppression motion, we view the facts in the light most favorable to the Government.” *United States v. Garner*, 961 F.3d 264, 269 (3d Cir. 2020).

III. Analysis

A. Motion to Suppress

The sole issue raised by Dyer on appeal is whether the District Court erred when it held that the plain-view exception to the warrant requirement permitted law enforcement to seize the Box from a shelf in Dyer’s residence. In general, the Fourth Amendment requires that law enforcement officers seize evidence pursuant to a “warrant based on probable cause.” *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). This requirement, however, is subject to several exceptions, including the plain view doctrine. *See Horton v. California*, 496 U.S. 128, 133-37 (1990). Under the plain view doctrine, officers may seize incriminating evidence they come across if (1) they have not “violated the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed”; (2) “the incriminating character of the evidence [is]

immediately apparent”; and (3) they “have a lawful right of access to the object itself.” *United States v. Menon*, 24 F.3d 550, 559 (3d Cir. 1994) (cleaned up). The Government bears the burden of establishing that the plain view doctrine applies to the seizure in question. *See United States v. Bey*, 911 F.3d 139, 145 (3d Cir. 2018) (“Warrantless searches and seizures are presumptively unreasonable unless the Government satisfies its burden of establishing that one of the exceptions to the warrant requirement applies.”). Regarding the contents of the Box, the police may search any container within a home as long as “it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant.” *United States v. Crooker*, 688 F.3d 1, 8 (1st Cir. 2012) (internal quotation marks omitted); *accord United States v. Newman*, 685 F.2d 90, 92 (3d Cir. 1982); *United States v. Ross*, 456 U.S. 798, 821 (1982).

The District Court held that the seizure fell within the plain view doctrine. Regarding the plain view doctrine’s first requirement, the Court determined that the valid search warrant for Dyer’s residence authorized law enforcement officers’ presence in Dyer’s home. With respect to the second requirement, the District Court credited testimony of the law enforcement officers involved with the search that the incriminating nature of the Box and its contents “was immediately apparent.” App. 44. Turning to the third requirement, the Court noted that the evidence in the record, although it lacked detail, indicated that the Box was on a shelf when the officers came across it. Based on this location, the Court determined that “it was more likely than not that the [officers] were able to spot [the Box and its contents] merely by conducting a quick scan” of the bedroom. App. 45. Therefore, it found that the officers had a right to access the

Box and its contents during a protective sweep incident to Dyer's arrest.

Before us, Dyer argues that the District Court erred in determining that law enforcement officers could lawfully access the Box and its contents. In essence, he contends that since the record lacked any specific information about the Box—what it looked like, what the officers thought it might contain, how they came across it, and whether they manipulated it in any way to view its contents—there was not sufficient evidence for the Court to conclude that the officers had a right to seize or access the Box. The Government in turn argues that because the officers had a valid warrant to search for cell phones and firearms, they were permitted to search in any location where these items might be found—and a box that contained packaging material, a container of pills, and an ID could have instead contained a cell phone.

We agree that there is insufficient evidence in the record to support the District Court's conclusion that the Box and its contents were seized as part of a cursory protective sweep. The record indicates that the Box was located on a "shelf" in Dyer's son's bedroom. App. 297. But that is all. It does not indicate, for instance, where on the shelf the Box was located—and as such, whether it would have been spotted during a "quick and limited search" of the premises for safety purposes. *See Maryland v. Buie*, 494 U.S. 325, 327 (1990). Nor does it indicate whether the officers could see inside the box—and thus, the incriminating material within—from a quick scan.

There is more evidence in the record, however, to support a different theory for why the officers had "a lawful right of access" to the Box and its contents. *Menon*, 24 F.3d at 559. That is because the District Court properly determined

that the first warrant authorized a search for firearms and cell phones, so the officers had a right to search the bedroom in which the Box was found for those items. This theory has some force: although the record leaves many questions unanswered, it does indicate that the Box was large enough to fit “green pills, drug packaging material, and [an] ID.” *See* App. 297. One might reasonably infer from this that the Box was large enough to fit a cell phone, and whatever the officers’ subjective intent, the plain view doctrine only requires that the Box *could have* contained an item, such as a phone, for which the officers had a valid warrant to search. *See Horton*, 496 U.S. at 129 (application of plain view doctrine does not “depend upon the officer’s subjective state of mind”).

Fortunately, we need not reach this question or rest on inference, because assuming the Box should have been suppressed, Dyer is not entitled to relief. In his brief, he urges that if we agree with him that the District Court erred in not suppressing the Box—the only issue he has raised on appeal—he has prevailed under Rule 11 and would be entitled on remand to withdraw his plea. But the Government counters that, because the Box was not material to the charges against him, we should adopt the approach of the Ninth Circuit in *Lustig*, which applied harmless error principles in the Rule 11(a)(2) context. *United States v. Lustig*, 830 F.3d 1075, 1087 (9th Cir. 2016). The *Lustig* approach requires us to ask whether an erroneous ruling was material to the defendant’s decision to plead guilty, and if the answer is no, then we would not reverse the District Court’s order, and the defendant would not be permitted to withdraw his plea. *See id.* at 1091. Under this theory, the defendant does not “prevail” under Rule 11 unless evidence wrongly admitted had a material effect on his decision to plead guilty.

Both of these arguments have visceral appeal. Dyer is right that when a defendant makes a conditional plea and challenges a ruling, then he has prevailed—at least in some sense—if the reviewing court agrees. And the Government is correct that applying a harmless error test in assessing whether a defendant has prevailed makes sense. But the important question is: Will we affirm or reverse the District Court? Only if we *reverse* has Dyer prevailed, and we will reverse only if the evidence erroneously admitted was material to the defendant’s decision to plead guilty, such that the District Court’s error was not harmless.

Some of the cases that bear on this issue refer to the materiality of the evidence as relevant in assessing whether the defendant has “prevailed.” *See, e.g., United States v. Leake*, 95 F.3d 409, 420 n.21 (6th Cir. 1996); *United States v. Peyton*, 745 F.3d 546, 557 (D.C. Cir. 2014). And some also discuss whether the District Court’s error was harmless—which puts a slightly different, yet jurisprudentially common, twist on the issue—and brings materiality back into play. *See, e.g., United States v. Benard*, 680 F.3d 1206, 1213-14 (10th Cir. 2012); *United States v. Mikolon*, 719 F.3d 1184, 1188 (10th Cir. 2013); *Lustig*, 830 F.3d at 1086.

In the context of a conditional guilty plea, the harmless error standard is “whether the government has proved beyond a reasonable doubt that the erroneously denied suppression motion did not contribute to the defendant’s decision to plead guilty.” *Id.* at 1087; *accord United States v. Molina-Gomez*, 781 F.3d 13, 25 (1st Cir. 2015); *Peyton*, 745 F.3d at 557; *Benard*, 680 F.3d at 1213-14; *Leake*, 95 F.3d at 420 n.21; *United States v. Burns*, 684 F.2d 1066, 1076 (2d Cir. 1982). This is essentially the other side of the materiality coin.

None of the evidence contained in the Box pertains to the count to which Dyer pleaded guilty, being a felon in possession of a firearm, nor did it add anything to the Government's case. It did not support the charges in any meaningful way. The Government has never asserted that the seized pills were narcotics—the record suggests they were iron supplements. Detective Baker testified that the ID was possible evidence of a crime, but it is unclear how it provides evidence of Dyer's criminal activities. The drug packaging material has the most obvious relationship to the offenses for which Dyer was charged, but the Government had significantly more relevant and probative evidence that Dyer committed drug trafficking offenses, namely the bath salts, digital scales with residue from narcotics, and branded drug packaging materials seized during law enforcement's second search, which were clearly going to be presented to jury, and which Dyer did not challenge on appeal. The Box added absolutely nothing to the Government's case. It could not reasonably have contributed to Dyer's decision to plead guilty.

B. Applicability of Federal Rule 11 of Criminal Procedure

Recently, some courts have agonized over the concept of harmless error in the context of guilty pleas, urging that courts cannot assess the defendant's mindset and thus should not attempt to determine harmlessness in the guilty plea setting. *See, e.g., Molina-Gomez*, 781 F.3d at 25; *Benard*, 680 F.3d at 1213-14. Dyer urges us to adopt this view, but we cannot.

In *Benard*, the Tenth Circuit grappled with whether a court could *ever* presume to know, in the case of erroneously admitted evidence, whether a defendant would have made the

same calculation to plead guilty absent such a ruling, where the record did not reflect “why Defendant decided to plead guilty, what other defenses or evidence he might have produced on his behalf, or how the altered bargaining positions of the parties might have affected his decision if [the erroneously admitted evidence] had been properly suppressed.” 680 F.3d at 1214. The court cited approvingly and at length to two state supreme court decisions, *People v. Grant*, 380 N.E.2d 257 (N.Y. 1978), and *People v. Hill*, 528 P.2d 1 (Cal. 1974); specifically, for the proposition that “[t]here simply is no intelligent means of assessing the impact of a particular erroneous refusal to suppress evidence.” 680 F.3d at 1213 (citing *Hill*, 528 P.2d at 29).³

But, as then-Judge Gorsuch pointed out in his partial dissent in *Benard*, these courts relied on state court reasoning that preceded Federal Rule 52 of Criminal Procedure, which incorporated the harmless error standard analysis in all federal criminal proceedings. “[T]he Supreme Court has repeatedly told us that Rule 52(a) must be respected,” and “has even more specifically directed us to apply harmless error analysis when a district court fails to inform a defendant of all his legal rights before accepting his guilty plea—a circumstance sharing the very same sort of epistemological challenges as this case.” *Id.* at 1216 (Gorsuch, J., concurring in part and dissenting in part) (citing *United States v. Dominguez Benitez*, 542 U.S. 74, 81 (2004)).

³ Tellingly, the Tenth Circuit retreated from its majority position in *Benard* just one year later, in *Mikolon*, when it found “that the record in this case permits us to conclude beyond a reasonable doubt that any error did not contribute to [Defendant’s] decision to plead guilty.” 719 F.3d at 1188.

Far from requiring an assessment of the actual mental state of a defendant, harmless error employs a reasonable, objective examination of the evidence as it related to the charges against the defendant. Thus, Judge Gorsuch proceeded to analyze the materiality of the evidence that was wrongly admitted, finding that even without the wrongly admitted evidence, the Government had ample other evidence to prove its case, and the defendant had “rejoin[ed] with no reason—rational or even irrational—why the admission of [the evidence that should have been suppressed was] at all relevant to him in making his plea decision.”⁴ *Id.* at 1217. Judge Gorsuch then concluded, “on the evidence and argument before us, the government has met its high burden of showing harmless error and I would affirm.” *Id.*

The Sixth Circuit has reached a similar conclusion, albeit without explicitly employing a harmless error analysis. In *Leake*, the court considered “the effect of a *partially* successful appeal” on a defendant’s right to withdraw a conditional guilty plea when the defendant was “successful in excluding what appear[ed] to be the most damning evidence against him.” 95 F.3d at 420. The court held that he was entitled to withdraw his plea because the evidence that he managed to suppress on appeal “would have had a material effect on the defendant’s decision to plead guilty.” *See id.* at 420 n.21.

⁴ Similarly, here, too, as the Government points out in its supplemental briefing, Dyer has not advanced any argument as to how the allowance of the Box into evidence could have influenced his decision to plead guilty.

If Rule 52(a) is to mean what it says, in the context of Rule 11, the Defendant cannot prevail if the error in admitting the challenged evidence was harmless. In *Dominguez Benitez*, the Supreme Court noted that only “certain structural errors undermining the fairness of a criminal proceeding as a whole” require automatic reversal. 542 U.S. at 81. “Otherwise, relief for error is tied in some way to prejudicial effect.” *Id.* Prejudicial effect incorporates the consideration of harmlessness.

So, here, because the Box did not support the charges against Dyer in any meaningful way, and we can reasonably conclude that it could have had no effect on the Defendant’s decision to plead guilty, the District Court’s error in admitting it was harmless and we will affirm. Therefore, Dyer has not prevailed on appeal and is not entitled to withdraw his plea under Rule 11.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3087

UNITED STATES OF AMERICA

v.

Ernest Kyle Dyer,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No.: 1:17-cr-00226-001)
District Judge: Hon. Sylvia H. Rambo

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 16, 2022

Before: KRAUSE, BIBAS, RENDELL, *Circuit Judges*.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 16, 2022.

On consideration whereof, it is now **ORDERED** and **ADJUDGED** that the District Court's order entered on October 28, 2021, is hereby **AFFIRMED**.

Costs shall not be taxed.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATE: November 29, 2022

PATRICIA S. DODSZUWEIT

TELEPHONE NO.
215-597-2995

CLERK

OFFICE OF THE CLERK



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RE: USA v. Ernest Dyer
Case Number: 21-3087
District Court Case Number: 1-17-cr-00226-001

ENTRY OF JUDGMENT

Today, **November 29, 2022** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App.

P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very Truly Yours,

s/ Patricia S. Dodszuweit

Clerk

By: s/ Desiree

Case Manager

Direct Dial: 267-299-4252

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

UNITED STATES OF AMERICA	:	Crim. No. 1:17-CR-226
	:	
v.	:	
	:	
ERNEST KYLE DYER	:	Judge Sylvia H. Rambo

MEMORANDUM

Before the court is the motion to suppress (Doc. 107) filed by Defendant Ernest Kyle Dyer (“Mr. Dyer” or “Defendant”). Having considered the briefing submitted by the parties, the documentary evidence, and the testimony of the officers, the court will grant the motion in part and deny the motion in part.

I. Background¹

On July 5, 2017, Starr Bowman called 911 to report that that she had been physically attacked by her boyfriend, Ernest Dyer. York county officers Joshua Phillips and Po Engle located Ms. Bowman at the Sunoco gas station on North Sherman Street in York.² There, she told them—both orally and through a written statement—that she lived at 515 South Queen Street with Mr. Dyer. According to

¹ The court’s factual findings are based on the documentary evidence submitted by the parties and testimony elicited from officers during an evidentiary hearing. The facts regarding Mr. Dyer’s conduct are introduced solely for the sake of deciding this motion and are not binding factual findings for trial.

² Special Agent Ryan Anderson eventually arrived on scene but did not ask Ms. Bowman questions.

Ms. Bowman,³ Mr. Dyer had been sexually trafficking her and a woman named Summer Bechtold, sometimes out of his house and other times at a motel, despite being a convicted felon under house arrest. Mr. Dyer paid Ms. Bechtold in drugs, and sometimes used drugs and violence to coerce the women, but stopped trafficking Ms. Bowman upon her request. Ms. Bowman continued to help Mr. Dyer manage the women by feeding, transporting, and disciplining them. Ms. Bowman stated that Mr. Dyer was violent, previously assaulting her by pouring cooking oil on her vehicle and attempting to set it ablaze while she and her children were inside.

Before calling the police, Ms. Bowman had gone to her neighbor's house looking for a prescription bottle of thyroid medication that belonged to her. Upon returning to her home, she and Mr. Dyer began arguing and, as their conflict escalated, he brandished a forty caliber Hi-Point pistol and struck her in the left eye with it.⁴ Ms. Bowman stated that she was familiar with the weapon because Mr. Dyer's mother had purchased it on his behalf, he frequently fired the gun in the backyard, and he kept it in an orange backpack by his night stand. Ms. Bowman informed police that, in response, she fled and began receiving calls from Mr. Dyer,

³ The majority of the facts recited herein regarding Mr. Dyer's conduct are testimony from Ms. Bowman, not the court's finding of undisputed facts.

⁴ There is a factual dispute as to whether this happened early in the morning or later in the day.

telling her she should return to the house “with a body bag.” As a result, she contacted the police.

Ms. Bowman also made several other statements not directly related to the altercation, including that Mr. Dyer hired men to rape her as punishment, and that she knew they were hired because they would say things during the assault that only Mr. Dyer could know. She claimed Mr. Dyer paid off police, such that when she would call in, police would arrive, dismiss her claims, then leave. She believed that when she would take taxi cabs, the drivers would be hired by Mr. Dyer and would report to him. She stated that Mr. Dyer had once choked a woman until she was unconscious while having sex with her in the house, potentially killing her. Ms. Bowman also told police Mr. Dyer had murdered people in New Jersey.

The police examined Ms. Bowman’s eye and took photographs of it, concluding she had swelling and injuries consistent with Mr. Dyer having struck her in the face. They also followed up on her explanation of how Mr. Dyer acquired the handgun, confirming that his mother had in fact gone to a gun store and purchased the exact pistol Ms. Bowman claims Mr. Dyer struck her with. The officers confirmed Mr. Dyer was a convicted felon thus barring him from legally possessing a firearm. They also confirmed Ms. Bowman’s car had burn marks. The police, however, took no efforts to corroborate Ms. Bowman’s claims that Mr. Dyer was offering drugs to his prostitutes, nor did they follow up on what were likely some of

the worst crimes she accused him of—murdering multiple people, paying a man to rape her, attempting to murder her and her children, and paying off police.

This information was at some point relayed to Special Agents Donald Asper and Angela Strauss, who proceeded to conduct their own interview of Ms. Bowman. On July 6, 2017, Agents Asper and Strauss transmitted that information to Detective Mark Baker. He proceeded to rely upon it in drafting an affidavit and warrant application to submit to a York County Magisterial Judge. He listed the following information in his affidavit:

1. Your affiant, Detective Mark Baker, is a sworn police officer with the Northern York County Regional Police Department (NYCRPD) and has been so employed by this agency for 13 years. Your affiant is a member of the criminal investigation division and a Task Force Officer with the Federal Bureau of Investigation (FBI). Your affiant is also a sworn Special County Detective for the District Attorney's Office.
2. On 7/6/2017, your affiant was contacted by Special Agent (SA) Donald Asper from the FBI regarding an incident which had occurred last evening involving Starr Bowman.
3. Your affiant spoke with SA Asper who indicated a female in York City was assaulted by a male identified as ERNEST DYER.
4. A copy of the incident report taken by York City including the victim's written statement was forwarded this officer for review.
5. On 7/5/2017, Starr Bowman indicated she had left her dwelling to go to a neighbor's house to get some prescription medications which were hers.
6. Bowman advised she lives at 515 South Queen Street in York City with her boyfriend, ERNEST DYER.
7. Bowman indicated when she returned to the house, a verbal altercation ensued between her and DYER.
8. During the altercation, DYER brandished a Highpoint .40 caliber pistol and struck Bowman in the left eye with the gun.
9. Bowman then indicated DYER pointed the pistol at her.

10. Bowman indicated she fled the residence to an undisclosed location.
11. Bowman further advised after the incident, DYER started to threaten her via phone stating things such as “bring a body bag”
12. Bowman stated DYER has threatened her life in the past and she currently fears for her safety.
13. Bowman advised approximately two weeks prior, another verbal altercation ensued with DYER and during this, he poured cooking oil on her vehicle, which contained her 12-year-old and 5-year-old children.
14. Bowman advised DYER then tried to light the oil on fire while her children were still in the vehicle.
15. Bowman contacted the York City Police Department who responded and conducted an initial investigation.
16. Photographs were taken of the injuries to Bowman by York City Police which included a bruised area around her left eye and considerable redness and swelling.
17. On 7/6/17, an interview was conducted by SA Donald Asper and SA Angela Strauss of Starr Bowman.
18. Bowman confirmed the above account as stated the previous night.
19. Also during the interview, Bowman disclosed there may be illegal drugs located in the residence.
20. A search was done of the criminal history of ERNEST DYER and it was discovered based on his past record, DYER is a person not to possess a firearm.
21. Based upon above information, your affiant requests a search warrant be issued for the residence of ERNEST DYER for the aforementioned items listed on page 1.

(Doc. 116-2, pp. 3-4.) Detective Baker included in the application a request for authorization to seize three categories of items during the search: “Firearms, illegal drugs, cell phones possessed or belonging to Ernest Dyer.” (Doc. 116-2, p.2.) At 8:40 that evening, Magisterial Judge Barry Bloss signed the warrant.

The next day, Detective Baker executed the search warrant at 515 South Queen Street, along with, among others, Special Agent Ryan Anderson. Upon entering the

home, the officers found Mr. Dyer and Summer Bechtold in bed together. In other parts of the house, police located Mr. Dyer's mother and son, Annie Dyer and Raekwon Grant. They handcuffed Mr. Dyer. They then realized there was a bench warrant out for Ms. Bechtold's arrest, so the officers handcuffed her as well. Upon questioning, Mr. Dyer led police to a vacuum in the kitchen closet where a forty-caliber Hi-Point handgun was located. Police proceeded to continue searching the house for contraband and ended up seizing the following items:

- (1) 1 HiPoint .40 S/N X7259647 with 10 rounds, Magazine
- (2) 1 Swann DVR and charger
- (3) 1 Plastic packaging with Apple brand
- (4) 1 \$270 USC
- (5) 1 \$36 USC
- (6) 1 Silver LG Cell Phone
- (7) 1 Gray LG Cell Phone
- (8) 1 Silver LG Cell Phone with cracked Screen
- (9) 1 Trac phone
- (10) 1 Drug paraphernalia
- (11) 1 Black padfolio with paperwork and receipt book
- (12) 1 Box containing green pills and packaging material and ID for T. Holmes
- (13) 1 Multiple [sic] boxes of .40 caliber ammunition (106 bullets)
- (14) HiPoint gun box with Gander Mountain receipts
- (15) 1 2 [sic] Flash Drives
- (16) 1 Alcatel cell phone
- (17) 1 Belly Band type pistol holster
- (18) 1 Black pistol holster
- (19) 1 Clear empty sandwich bags from freezer

(Doc. 116-2, p. 6.)⁵

⁵ Because the warrant did not list the Swann DVR and charger, plastic packaging with Apple brand, cash, drug paraphernalia, black padfolio with paperwork and receipt book, box containing

Mr. Grant and Ms. Bechtold were subsequently brought into custody. Ms. Bechtold informed police that, during the transport, Mr. Grant said the police had missed a bottle of pills that he had left on an outer window sill at the house.

On July 7, 2017, the United States Attorney's Office for the Middle District of Pennsylvania filed a criminal complaint against Mr. Dyer in the United States District Court for the Middle District of Pennsylvania. On July 13, 2017, Special Agent Ryan Anderson submitted an application for a second warrant to United States Magistrate Judge Martin Carlson. In a thorough affidavit, Mr. Anderson laid out the foundations of the investigation into Mr. Dyer and the police's basis for believing he was keeping drugs as part of a sex trafficking operation. He also relayed Ms. Bechtold's statement that officers would be able to find a bottle of drugs on a window sill in the house. Judge Carlson subsequently issued the requested warrant. On July 14, 2017, Mr. Anderson executed the warrant, discovering two children of Mr. Dyer and two women now living in the house. Upon searching the window sill Ms. Bechtold directed him towards, he located a bottle of drugs.

On July 26, 2017, a grand jury indicted Mr. Dyer for one count of felon in possession of a firearm. On March 14, 2018, a grand jury indicted Mr. Dyer for one count of a felon in possession of a firearm, one count of possession of a firearm in

green pills and packaging material and ID for T. Holmes, flash drives, and empty sandwich bags, the court only discusses these items in its section on the plain view doctrine.

furtherance of drug trafficking, one count of criminal conspiracy to distribute and possess with the intent to distribute pentylone, and one count of distribution and possession with the intent to distribute a controlled substance.

On May 10, 2019, Defendant filed a motion to suppress, seeking the exclusion of all evidence acquired during both searches on multiple grounds. (Doc. 107.) On June 5, 2019, the United States submitted its brief in opposition. (Doc. 114.) On August 13, 2019, the court held an evidentiary hearing on the motion to suppress, hearing testimony from the two affiants, Detective Mark Baker and Special Agent Ryan Anderson. (Doc. 127.) On September 19, 2019, Defendant filed supplemental briefing in support of his motion, incorporating facts revealed during the evidentiary hearing. (Doc. 140.) On October 17, 2019, the United States submitted its own supplemental briefing on the matter. (Doc. 149.) Having fully reviewed the briefs, case law, testimony, and all other evidence in the record, this motion is now ripe for resolution.

II. Standard of Review

“On a motion to suppress, the government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable.” *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005).⁶ “[T]he

⁶ The United States claims that *Franks v. Delaware*, 438 U.S. 154, 156 (1978) stands for the proposition that a “search with a search warrant is presumed lawful, and the preliminary burden is on the defendant to invalidate it by defeating its presumption of regularity.” (Doc. 114, p. 7.) This

controlling burden of proof at suppression hearings” is “a preponderance of the evidence.” *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974). The Fourth Amendment to the United States Constitution grants individuals the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. As the United States Supreme Court has repeatedly held, “[t]he touchstone of the Fourth Amendment is reasonableness.” *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). “Generally for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause.” *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002) (citing *Katz v. United States*, 389 U.S. 347, 356-57 (1967)).

An officer properly acquires a warrant by submitting an affidavit to a magistrate judge providing a sufficient factual basis from which the magistrate judge can reasonably infer that “there is a fair probability that evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). Probable cause is something less than a prima facie showing, but requires, at least,

is incorrect. *Franks* established that the facts stated in a search warrant affidavit are presumed true unless the defendant makes a preliminary showing that they may be false. *Franks*, 438 U.S. at 171 (“There is, of course, a presumption of validity *with respect to the affidavit* supporting the search warrant.”) (emphasis supplied); *United States v. Aviles*, 938 F.3d 503, 508 (3d Cir. 2019) (“In *Franks*, the Supreme Court held that a defendant has a right to challenge the veracity of statements made in an affidavit of probable cause that supported the issuance of a warrant. . . . [as long as they] make a substantial preliminary showing that the affidavit contained a false statement or omission[.]”) (internal quotations omitted). But an affidavit or warrant can be insufficient on its face without the defendant presenting any evidence.

“a substantial basis for concluding that a search would uncover evidence of wrongdoing.” *Id.* at 235, 237 (internal quotations, ellipses, and brackets omitted). In evaluating the magistrate judge’s finding of probable cause, the district court should defer to the magistrate judge’s judgment. *Id.* at 236. “This, however, does not mean that reviewing courts should simply rubber stamp a magistrate’s conclusion.” *United States v. Zimmerman*, 277 F.3d 426, 432 (3d Cir. 2002) (internal quotations omitted). For example, the magistrate judge cannot rely upon a “wholly conclusory statement” by the affiant, as such a statement “gives the magistrate virtually no basis at all for making a judgment regarding probable cause.” *Gates*, 462 U.S. at 238-39. Instead, “courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued,” and evaluate whether the magistrate judge had a “substantial basis” for concluding probable cause existed justifying the issuance of a warrant. *Id.*

In addition to challenging the sufficiency of the affidavit, “a defendant may attack the issuance of a warrant if based on untruthful information.” *United States v. Harvey*, 2 F.3d 1318, 1323 (3d Cir. 1993) (citing *Franks*, 438 U.S. at 165, 171). A successful truthfulness attack must show, through evidence, that the police put forward false facts either deliberately or through a reckless disregard for the falsity of the facts. *Id.*

III. Discussion

There are three bases upon which the government could have permissibly seized evidence during its searches of Mr. Dyer's home: (1) pursuant to a properly issued warrant; (2) pursuant to the good-faith reliance upon an improperly issued warrant; and (3) pursuant to the plain view doctrine. The court begins by dispensing of arguments that did not affect its analysis and proceeds to address each possible legal justification in turn.

A. Defendant's statement inconsistency and hearsay attacks do not effectively problematize either warrant.

Defendant raises two lines of objections that the court can preliminarily dispose of. First, Defendant complains that the search warrant affidavits rely on lines of hearsay. Second, Defendant raises several attacks on Ms. Bowman's inconsistencies and biases in her statements. Here, Defendant is correct that the affidavits in support of the search warrants relied upon multiple layers of hearsay, and Defendant marshals some decent attacks on the consistency of Ms. Bowman's statements. Defendant, however, does not explain in his brief what the *legal* implications of these attacks are, leaving the court to do its best to connect the dots.⁷ Neither of these arguments mount an effective attack on either warrant.

⁷ This is, indeed, a general problem with Defendant's briefing—it reads like a story with very little explanation as to how the facts play into the legal attacks he raises against the warrant and affidavit and with little attempt to directly address various legal arguments raised by the United

To begin, Defendant does not claim any of the statements in the affidavit are false. As such, the court need not evaluate whether the police conducted an adequate investigation to support the statements made in the affidavit. Instead, the court will “confine” its review “to the facts that were before the magistrate judge, i.e., the affidavit, and [will] not consider information from other portions of the record.” *United States v. Miknevich*, 638 F.3d 178, 181-82 (3d Cir. 2011) (quoting *United States v. Jones*, 994 F.2d 1051, 1055 (3d Cir. 1993)). Here, Defendant has not raised a viable attack on the consistency of either the statements by Ms. Bowman or Ms. Bechtold that were included in the affidavits in support of the first and second warrant. The court thus turns to Defendant’s hearsay objection.

An officer drafting an affidavit in support of a warrant application can generally rely upon hearsay that would be inadmissible at trial, as long as the officer has “a substantial basis for crediting the hearsay.” *Gates*, 462 U.S. at 241-42 (internal quotations omitted); accord *DeAngelo v. Yeager*, 490 F.2d 1012, 1014 (3d Cir. 1973) (“[A]lthough an affidavit (submitted to support the issuance of a search warrant) may be based on hearsay information . . . the magistrate must be informed on some of the underlying circumstances from which the informant concluded that evidence of crime was to be found in the place to be searched.”). Further, when the

States, such as the plain view doctrine and good-faith exception. The court is thus left to resolve these on its own.

hearsay statements are made by fellow law enforcement officers, they are generally deemed trustworthy, unless the defendant marshals evidence demonstrating the statements were unreliable and merited further corroboration. *Compare United States v. Harvey*, 2 F.3d 1318, 1324 (3d Cir. 1993) (holding defendant's failure to put forward evidence demonstrating lack of reliability by fellow officer's statement warranted rejection of hearsay challenge), *with Zimmerman*, 277 F.3d at 430 n.3 (distinguishing *Harvey* and finding defendant's hearsay challenge was meritorious because he put forward evidence showing that the informant herself was merely relaying information she had heard a parent relay from their child); *cf. United States v. Yusuf*, 461 F.3d 374, 385-86 (3d Cir. 2006) ("[I]nformation received from another governmental agency may raise questions as to its accuracy and require an agent to undertake further investigation, and we explicitly decline to adopt a rule that information obtained from a sister governmental agency pursuant to a court order is *per se* reliable.").⁸

The first warrant references that Detective Baker is relying upon a victim statement taken from Ms. Bowman and relayed to him by another officer. Ms.

⁸ The United States characterizes the law in a much simpler manner, as if an officer can *always* rely on hearsay, including statements by fellow law-enforcement officers, in issuing an affidavit. While the court agrees there is a strong legal presumption in statements made by fellow officers, there is no similar presumption in favor of non-police declarants. And, as shown above, the Third Circuit has held there are circumstances under which reliance on a fellow officer's statement may be deemed unreasonable.

Bowman's statement itself was not hearsay—it was her own testimony of things she directly observed. Detective Baker's reliance upon another officer's statement is hearsay, but, because the declarant is another officer, and Defendant has introduced no affirmative reason to doubt such testimony, Detective Baker's reliance was reasonable.

Turning to the second affidavit, there is an additional level of hearsay here because the affiant relies upon Ms. Bechtold relaying a statement from Mr. Grant regarding the location of drugs previously undiscovered by the police. Here, reviewing the well-detailed affidavit, on the whole, it was reasonable for the affiant to believe Ms. Bechtold relaying Mr. Grant's apparent confessions regarding the location of drugs was reliable. Ms. Bechtold claimed that Mr. Grant was bragging about where he had hidden drugs. In light of the facts that: (1) both of them were in the house and present at the time of the search; (2) Ms. Bechtold said she had been around Mr. Grant repeatedly (as he managed her prostitution); and (3) she was generally familiar with drug use in the house, it was reasonable for the magistrate judge to consider the officer relaying Ms. Bechtold's statement about where Mr. Grant claimed he hid the drugs. Thus, Defendant's hearsay attacks fail to draw the court's attention to any problem in the magistrate judges' analysis.

B. On the face of the affidavits, the magistrate judge had probable cause to issue the first warrant in search of guns and cell phones.

The court begins by laying out some uncontroverted facts in the affidavit that supported a finding of probable cause justifying a search for guns and phones, then identifies and sorts the controverted facts on the issue. Here, the first affidavit was sufficient to establish probable cause to search Mr. Dyer's residence for a gun and cell phone. The affidavit states that Ms. Bowman contacted police, claiming she had recently been struck by Dyer in his house with a gun, and that police corroborated this accusation by examining her eye, confirming she appeared to have a fresh injury, and taking photographs of it. The affidavit states Mr. Dyer proceeded to call and threaten to kill her. The affidavit states that police conducted a background check on Mr. Dyer, confirming it was illegal for him to possess a gun. The affidavit also states the altercation took place "when she returned to the house." This leaves two questions for the court in assessing whether there was probable cause to search for a gun in his residence: (1) were there sufficient facts to justify finding Ms. Bowman's testimony on these points reliable; and (2) were there sufficient facts to justify believing there would be contraband in his house. The court addresses each in turn.

In evaluating an affidavit based on an informant's tip, the court must look to the totality of circumstances, focusing on facts showing the overall reliability of the tipster, the veracity of their statement, and the basis of their knowledge. *See Gates*, 462 U.S. at 230-34. "Informants are not presumed to be credible, and the

government is generally required to show by the totality of the circumstances either that the informant has provided reliable information in the past or that the information has been corroborated through independent investigation.” *United States v. Yusuf*, 461 F.3d 374, 384-85 (3d Cir. 2006). The corroboration of innocent facts can bolster the trustworthiness of a tip if they nonetheless carry a “degree of suspicion.” *United States v. Nelson*, 284 F.3d 472, 479 (3d Cir. 2002) (quoting *Gates*, 462 U.S. at 245 n.13). But “where the tip contains information that later investigation contradicts, or that is of such a general nature as to be easily obtained by any observer, there is no reasonable suspicion.” *Id.* An informant’s “explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand” weighs in favor of the reliability of the tip. *Gates*, 462 U.S. at 234. Informants’ statements are more reliable if they claim to have “just witnessed a crime,” and if “officers had an opportunity to appraise the witness’s credibility through observation.” *Nelson*, 284 F.3d at 480.

Here, the government argues Ms. Bowman should be afforded significantly more trust than a typical confidential informant because she directly appeared in front of the police, disclosed her identity, and claimed she was the direct victim of the crime. The court agrees. By presenting herself physically to police while telling her story, they had the opportunity to examine her overall demeanor and make a judgment call regarding her honesty and trustworthiness. And by disclosing her

identity, she exposed herself to being cross-examined at trial and otherwise having her claims subject to additional scrutiny. Moreover, the affidavit states Ms. Bowman claimed to live with Mr. Dyer, to date him, and to have directly experienced the assault and threats she was reporting. Based upon these facts, the magistrate judge could have reasonably concluded that Ms. Bowman was reliable, her injury corroborated, and that she had a sufficient basis of knowledge to make these claims.

Regarding whether the gun could have been located in the house, under Third Circuit precedent, which binds this court, “direct evidence linking the residence to criminal activity is not required to establish probable cause.” *United States v. Burton*, 288 F.3d 91, 103 (3d Cir. 2002). Instead, the magistrate judge could infer from “an accumulation of circumstantial evidence that together indicates a fair probability of the presence of contraband at the home of the arrested.” *Id.* The types of circumstantial facts the magistrate judge may infer from frequently include “the type of crime, the nature of the items sought, the suspect’s opportunity for concealment,” and other inferences about where persons tend to hide contraband. *Id.* (internal quotations omitted). “If there is probable cause to believe that someone committed a crime, then the likelihood that that person’s residence contains evidence of the crime increases.” *Id.* at 103 (internal quotations omitted). Moreover, as long as the warrant “contain[s] the specific address of the house, an exhaustive list of items (including weapons, drugs, and drug paraphernalia), and it name[s] [the

defendant] as an owner, occupant, or possessor of the property,” then it properly specifies a particular place “to be searched and the persons or things to be seized.” *United States v. Williams*, 720 F. App’x 681, 683 (3d Cir. 2018) (internal quotations omitted).

Here, despite Ms. Bowman having informed the police that Mr. Dyer generally kept his pistol in an orange backpack next to his bed, this information did not make its way into the affidavit. In fact, the affidavit contains no specification regarding where the gun might be. Nonetheless, other facts in the affidavit could have led the magistrate judge to reasonably infer the gun could be located in the house. The affidavit appears to suggest Mr. Dyer attacked Ms. Bowman with a pistol inside of the house, and the police corroborated this attack. The affidavit also states that Mr. Dyer was calling Ms. Bowman instructing her to return to the house, and that he would kill her upon arrival, suggesting he still had the gun at the house. Finally, the affidavit suggested Mr. Dyer lived at the house. Together, a reasonable person could believe the gun was located in the house.

As such, based on the facts in the affidavit, the magistrate judge could reasonably have concluded the police found Ms. Bowman’s testimony regarding the gun and phone threat credible. He could also have found a fair probability the gun and cell phones were located in the home the next day, when the warrant was issued.

The magistrate judge thus had probable cause to issue the warrant searching the house for a gun and phone.

C. The magisterial judge lacked a substantial basis for its finding of probable cause in support of the drug search in the first warrant.

The magistrate judge, however, had no probable cause to issue the warrant in search of drugs. The only line in the affidavit referring to drugs is a conclusory assertion that “Bowman disclosed there may be illegal drugs located in the residence.” (Doc. 116-2, p. 4.) From this line, the magistrate judge had no factual basis to conclude that there was a fair probability drugs could be located in the house. The affidavit contains no explanation of what drugs could be found in the house, why they could be found there, or what degree of probability Ms. Bowman or the police assigned to the presence of drugs in the residence. As such, the magistrate judge erred in issuing the warrant justifying a search for illegal drugs. *Gates*, 462 U.S. at 239 (“An officer’s statement that ‘affiants have received reliable information from a credible person and believe’ that heroin is stored in a home, is likewise inadequate.”) (quoting *Aguilar v. Texas*, 378 U.S. 108, 109 (1964)); *see, e.g. United States v. Jones*, 818 F. Supp. 2d 845, 850 (E.D. Pa. 2011) (holding an affidavit which relied on “a single bald assertion that [the informant] ‘knows Jones to sell drugs to earn money’” was insufficient to establish probable cause).

Before the court can exclude any items acquired during the search, though, it must examine what items the police took based on the illegal drug portion of the

affidavit, and whether the plain view or good-faith doctrine nonetheless justified the items acquired.

D. The good-faith doctrine did not justify the police seizing drug-related evidence.

Based on the testimony of the officers, and the court's own reasonable inferences from the warrant and seized property, the police seized the following items pursuant to the "illegal drugs" section of the warrant: "plastic packaging with Apple brand"; "\$270 USC"; "\$36 USC"; "Drug paraphernalia"; "Black padfolio with paperwork and receipt book"; "Box containing green pills and packaging material and ID for T. Holmes"; "Clear empty sandwich bags from freezer." (Doc. 116-2, p. 6.) The court begins its analysis of whether these items should be excluded by examining whether the officers had objectively reasonable good faith in believing the warrant justified these searches.

Under the good-faith exception established in *United States v. Leon*, 468 U.S. 987 (1984), the court cannot exclude evidence obtained through an improper warrant where "police acted in objectively reasonable reliance on the subsequently invalidated search warrant." *Virgin Islands v. John*, 654 F.3d 412, 417-18 (3d Cir. 2011) (internal quotations omitted). The United States bears the burden of establishing that the exception applies. *Jones*, 818 F. Supp. 2d at 849.⁹ While

⁹ The court did not locate a Third Circuit case on this issue, but several other circuits have held the same. *See, e.g. United States v. George*, 975 F.2d 72, 77 (2d Cir. 1992) ("The burden is on the

Defendant fails to address the exception, the United States does not provide a sufficient basis for applying it. The United States argues that the officers' reliance upon a warrant in executing their search is sufficient to satisfy the *Leon* good-faith exception. This cannot be the case. "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." *Beck v. State of Ohio*, 379 U.S. 89, 97 (1964). Moreover, if mere reliance upon a warrant was sufficient, it would mean that every time a magistrate judge issued a warrant, the *Leon* exception would be automatically triggered. This would result in the district court functionally "rubber stamp[ing]" the magistrate judge's issuance of a warrant every time, in contravention of Third Circuit law. *Zimmerman*, 277 F.3d at 432. The court is thus left to analyze on its own the record and case law in more depth than the parties have offered.

The applicability of the good-faith test is interwoven with the applicability of the exclusionary rule—a remedy created by courts to effectuate a defendant's right to be free from arbitrary, unconstitutional searches. Thus, to flesh out the parameters

government to demonstrate the objective reasonableness of the officers' good faith reliance."); *United States v. Corral-Corral*, 899 F.2d 927, 932 (10th Cir. 1990) (same); *United States v. Brunette*, 256 F.3d 14, 17 (1st Cir. 2001) (same); *United States v. Michaelian*, 803 F.2d 1042, 1048 (9th Cir. 1986) (same); *but see United States v. Guerrero*, No. 2:17-CR-137, 2018 WL 8805227, at *4 (N.D. Tex. Oct. 3, 2018) ("When challenging the application of the good faith exception, Defendant carries the burden to prove by a preponderance of the evidence that it does not apply.") (citing *United States v. Rosa*, 721 F. App'x 403 (5th Cir. 2018)).

of the good-faith exception to the warrant requirement, the court examines under what conditions the exclusionary rule should apply. The Third Circuit has held “exclusion will not deter police from relying on an invalid warrant unless the police should reasonably have known that the warrant’s issuance would be found unconstitutional.” *John*, 654 F.3d at 418. “When law enforcement ‘exhibits “deliberate,” “reckless,” or “grossly negligent” disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs.’” *United States v. Franz*, 772 F.3d 134, 144 (3d Cir. 2014) (quoting *Davis v. United States*, 564 U.S. 229, 258 (2011)) (internal brackets omitted). ““But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot pay its way.” *Id.* (quoting *Davis*, 564 U.S. at 238). “[P]olice conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.” *Id.* at 145 (quoting *Herring v. United States*, 555 U.S. 135, 144 (2009)). The court must thus apply the exclusionary rule when doing so is “calculated to prevent” future constitutionally-invalid searches, “not to repair” the harm inflicted by one. *United States v. Wright*, 493 F. App’x 265, 271 (3d Cir. 2012) (quoting *Elkins v. United States*, 364 U.S. 206, 217 (1960)).

There are four circumstances where an officer's reliance upon a warrant will be deemed objectively unreasonable: (1) where the magistrate judge relied upon "deliberately or recklessly false" statements in the warrant affidavit; (2) where the magistrate "abandoned his or her judicial role and failed to perform his or her neutral and detached function"; (3) "where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; and (4) "where the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized." *John*, 654 F.3d at 418.

In applying these exceptions, the court must look to the facts as a whole, *Franz*, 772 F.3d at 144-45, to determine how a reasonable, well-trained officer would have examined the situation, and whether they "would have known that the search was illegal under all of the circumstances." *United States v. Vasquez-Algarin*, 821 F.3d 467, 483 (3d Cir. 2016) (internal quotations omitted). Reasonable officers' "appreciation for constitutional intricacies are not to be judged by the standards applicable to lawyers." *United States v. Tracey*, 597 F.3d 140, 152 (3d Cir. 2010) (quoting *United States v. Cardall*, 773 F.2d 1128, 1133 (10th Cir. 1985)). As such, an officer may reasonably rely upon a technically deficient warrant. *Id.* But an officer may have relied upon a "supporting affidavit [that] was so conclusory that their good faith reliance upon the warrant is obviated." *Cardall*, 773 F.2d at 1133.

The first exception is inapplicable because Defendant has not alleged that any of the statements in the affidavit were false. The second exception is inapplicable because Defendant has not accused either of the magistrate judges of examining the materials with the same heated passion as an investigating officer. And the fourth exception is inapplicable because the warrant contains adequate specifications. *See Williams*, 720 F. App'x at 683. Therefore, the question becomes whether the warrant affidavit was so obviously deficient that any reasonable officer would have realized there was no probable cause to search for drugs. Given the affidavit was devoid of any factual explanation of why the police thought drugs may be in the house, the court finds this exception applicable.

As explained above, the affidavit presents essentially no facts upon which a magistrate judge could have assessed whether there was probable cause to search for drugs. This failure on the affiant's part demonstrates more than a technical deficiency; it is a grossly negligent disregard for the substantive requirement that "[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Gates*, 462 U.S. at 239. Giving magistrate judges the ability to review the facts and make their own judgment calls "is not a mere formality; it ensures that necessary judgment calls are made by a neutral and detached magistrate, not by the officer engaged in the often competitive enterprise of ferreting out crime."

Mitchell v. Wisconsin, 139 S. Ct. 2525, 2543 (2019) (internal quotations omitted). Because this deficiency violates a bedrock of warrant case law, it is significant that the court deter this police behavior. *United States v. Reilly*, 76 F.3d 1271, 1280 (2d Cir. 1996) (cited favorably by *Zimmerman*, 277 F.3d at 438) (“For the good faith exception to apply, the police must reasonably believe that the warrant was based on a valid application of the law to the known facts. In the instant matter the officers failed to give these facts to the magistrate.”).

Further, the officers executing the warrant cannot in good faith claim to have simply read the warrant and not the affidavit in support of it. The affidavit was directly attached to the warrant. And, more importantly, Detective Mark Baker was both the affiant and one of the officers executing the warrant. This weighs in favor of finding the police culpable in the error and thus justifying exclusion:

Good faith is not a magic lamp for police officers to rub whenever they find themselves in trouble. And particularly where the affiant is also one of the executing officers, it is somewhat disingenuous, after having gone to the magistrate with the paltry showing seen here, to suggest, as the government suggests, that at bottom it was the magistrate who made the error and the search and seizure are insulated because the officer’s reliance on that error was objectively reasonable.

Zimmerman, 277 F.3d at 438 (internal quotations and citations omitted); *accord* *United States v. Crist*, 627 F. Supp. 2d 575, 588 (M.D. Pa. 2008) (“In a case such as this, where the police officers were the source of their own trouble, the good-faith

exception does not apply.”); *Reilly*, 76 F.3d at 1281 (holding the good-faith exception is inapplicable “when the officers are themselves ultimately responsible for the defects in the warrant”).

Finally, even if additional facts had been supplied, the affiant’s phrasing of the issue did not give rise to an inference of probable cause. The contingent nature of Bowman’s statement—that there “may” be drugs in Dyer’s house, without any further indication of the probability the statement is true—is a type of factual averment that police should know they cannot rely upon. *See United States v. Griffith*, 867 F.3d 1265, 1278 (D.C. Cir. 2017) (holding an affidavit “fell short to an extent precluding good-faith reliance on the warrant” where it said the defendant “might own a cell phone” that “might be found in the residence” and “might retain incriminating” evidence).

Taking all facts into consideration, the court finds the officers’ subjective reliance upon the first warrant is not objectively reasonable. The court also finds the police culpable for disregarding a fundamental requirement that they put before the magistrate judge the factual basis for their belief that contraband shall be found in a particular location. These conclusions militate in favor of excluding any evidence of “illegal drugs” acquired by the police pursuant to the first search.

Even if the search for drugs was illegal, however, the police may nonetheless retain any contraband they acquired if it was in plain view during the legal portions of the search. Hence, the court now turns to the plain view doctrine.

E. The plain view doctrine only permitted the police to seize the green pills, plastic packaging, and ID card.

The plain view doctrine is a “rule permitting a police officer’s warrantless seizure and use as evidence of an item seen in plain view from a lawful position or during a legal search when the officer has probable cause to believe that the item is evidence of a crime.” BLACK’S LAW DICTIONARY 1391 (11th ed. 2019). “An example of the applicability of the ‘plain view’ doctrine is the situation in which the police have a warrant to search a given area for specified objects, and in the course of the search come across some other article of incriminating character.” *Horton v. California*, 496 U.S. 128, 135 (1990). Three conditions must be satisfied for the plain view doctrine to justify the seizure of certain items: (1) “the officer must not have violated the Fourth Amendment in ‘arriving at the place from which the evidence could be plainly viewed’”; (2) “the incriminating character of the evidence must be ‘immediately apparent’”; and (3) “the officer must have ‘a lawful right of access to the object itself.’” *United States v. Menon*, 24 F.3d 550, 559 (3d Cir. 1994) (quoting *Horton*, 496 U.S. at 136); accord *United States v. Shabazz*, 563 F. App’x 875, 878 (3d Cir. 2014) (same). The government bears the burden of proving all three of these elements by a preponderance of the evidence. See *United States v.*

Scarfo, 685 F.2d 842, 856 (3d Cir. 1982) (“[T]he plain view doctrine carves out an exception to the warrant requirement.”); *California v. Acevedo*, 500 U.S. 565, 589 (1990) (holding a party seeking to invoke an exception to the warrant requirement bears the burden of proof). The Supreme Court has held that discovery of the object in plain view need not be inadvertent, but there is a limit to the intent:

Nonetheless, even though an officer can keep his or her eye out for particular objects while conducting a lawful search, the Court has made quite clear that the “plain view” doctrine cannot be used to expand the scope of a legal search—there must be “scrupulous adherence” to the requirement that the search be limited to the time and place necessary to find the items listed on the warrant.

Menon, 24 F.3d at 560 (quoting *Horton*, 496 U.S. at 138). If the police must manipulate items in a manner that invades the possessory interests of their owners before ascertaining that the object is evidence of contraband, then the items were not plainly viewable. *See Arizona v. Hicks*, 480 U.S. 321, 324-25 (1987).

Here, given the warrant was at least partially valid, the police were constitutionally permitted to be in the home at issue. Thus, whether any particular item was in “plain view” depends on whether the police: (1) were able to see it while searching for the gun and cell phones or securing the house; and (2) if it was “immediately apparent” that the items contained incriminating evidence.

Looking first at the cash seized, the government has put forward no evidence that the cash had the immediate appearance of wrongdoing. In *United States v. Law*,

the Third Circuit conducted a wide review of federal law governing the seizure of cash under the plain view doctrine and concluded that the police's seizure of cash—absent “testimony that [the officer] thought the cash was incriminating or had anything to do with drugs”—is inappropriate under the doctrine. 384 F. App'x 121, 122-23 (3d Cir. 2010) (collecting cases). The court's rationale was that cash, in and of itself, is innocuous, even in large bundles and wrapped in rubber bands—only additional evidence creating a suspicious context can show it is immediately apparent that such money is incriminating. *Id.* Here, the police presented no testimony as to why they seized Mr. Dyer's cash. The government has thus failed to carry its burden of showing Detective Baker believed it was immediately apparent the cash was inculpatory.

Next, the United States has put forward no evidence to support its acquisition of “1 Drug paraphernalia.”¹⁰ During the evidentiary hearing, Detective Baker stated that he did not recall what items they seized that fall under the category of drug paraphernalia. He did not indicate where he located them or what about them suggested they were paraphernalia, thus giving rise to an immediate appearance of wrongful conduct. As such, the government has not carried its burden of showing

¹⁰ The fact that the police recorded seizing “1 Drug paraphernalia”—and the officer who supposedly seized the paraphernalia could not even testify as to what objects fell into this category—suggests the York police employed an alarmingly lax and disorganized standard of recording the items acquired during a search.

the plain view doctrine justified the seizure of such evidence; any materials acquired during the first search under the category of “drug paraphernalia” are thus inadmissible at trial.

Turning to the Swann DVR, charger, and flash drives, it appears the police located all of these while properly searching the house, but the Government has not carried its burden of showing that it was immediately apparent that these items contained evidence of contraband. In determining whether the incriminating nature of any items was immediately apparent, the court must not hold police to “an unduly high degree of certainty as to the incriminatory character of evidence.” *Texas v. Brown*, 460 U.S. 730, 741 (1983). Instead, the court must determine whether, from the perspective of the officer and the degree of observation they took before seizing the object, there was probable cause that the item contained, or was itself, incriminating evidence. *See id.* The United States Supreme Court has held that merely seeing stereo equipment—even with knowledge stereo equipment was stolen nearby—or feeling a lump in a suspect’s pocket are insufficient factual bases from which the police might find the immediate appearance of wrongful conduct. *See Minnesota v. Dickerson*, 508 U.S. 366, 378-79 (1993).

In *United States v. Wilson*, the United States Court of Appeals for the Eighth Circuit considered whether, under *Arizona v. Hicks*, the seizing of a camera, cell phone, and video tape was permissible under the plain view doctrine. 565 F.3d 1059,

1065 (8th Cir. 2009). Wilson argued that merely by observing the outside of the devices, the police could not reasonably believe the items contained evidence of illegal conduct. *Id.* The court rejected this challenge, finding the officers there had probable cause to believe the recording devices contained evidence of criminal conduct because: (1) the officers were aware of testimony from a victim that the recording devices were used to record underage sexual activity; (2) the devices were located in the exact place described by the victim; and (3) the officers had reviewed images of the recording devices before conducting the search. *See id.*; *see also Glick v. Edwards*, No. 11-cv-168, 2012 WL 2524975, at *4 (D. Mont. June 29, 2012) (describing the holding of *Wilson* as turning on the fact that “the officer knew a child pornography victim had alleged such items had been used to record her and the video camera was found in the same location the victim had described”).

In contrast to the on-point evidence in *Wilson*, the officers’ testimony here as to why they seized these recording devices is flimsy. The officers did not testify that they were privy to any testimony by a victim as to what information would be found on this DVR device. They did not locate the recording devices in any position described by a victim. And the officers did not testify that they had a sufficient basis to believe the devices immediately and apparently contained contraband; instead, they testified that they seized the devices “as just a precautionary measure since it’s a digital piece of equipment and it’s easily disposed,” and because it was their “hope”

that it contained incriminating evidence. While one officer did testify he believed the location of the cameras in the house suggested they “might have caught a lot of the incident as it occurred,” the officer did not explain what he means by this, why he believes that, or how he came to believe the DVR was recording data from those cameras.

Similarly, the flash drives were seized simply because “they were computer items” that “were seized within the same area as the weapons and the cash and everything else.” It is unclear why the flash drives being near “weapons” would lead the police to believe they had any evidence of wrongdoing. During the evidentiary hearing, the Assistant United States Attorney, Michael Consiglio, did ask: “Was there thoughts maybe that flash drives contained storage information associated with the surveillance,” in response to which the officer stated, “That’s correct.” (Doc. 127, 78:23-25.)¹¹ But the fact that the officer had “thoughts” that “maybe” the flash drives contained possibly incriminating evidence is pure speculation, not a

¹¹ Defendant complains that Mr. Consiglio “spoon fed” the officers the answers he was seeking. As a factual matter, Defendant is correct. But the legal phrase Defendant is looking for is that Mr. Consiglio employed “leading questions”—an objection that is now waived because he did not object to these questions during the hearing. *See Herman v. Hess Oil Virgin Islands Corp.*, 524 F.2d 767, 770 (3d Cir. 1975). Upon its own review of the officers’ testimony, however, the court is suspicious of the fact that the officers were, at times, willing to affirmatively respond to Mr. Consiglio’s conclusory and leading questions, even when they admitted they had no recollection of what he was asking about. (*See* Doc. 127, 77:1-7 (after admitting he did not recall what any of the items labeled “drug paraphernalia” were, Detective Baker was willing to testify that it was immediately apparent all of those items were incriminating).) The court nonetheless does consider all of the officers’ testimony together.

reasonable and immediate appearance of inculpatory evidence on the flash drives. Subjective consideration that it is possible an item could contain incriminating evidence does not meet the admittedly low bar of probable cause. Thus, the government has not carried its burden of showing, by a preponderance of evidence, that it was immediately apparent that the recording devices or flash drives contained incriminating evidence.

Turning to the plastic sandwich bags found in the freezer, the court finds these were located in a space the police did not have constitutional authority to enter. In *United States v. Telfair*, the Third Circuit held that an officer was permitted to open a refrigerator, under the plain view doctrine, because he “had probable cause to believe the appliance both was and contained incriminating evidence.” 507 F. App’x 164, 173 (3d Cir. 2012). Specifically, the police had reason to believe there may be shell casings in the refrigerator because they had been called to the house because of a shooting in the kitchen area, and because the refrigerator had bullet holes in it. *Id.* Here, the police had no basis for believing the freezer was or contained incriminating evidence. As shown above, the police only had a good-faith basis for searching for a gun and cell phones. The police claim they located the bags inside the freezer, suggesting they had to open the freezer door to locate them. Because the police had no basis for believing the freezer contained a gun or cell phones, they

did not have a justification for opening the freezer. The plain view doctrine did not justify them locating or seizing the sandwich bags.

Regarding the plastic Apple-brand packaging, box of green pills, and an identification card for a “T. Holmes,” the police gave some testimony suggesting it was immediately apparent these items were evidence of criminal activity. The court finds that a reasonable person could have probable cause to conclude unmarked pills next to Apple-brand packaging is evidence of illegal activity. The officers here testified, without any rebuttal, that, in their experience, Apple-brand packaging is regularly used to store and sell drugs. And a person’s identification next to these materials could be evidence of the person who was selling said drugs. But the officers gave no testimony regarding exactly where these items were located in the house. The court thus looked elsewhere in the record to glean where the items were located.¹²

On the day following the issuance of the warrant, Detective Baker filed a supplemental narrative outlining the officers’ executions of the warrant. (*See* Doc. 116-2, p. 42.) This document includes a line stating “Box containing green pills,

¹² Ordinarily, it is the job of the parties to “point the court to record evidence supporting” the factual basis for its arguments. *Cf. Griffin v. Air Line Pilots Ass’n, Int’l*, 32 F.3d 1079, 1083 (7th Cir. 1994) (discussing the parties’ summary judgment briefing obligations). But, because Defendant did not rebut by brief the Government’s invocation of the plain view doctrine, the court finds it understandable that the Government did not fully brief the matter in its supplemental brief. The court thus is attempting to diligently review the record to conduct its own comprehensive analysis of the facts. But its decision to do so should not be seen a basis for alleviating the parties from, in the future, pointing the court to the needed facts in the record.

drug packaging material and ID of T. Holmes – Bedroom of T. Holmes on shelf.” The court finds this is a sufficient factual basis to justify the police locating it in plain view during a legal search. Incident to the arrest of the suspects, the police properly conducted a quick search of all rooms and closets in the house to secure the premises from any possible threats. *See Grayer v. Twp. of Edison*, 198 F. App’x 203, 208 (3d Cir. 2006) (citing *Maryland v. Buie*, 494 U.S. 325, 327 (1990)). The fact that the materials were on the “shelf” does not tell the court much. But, unrebutted, it is enough for the court to conclude that it was more likely than not that the police were able to spot them merely by conducting a quick scan. The court therefore shall not exclude the use of these pieces of evidence.

Regarding the “Black padfolio with papers,” the government has not put forth sufficient evidence to show it was immediately apparent these documents were evidence of illegal activity. Several cases have held that “a document, even though in plain view, is [not] within the plain view exception if it must be read in order for its incriminating nature to be determined.” *United States v. Garcia*, 496 F.3d 495, 510 (6th Cir. 2007) (holding receipts, financial records, and invoices that the officer had to read before he could determine they were evidence of wrongdoing did not fall within the plain view doctrine); *see, e.g. Gleeson v. Prevoznik*, 190 F. App’x 165, 167 (3d Cir. 2006) (affirming the district court’s finding that a detective failed to show “the incriminating character of the documents was immediately apparent, as

required by the plain view doctrine”); *United States v. Andrews*, 847 F. Supp. 2d 236, 253 (D. Mass. 2012) (excluding documents that police had to read to determine if they were incriminating); *United States v. Reeves*, No. 11-cr-520, 2012 WL 1806164, at *10 (D.N.J. May 17, 2012) (excluding digital items whose filenames were in plain view, but whose content had to be read to determine if they were incriminating).

In *United States v. Menon*, the police were authorized by warrant to search a house for blank invoices bearing the name “Abad Fisheries,” a phony seafood supplier. 24 F.3d 550, 559 (3d Cir. 1994). A senior officer nonetheless instructed the officers executing the warrant to also “look for any other blank invoices and for documents regarding” another company named “Jabeco.” *Id.* In executing the warrant, one officer searched a desk for blank invoices with the name “Abad Fisheries,” but also came upon a document with the name “Jabeco” and turned it over to the senior official. *Id.* The senior official then read the entire document and inferred, from a prior investigation, that these documents and others were evidence of a scheme of illegal food shipments. *Id.*

The defendant moved to suppress the Jabeco documents, arguing that, under *Arizona v. Hicks*, the police had improperly sifted through and closely read documents before ascertaining they were evidence of wrongdoing, demonstrating it was not “immediately apparent” that they were incriminating. *Id.* at 560-63. The

Third Circuit held that the issue was a close call, and that the defendant put forward a “forceful” argument that a cursory examination of documents conducted during an otherwise legal search did not give rise to an immediately apparent impression of wrongdoing, and thus further reading the documents was impermissible under the plain view doctrine. *Id.* The court nonetheless held it was proper for the police to read the document because they had to do so in order to determine whether they were blank invoices with the name “Abad Fisheries” on them—an act expressly authorized by the warrant. *Id.*; *see also United States v. Baker*, No. 3:13-cr-197, 2015 WL 13307591, at *7 (M.D. Fla. Oct. 15, 2015), *report and recommendation adopted*, 2015 WL 7068145 (M.D. Fla. Nov. 13, 2015) (holding that *Menon* stands for the proposition that an officer can review documents if it is authorized, by a warrant, to look for certain documents in the residence).

Here, Detective Baker testified that:

There was, so the pad folio containing receipts. The receipts did not appear to legitimate for lack of a better word. They looked like they were made up receipts or it might have been something involving the drug trafficking trade like he was trying to keep track of how much was being sold to certain people in certain ways that way.

(Doc. 127, 77:11-16.) On its face, this testimony does not show Detective Baker had anything more than an intuitive hunch that something might be wrong with some receipts. This is a sufficient basis to show he did not find it immediately apparent that the documents were incriminating. But, even assuming his gut feeling was

enough, his testimony reveals that he had to open the padfolio and read the materials inside of it to ascertain whether the documents hinted at incriminating activity. Moreover, in contrast to the police in *Menon*, the officers here were not authorized by the warrant to search for any documents.¹³ Thus, Detective Baker's conduct of opening the pad folio is closer to the officers in *Hicks* and *Mitan* who had to move materials around to identify incriminating evidence. *United States v. Mitan*, Nos. 08-760-1, 08-760-2, 2009 WL 2195321, at *17 (E.D. Pa. July 23, 2009) ("Strosnifer testified that he moved some of the documents around to further identify them; moving documents around also supposed the conclusion that their incriminating nature was not immediately apparent."). Moreover, the fact that he had to read the receipts to come to his conclusion that they seemed like recordings of drug deals renders his conduct in line with the officers in the cases excluding documentary evidence. As such, the court finds the plain view doctrine did not permit the police to seize the padfolio or documents contained therein, and they should be excluded.

F. The second warrant is amply supported by a valid affidavit that does not rely upon any fruit of the poisonous tree.

Here, Magistrate Judge Carlson issued a second warrant based on an eight-page long, well-drafted affidavit by Special Agent Ryan Anderson, laying out his thorough basis for believing additional drugs could be found in a specific location

¹³ The government has not argued that the officer was looking for drugs, phones, or guns—the items actually authorized to be searched for in the warrant—in the padfolio.

in the house. Specifically, Ms. Bechtold testified, *inter alia*, that Mr. Grant had informed her he hid drugs on a specific outer window sill. The officers found the exact drugs in question in the exact location predicted. Defendant does not question the sufficiency of the affidavit, so the court will not explore it further.

Instead, Defendant raises two complaints: (1) that the second search was not executed for days after he was arrested and other people moved into the house, so the drugs could have belonged to someone else; and (2) that the second warrant was based on fruit of the poisonous tree because the affidavit in support relied upon evidence acquired during the first search, which was wholesale illegal.

The first argument does not adequately call into question Judge Carlson's basis for finding probable cause. The evidence being days old is an insufficient basis to void probable cause. *See United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir. 1993) (holding a two-month old letter was not stale and thus served as a valid basis for establishing probable cause). And the fact that other people moved in does not negate the fact that there may still have been drugs located where Mr. Grant hid them. If the Government is unable to trace the chain of possession to Mr. Dyer, this argument may serve as part of a valid basis for excluding the evidence for a separate reason. Or it may serve as a persuasive trial argument. But it is not a basis for concluding Judge Carlson lacked probable cause to issue the warrant when he did. The second argument fails because the court has reviewed the affidavit in support of

the second warrant and does not find it relied upon any evidence the court has excluded. Instead, the second affidavit relies primarily on the testimony of Ms. Bechtold, who the police would have been authorized to arrest and question due to the partial validity of the first warrant and due to her having an outstanding bench warrant. Defendant has thus failed to raise a meritorious objection to the second warrant and all evidence acquired during the second search was seized in a constitutionally-permissible way.

In deciding the second search warrant was valid, the court considered whether this meant the discovery of the original items would have been inevitable. The government, however, bears the burden of proof regarding the applicability of the inevitable discovery doctrine and did not raise the argument in its brief or explain what evidence it believed would have supported such a finding; the court therefore will not permit the introduction of the evidence on that basis. *See United States v. Bradley*, 370 F. Supp. 3d 458, 476-77 (M.D. Pa. 2019) (citing *United States v. Vasquez De Reyes*, 149 F.3d 192, 195 (3d Cir. 1998)). Even if the court did consider this argument, there is insufficient evidence in the record to support a finding of inevitability. While executing the second warrant, the police searched for but were unable to locate some evidence of contraband that Ms. Bechtold stated they would find. This could be explained by the passage of time between Mr. Dyer's arrest and execution of the second warrant, during which time other people—including

mothers who likely would remove or destroy such contraband from a house where their children lived—were occupying the premises. As such, a finding of inevitability would require impermissible speculation on the court’s part. As this court recently explained:

Speculation and assumption do not satisfy the dictates of [the Supreme Court’s decision in] *Nix* . . . inevitable discovery is not an exception to be invoked casually, and if it is to be prevented from swallowing the Fourth Amendment and the exclusionary rule, courts must take care to hold the government to its burden of proof.

Id. (quoting *Vasquez De Reyes*, 149 F.3d at 195) (citing *Nix v. Williams*, 467 U.S. 431 (1984)).

IV. CONCLUSION

For the reasons outlined above, the court shall grant the motion in part, excluding the Swann DVR and charger, cash, drug paraphernalia, black padfolio with paperwork and receipt book, flash drives, and clear empty sandwich bags. The motion is denied in all other regards. An appropriate order shall follow.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: November 21, 2019

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

UNITED STATES OF AMERICA

Crim. No. 1:17-CR-226

v.

ERNEST KYLE DYER

Judge Sylvia H. Rambo

ORDER

In accordance with the accompanying memorandum of law, **IT IS HEREBY ORDERED** that Defendant's motion to suppress (Doc. 107) is **GRANTED IN PART**. The following items and categories of items acquired during the first search of Defendant's residence are excluded from admission at trial:

- (1) the Swann DVR and charger;
- (2) drug paraphernalia;
- (3) black padfolio with paperwork and receipt book;
- (4) flash drives;
- (5) and clear empty sandwich bags from the freezer.

IT IS FURTHER ORDERED that the motion is **DENIED** in all other regards.

/s/ Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: November 21, 2019

Commonwealth of Pennsylvania

COUNTY OF YORK

APPLICATION FOR
SEARCH WARRANT
AND AUTHORIZATION

Docket Number (Issuing Authority): Police Incident Number: 20170706M0093 Warrant Control Number:

DETECTIVE MARK BAKER AFFIANT NAME NORTHERN YORK COUNTY REGIONAL PI AGENCY (717)292-3647 PHONE NUMBER 7/6/2017 DATE OF APPLICATION

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

Firearms, illegal drugs, cell phones possessed or belonging to Ernest Dyer

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSON TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):
Social security numbers and financial information (e.g., PINs) should not be listed. If the identity of an account number must be established, use only the last 4 digits.
204 PA §§ 213.1 - 213.7.

515 South Queen Street, York PA

Described as a three story end unit with second floor bay window

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):
Ernest Dyer

VIOLATION OF (Describe conduct or specify statute):

Person not to Possess, T18 CSA 6105

DATE(S) OF VIOLATION:

07/05/2017

☐ Warrant Application Approved by District Attorney - DA File No.

(If DA approval required per Pa.R.Crim.P. 201(1) with assigned File No. per Pa.R.Crim.P. 507)

☐ Additional Pages Attached (Other than Affidavit of Probable Cause)

☒ Probable Cause Affidavit(s) MUST be attached (unless sealed below) Total number of pages: 3

TOTAL NUMBER OF PAGES IS SUM OF ALL APPLICATION, PROBABLE CAUSE AND CONTINUATION PAGES EVEN IF ANY OF THE PAGES ARE SEALED

The below named Affiant, being duly sworn (or affirmed) before the Issuing Authority according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at the particular premises or in the possession of the particular person as described above.

Signature of Affiant

Agency or Address if private Affiant

Badge Number

Sworn to and subscribed before me this 6th day of JULY 2017, Mag. Dist. No. 19

Signature of Issuing Authority

Office Address

SEARCH WARRANT
TO LAW ENFORCEMENT
OFFICER:

WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the premises or person described, to seize, secure, inventory and make return according to the Pennsylvania Rules of Criminal Procedure.

☒ This Warrant shall be served as soon as practicable and shall be served only between the hours of 6AM to 10PM but in no event later than

☐ This Warrant shall be served as soon as practicable and may be served any time during the day or night but in no event later than **

8:40 P M, o'clock 08 JULY 2017

☒ This Warrant shall be returned to judicial officer

19-1-04

* The issuing authority should specify a date no later than two (2) days after issuance. Pa.R.Crim.P. 205(4).

** If the issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit(s) and wishes to issue a nighttime warrant, then this block shall be checked. Pa.R.Crim.P. 206(7).

Issued under my hand this 6th day of JULY 2017 at 8:40 P M, o'clock.

Signature of Issuing Authority

Mag. Dist. or Judicial Dist. No.

Date Commission Expires

Title of Issuing Authority:

☒ Magisterial District Judge

☐ Common Pleas Judge

☐ For good cause stated in the affidavit(s) the Search Warrant Affidavit(s) are sealed for days by my certification and signature. (Pa.R.Crim.P. 211)

Signature of Issuing Authority

(Judge of the Court of Common Pleas or Appellate Court Justice or Judge)

(Date)

(SEAL)

MDJS 410A

USA000047

62a

Commonwealth of Pennsylvania

COUNTY OF YORK

AFFIDAVIT OF
PROBABLE CAUSE

Docket Number

(Issuing Authority):

Police Incident

Number:

20170706M0093

Warrant Control

Number:

PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

Social security numbers and financial information (e.g., PINs) should not be listed. If the identity of an account number must be established, use only the last 4 digits.
204 PA 66 213.1 - 213.7.

1. Your affiant, Detective Mark Baker, is a sworn police officer with the Northern York County Regional Police Department (NYCRPD) and has been so employed by this agency for 13 years. Your affiant is a member of the criminal investigation division and a Task Force Officer with the Federal Bureau of Investigation (FBI). Your affiant is also a sworn Special County Detective for the District Attorney's Office.
2. On 7/6/2017, your affiant was contacted by Special Agent (SA) Donald Asper from the FBI regarding an incident which had occurred last evening involving Starr Bowman.
3. Your affiant, spoke with SA Asper who indicated a female in York City was assaulted by a male identified as ERNEST DYER.
4. A copy of the incident report taken by York City including the victim's written statement was forwarded this officer for review.
5. On 7/5/2017, Starr Bowman indicated she had left her dwelling to go to a neighbor's house to get some prescription medications which were hers.
6. Bowman advised she lives at 515 South Queen Street in York City with her boyfriend, ERNEST DYER.
7. Bowman indicated when she returned to the house, a verbal altercation ensued between her and DYER.
8. During the altercation, DYER brandished a Highpoint .40 caliber pistol and struck Bowman in the left eye with the gun.
9. Bowman then indicated DYER pointed the pistol at her.
10. Bowman indicated she fled the residence to an undisclosed location.
11. Bowman further advised after the incident, DYER started to threaten her via phone stating things such as "bring a body bag".
12. Bowman stated DYER has threatened her life in the past and she currently fears for her safety.
13. Bowman advised approximately two weeks prior, another verbal altercation ensued with DYER and during this, he poured cooking oil on her vehicle which contained her 12-year-old and 5-year-old children.
14. Bowman advised DYER then tried to light the oil on fire while her children were still in the vehicle.
15. Bowman contacted the York City Police Department who responded and conducted an initial investigation.
16. Photographs were taken of the injuries to Bowman by York City Police which included a bruised area around her left eye and considerable redness and swelling.
17. On 7/6/17, an interview was conducted by SA Donald Asper and SA Angela Strauss of Starr Bowman.
18. Bowman confirmed the above account as stated the previous night.

(Continued)

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Affiant Signature

Date

7-6-17

Issuing Authority Signature

Date

07-06-17

Page 2 of 3 Pages

MDJS 410B-10

USA000048

63a



Commonwealth of Pennsylvania

COUNTY OF YORK



**AFFIDAVIT OF
PROBABLE CAUSE**

Docket Number
(Issuing Authority):

Police Incident
Number: 20170706M0093

Warrant Control
Number:

PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

Social security numbers and financial information (e.g., PINs) should not be listed. If the identity of an account number must be established, use only the last 4 digits.
204 PA §§ 213.1 - 213.7.

19. Also during the interview, Bowman disclosed there may be illegal drugs located in the residence.
20. A search was done of the criminal history of ERNEST DYER and it was discovered based on his past record, DYER is a person not to possess a firearm.
21. Based upon the above information, your affiant requests a search warrant be issued for the residence of ERNEST DYER for the aforementioned items listed on page 1.

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Affiant Signature

Date

7-6-17

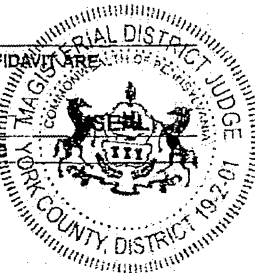
Issuing Authority Signature

Date

07-06-17

Page 3 of 3 Pages

MDJS 410B-10



USA000049

64a

Incident Report



NORTHERN YORK COUNTY REGIONAL PD
NORTHERN YORK COUNTY REG
1445 E CANAL RD
DOVER, PA 17315

Phone: (717)292-3647 Fax: (717)292-0364

Incident #

20170706M0093

Reference #

20170626M0119

Municipality **1 - DOVER TOWNSHIP (205)**
Report Type **INCIDENT**

Location **515 S QUEEN STR - YORK 17404**

Landmark
Premise

Point of Entry
Meth. of Entry

Patrol Zone **11 D Grid**

Reported **07/06/2017 @ 08:00 (Thur)**

Discovered **@**

Last Secure **@**

Received **08:00** Dispatched **08:00**

Arrived **08:00** Cleared **08:00**

Status **CLOSED/CLEARED**

Disposition **CLOSED - EXCEPTIONAL MEANS**

Clear Date **07/06/2017**

Badge **126 - DETECTIVE MARK BAKER**

Criminal
Code

Title :
Section :
Sub-Section :
Description :

UCR Codes

0430 ASSAULT - OTHER DANGEROUS WEAPON

Investigating Officer

Signature

Date

Approving Officer

Signature

Date

20170706M0093

20170626M0119

0430 - ASSAULT - OTHER DANGEROUS WEAPON

Evidence

Item	Tag #	Date Received	Bin Location
HIPOINT PISTOL	17-0001799	07/07/2017	FORENSIC LAB
10 R.P 40 CALIBUR ROUNDS	17-0001800	07/07/2017	FORENSIC LAB
SWANN DVR	17-0001801	07/07/2017	FORENSIC LAB
\$270 USC	17-0001802	07/07/2017	FORENSIC LAB
\$36 USC	17-0001803	07/07/2017	FORENSIC LAB
SILVER LG CELL PHONE	17-0001804	07/07/2017	FORENSIC LAB
GREY LG CELL PHONE	17-0001805	07/07/2017	FORENSIC LAB
SILVER LG CELL WITH CRACKED SCREEN	17-0001806	07/07/2017	FORENSIC LAB
BLACK TACPHONE	17-0001807	07/07/2017	FORENSIC LAB
2 NEEDLES, SPOON AND RAZOR BLADE	17-0001808	07/07/2017	DISPOSED
BLACK PADFOLIO WITH PAPERWORK	17-0001809	07/07/2017	FORENSIC LAB
MISC DRUG PARAPHERNALIA	17-0001810	07/07/2017	FORENSIC LAB
GREEN PILLS	17-0001811	07/07/2017	FORENSIC LAB
GUN BOX AND PURCHASE RECEIPTS	17-0001812	07/07/2017	FORENSIC LAB
2 THUMB DRIVES	17-0001813	07/07/2017	FORENSIC LAB
ALCATEL CELL PHONE	17-0001814	07/07/2017	FORENSIC LAB
BLACK PISTOL HOLSTER	17-0001815	07/07/2017	FORENSIC LAB
PLASTIC PACKETS WITH APPLE LOGO	17-0001816	07/07/2017	FORENSIC LAB
BLACK BELLY BAND HOLSTER	17-0001817	07/07/2017	F-1
CLEAR SANDWICH BAGGIES	17-0001818	07/07/2017	FORENSIC LAB
.40 CAL BULLETS (106)	17-0001819	07/07/2017	FORENSIC LAB

20170706M0093

20170626M0119

0430 - ASSAULT - OTHER DANGEROUS WEAPON

Persons Involved

BOWMAN, STARR

Arrest Date :

Disposition Date :

Role	Incident Classification	How Charged	Disposition
VICTIM	0430 ASSAULT - OTHER DANGEROUS WEAPON		

Alias
Age-DOB 33 [REDACTED] Height
Race WHITE Weight 0 Home Addr 515 S QUEEN STR
Sex FEMALE Hair YORK, PA 17408
Ethnicity NON-HISPANIC Eyes
Marital Stat Build
Residency Resident Complex.
SSN Home Ph # [REDACTED]
Gang Work Ph #
Tattoo Cell Ph #
Clothing Other Ph # No Photo
Employer
GBM Id
-Entered //
-Released // Occupation
OLN/State / Addl Addr None
Injury

DYER, ERNEST KIELE

Arrest Date : 7/6/2017

Disposition Date :

Role	Incident Classification	How Charged	Disposition
OFFENDER	0430 ASSAULT - OTHER DANGEROUS WEAPON	ARRESTED	

Alias
Age-DOB 44 [REDACTED] Height
Race BLACK Weight 0 Home Addr 515 SOUTH QUEEN ST
Sex MALE Hair YORK, PA 17403
Ethnicity Eyes
Marital Stat Build
Residency Resident Complex.
SSN Home Ph #
Gang Work Ph #
Tattoo Cell Ph # No Photo
Clothing Other Ph #
Employer
GBM Id
-Entered // Occupation
-Released // Addl Addr None
OLN/State [REDACTED]
Injury

20170706M0093

20170626M0119

0430 - ASSAULT - OTHER DANGEROUS WEAPON

DYER, ANNIE

Arrest Date :

Disposition Date :

Role	Incident Classification	How Charged	Disposition
OTHER	0430 ASSAULT - OTHER DANGEROUS WEAPON		

Alias

Age-DOB - / /

Race BLACK

Sex FEMALE

Ethnicity

Marital Stat

Residency

SSN

Gang

Tattoo

Clothing

GBM Id

-Entered / /

-Released / /

OLN/State /

Injury

Height

Weight 0

Hair

Eyes

Build

Complex.

Home Addr 515 S QUEEN STR
YORK, PA 17404

Home Ph #

Work Ph #

Cell Ph #

Other Ph #

E-Mail

Employer

No Photo

Occupation

Addl Addr None

GRANT, REAKWON

Arrest Date :

Disposition Date :

Role	Incident Classification	How Charged	Disposition
OTHER	0430 ASSAULT - OTHER DANGEROUS WEAPON		

Alias

Age-DOB 21 -

Race BLACK

Sex MALE

Ethnicity

Marital Stat

Residency

SSN

Gang

Tattoo

Clothing

GBM Id

-Entered / /

-Released / /

OLN/State /

Injury

Height

Weight 0

Hair

Eyes

Build

Complex.

Home Addr 515 S QUEEN STR
YORK, PA 17404

Home Ph #

Work Ph #

Cell Ph #

Other Ph #

E-Mail

Employer

No Photo

Occupation

Addl Addr None

Main Narrative
DETECTIVE MARK BAKER (126)

07/06/2017 17:48 - 126 DETECTIVE MARK BAKER 20170626M0119

Phone Call

1. Your affiant, Detective Mark Baker, is a sworn police officer with the Northern York County Regional Police Department (NYCRPD) and has been so employed by this agency for 13 years. Your affiant is a member of the criminal investigation division and a Task Force Officer with the Federal Bureau of Investigation (FBI). Your affiant is also a sworn Special County Detective for the District Attorney's Office.
2. On 7/6/2017, your affiant was contacted by Special Agent (SA) Donald Asper from the FBI regarding an incident which had occurred last evening involving Starr Bowman.
3. Your affiant, spoke with SA Asper who indicated a female in York City was assaulted by a male identified as ERNEST DYER.
4. A copy of the incident report taken by York City including the victim's written statement was forwarded this officer for review.
5. On 7/5/2017, Starr Bowman indicated she had left her dwelling to go to a neighbor's house to get some prescription medications which were hers.
6. Bowman advised she lives at 515 South Queen Street in York City with her boyfriend, ERNEST DYER.
7. Bowman indicated when she returned to the house, a verbal altercation ensued between her and DYER.
8. During the altercation, DYER brandished a Highpoint .40 caliber pistol and struck Bowman in the left eye with the gun.
9. Bowman then indicated DYER pointed the pistol at her.
10. Bowman indicated she fled the residence to an undisclosed location.
11. Bowman further advised after the incident, DYER started to threaten her via phone stating things such as "bring a body bag".
12. Bowman stated DYER has threatened her life in the past and she currently fears for her safety.
13. Bowman advised approximately two weeks prior, another verbal altercation ensued with DYER and during this, he poured cooking oil on her vehicle which contained her 12-year-old and 5-year-old children.
14. Bowman advised DYER then tried to light the oil on fire while her children were still in the vehicle.
15. Bowman contacted the York City Police Department who responded and conducted an initial investigation.
16. Photographs were taken of the injuries to Bowman by York City Police which included a bruised area around her left eye and considerable redness and swelling.
17. On 7/6/17, an interview was conducted by SA Donald Asper and SA Angela Strauss of Starr Bowman.
18. Bowman confirmed the above account as stated the previous night.
19. Also during the interview, Bowman disclosed there may be illegal drugs located in the residence.
20. Based upon the above information, your affiant requests a warrant for the arrest of ERNEST DYER be issued for the charges contained herein.

Supplemental Narrative
DETECTIVE MARK BAKER (126)

07/07/2017 16:27 - 126 DETECTIVE MARK BAKER

Follow up action:

On this date, a search warrant was executed by the US Marshal's Detail at 515 South Queen Street in York City. Ernest DYER was on location and was taken into custody for this incident. Also in the house

was Summer Bechtold, Taquan Holmes and Annie Dyer. Both Bechtold and T. Holmes were found to have arrest warrants and were taken into custody by the detail.

I spoke with Ernest DYER briefly regarding why we were at his house. DYER was provided with his Miranda Warnings and was able to provide the location of the firearm for this investigation. The weapon was located in a Dirt Devil commercial carpet cleaner. The gun was loaded with 10 .40 caliber rounds in a magazine. The chamber was empty.

A search was conducted of the residence with the following items found:

- HiPoint .40 caliber pistol
- Swann DVR and charger
- Glassine packets with an apple logo
- \$270 -- Under the mattress in Dyer's room
- \$36 -- On Dyer's person
- Silver LG Cell Phone -- Bedroom of Dyer
- Gray LG Cell Phone -- Bedroom of Dyer
- Silver LG Cell Phone with broken screen -- Bedroom of Dyer
- Black TracPhone -- Bed of A. Dyer
- Multiple needles, spoon, razor blade -- Handbag in the bedroom of Dyer
- Black padfolio with papers -- Bedroom of Dyer
- Box containing green pills, drug packaging material and ID of T. Holmes -- Bedroom of T. Holmes on shelf
- Multiple boxes of .40 caliber bullets -- Handbag in closet of A. Holmes
- HiPoint gun box with receipts -- Bedroom of A. Dyer
- 2 thumb drive -- Bedroom of A. Dyer
- Black pistol holster -- Bedroom of A. Dyer
- Alcatel Cell Phone -- Bedroom of Holmes
- Black pistol holster -- Bedroom of A Dyer in closet
- Plastic packets with apple logo -- Under fake fireplace Dyer bedroom
- Black belly band type holster -- Bedroom of Dyer
- Clear sandwich bag ends -- Freezer
- .40 Cal Bullets (106) -- Bedroom of A. Dyer in closet

All items were packaged and placed into evidence.

Case Status: ARREST CLEARED

Commonwealth of Pennsylvania

COUNTY OF York



**RECEIPT / INVENTORY
OF SEIZED PROPERTY**

Docket Number (Issuing Authority): Police Incident Number: 20170706M0093 Warrant Control Number: 07-07-17 Time of Search: 0600 Inventory Page Number: 1 of 1 Pages

Ofc. Mark Baker

Northern York County Regional Police Department

126

Affiant

Agency or Address if private affiant

Badge No.

The following property was taken / seized and a copy of this Receipt / Inventory with a copy of the Search Warrant and affidavit(s) (if not sealed) was

☒ personally served on (name of person) Annie Dyer

☐ was left at (describe the location)

Item Number	Quantity	Item Description	Make, Model, Serial No., Color, etc.
1	1	HiPoint .40 S/N X7259647 with 10 rounds, Magazine	
2	1	Swann DVR and charger	
3	1	Plastic packaging with Apple brand	
4	1	\$270 USC	
5	1	\$36 USC	
6	1	Silver LG Cell Phone	
7	1	Gray LG Cell Phone	
8	1	Silver LG Cell Phone with cracked Screen	
9	1	Trac phone	
10	1	Drug paraphernalia	
11	1	Black padfolio with paperwork and receipt book	
12	1	Box containing green pills and packaging material and ID for T. Holmes	
13	1	Multiple boxes of .40 caliber ammunition (106 bullets)	
14	1	HiPoint gun box with Gander Mountain receipts	
15	1	2 Flash Drives	
16	1	Alcatel cell phone	
17	1	Belly Band type pistol holster	
18	1	Black pistol holster	
19	1	Clear empty sandwich bags from freezer	

I/we do hereby state that this inventory is to the best of my/our knowledge and belief a true and correct listing of all items seized, and that I/we sign this Receipt / Inventory subject to the penalties and provisions of Title 18 Pa.C.S. 4904(b) - Unsworn Falsification to Authorities.

Mark Baker

NYCRPD

34126

Signature of person Issuing Receipt / Inventory

Printed Name

Affiliation

Badge or Title

Signature of Witness

Printed Name

Affiliation

Badge or Title

Signature of person making Search

Printed Name

Affiliation

Badge or Title

U.S. Department of Justice
United States Marshals Service

REPORT OF INVESTIGATION

Page 1 of 2

1. FID: 10356845 CASE: 1767-0707-1818-S	2. DATE OF REPORT: 07/07/2017	3. REPORTED BY: LEWIS III, PHILIP AT: A67
4. SUBJECT NAME: DYER, ERNEST KYLE		
5. MERGED FIDs:		
6. TYPE OF REPORT: <input type="checkbox"/> REPORT OF ELECTRONIC INTERCEPTION <input type="checkbox"/> COLLATERAL LEAD <input type="checkbox"/> WITNESS INTERVIEW <input type="checkbox"/> ADMINISTRATIVE SUBPOENA <input checked="" type="checkbox"/> ARREST (USM11 1046063) <input type="checkbox"/> INTELLIGENCE UPDATE <input type="checkbox"/> MEMORANDUM TO FILE <input type="checkbox"/> OTHER		
7. HOURS WORKED: 6		

On 07/07/2017, DUSM Phil LEWIS, and M/PA Task Force Officers Kyle PITTS, Clayton GLADFELTER and officers Cory AIMES, Zach PELTON from the York City Police Department, Task Force Officers Nate PAYNE, Cody MYERS of the York County Sheriff's Department, Task Force Officers Larry SMITH, Rob ROLAND of the PA State Parole, Task Force Officer Scott JAMES of the York County DA's Office, FBI Special Agents Donny ASPER, Angela STRAUSE, ATF Special Agent Ryan ANDERSON and Northern York Area Regional Police Officer and FBI Task Force Member Mark BAKER arrested subject DYER, ERNEST KYLE (DOB: [REDACTED]) at 515 South Queen Street, York, Pa.

The subject was wanted by the Northern York Area Regional Police for charges of: Possession of Firearm Prohibited, Simple Assault.

A search warrant was executed by the FBI Task Force and a Black in color High Point.40 Caliber Semi Auto handgun serial # (X7259647) was found and seized. The handgun had an inserted magazine with ten live rounds in it.

All seized evidence was taken by FBI Task Force member Mark BAKER.

At the time of the arrest at the 515 South Queen Street address, several other people were in the house. DYER's mother, Annie R DYER (DOB: [REDACTED]), who was negative for active warrants. DYER's son, Raekwon GRANT (DOB: [REDACTED]), had an active arrest warrant for Larceny out of Hudson County, NJ. DYER's girlfriend, Summer BECHTOLD (DOB: [REDACTED]), had an active arrest bench warrant with an original charge of Larceny.

8. SIGNATURE (Name and Title) PHILIP LEWIS III Criminal Investigator	9. DATE 07/07/2017 1:19 PM EDT	12. DISTRIBUTION DISTRICT HEADQUARTERS OTHER
10. APPROVED (Name and Title) EDWARD HOLST Warrant Supervisor	11. DATE 07/11/2017 10:02 AM EDT	

U.S. Department of Justice
United States Marshals Service

REPORT OF INVESTIGATION

Page 2 of 2

1. FID: 10356845 CASE: 1767-0707-1818-S	2. DATE OF REPORT: 07/07/2017	3. REPORTED BY: LEWIS III, PHILIP AT: A67
4. SUBJECT NAME: DYER, ERNEST KYLE		
5. MERGED FIDs:		

DYER, ERNEST KYLE was arrested without incident and transported to York County Central Booking Center.
End of report.

UNITED STATES DISTRICT COURT

for the
Middle District of PennsylvaniaIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)515 S. Queen St. York PA 17401 and
curtilage of 519 S. Queen St. York, PA 17401

Case No. 1:17-MC-427

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Middle District of Pennsylvania
(identify the person or describe the property to be searched and give its location):
515 S. Queen St. York PA 17401 and curtilage of 519 S. Queen St. York, PA 17401, more particularly described in Attachment A

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):
Please see Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before July 27, 2017

(not to exceed 14 days)

☒ in the daytime 6:00 a.m. to 10 p.m.☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge Martin C. Carlson

(name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for _____ days (not to exceed 30)

☐ until, the facts justifying, the later specific date of _____

Date and time issued:

7-13-17

3:45 PM

Martin C. Carlson

Judge's signature

City and state: Harrisburg, Pennsylvania

Martin C. Carlson, U.S. Magistrate Judge

Printed name and title

UNITED STATES DISTRICT COURT

for the
Middle District of Pennsylvania

In the Matter of the Search of

*(Briefly describe the property to be searched
or identify the person by name and address)*515 S. Queen St. York PA 17401 and
curtilage of 519 S. Queen St. York, PA 17401

Case No. 1:17-mc-427

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 the property to be searched and give its location)*:
515 S. Queen St. York PA 17401 and curtilage of 519 S. Queen St. York, PA 17401, more particularly described in Attachment A

located in the Middle District of Pennsylvania, there is now concealed *(identify the person or describe the property to be seized)*:
Please see 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 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:

<i>Code Section</i>	<i>Offense Description</i>
18 USC 922(g)(1)	Possession of a firearm by a felon
21 USC 841(a)	Distribution of a Controlled Substance
18 USC 1591	Sex trafficking by force, fraud, or coercion

The application is based on these facts:

See attached Affidavit

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

FILED
HARRISBURG, PA
JUL 13 2017
VE

Applicant's signature

Ryan Anderson, ATF Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

7-13-17

*Judge's signature*City and state: Harrisburg, PA

Martin C. Carlson, Magistrate Judge

Printed name and title USA000172

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

IN THE MATTER OF THE SEARCH
OF 515 S. Queen St. York PA 17401
and curtilage of 519 S. Queen St. York,
PA 17401.

Case No. 1:17mc-427

Filed Under Seal

FILED
HARRISBURG, PA
JUL 13 2017

AFFIDAVIT

I, Ryan Anderson, being duly sworn, do depose and state as follows:

1. Your affiant is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), an agency of the United States Department of Justice. Your affiant has been employed in this capacity since January 2015 and is currently assigned to the Harrisburg Field Office within the Philadelphia Field Division. Your affiant has a Bachelor's of Science degree in Criminal Justice from York College of PA. Prior to my current employment, I was a sworn police officer for more than 14 years with the York City Police Department in York County, PA. During my approximately 17 years of law enforcement experience, your affiant has prepared and participated in the execution of numerous search and arrest warrants, which resulted in the recovery of sought after evidence, the arrest of individuals and the successful prosecution of hundreds of defendants for violations of the law.
2. During my career, your affiant has received training at the Municipal Police Officer Education and Training Commission (M.P.O.E.T.C) in Harrisburg, PA and the Federal Law Enforcement Training Center, (FLETC) in Glynco, GA. Generally, this training focused on instruction of Federal and state criminal statutes,

procedures and methods of conducting criminal investigations, preparation and execution of search and arrest warrants, collection of evidence and court preparation. Specifically at FLETC, your affiant received training in the enforcement of the Federal firearm, explosive and arson laws, which included firearm and explosive identification. Your affiant has participated in the use of cooperating informants, undercover agents, pen register/trap and trace devices, video surveillance, GPS tracking devices, search warrants, and audio surveillance, among other law enforcement techniques, in the course of my career with ATF. Additionally, I have participated in controlled buys of firearms, explosives, and narcotics from targets of law enforcement investigations. Based on training and experience, I am familiar with methods used for firearms trafficking, explosive trafficking, narcotics trafficking, and a variety of means to launder illegal proceeds.

3. Your affiant has been working with local and federal investigative agencies to identify participants engaged in sex trafficking, firearms offenses and drug trafficking, at a residence at 515 South Queen St. York, PA. During the course of this investigation, your affiant has identified a group of individuals who are engaging in these offenses in this residence. These individuals have been identified through interviews with victims, witnesses, cooperating individuals and evidence gathered by federal and local law enforcement during the performance of their duties.

4. This affidavit is made in support of application for a search warrant for evidence located at 515 S. Queen St. York, PA 17401.

5. Because this affidavit is being submitted for the limited purpose of establishing probable cause to support the issuance of the search warrant, I have not included each and every fact known to me concerning this investigation. I have only set forth the facts. I believe are necessary to establish probable cause to support the issuance of a search warrant.

BACKGROUND OF THE INVESTIGATION

6. On Wednesday, 7/05/2017, Starr BOWMAN reported she was assaulted by her boyfriend, Ernest DYER, aka "K". BOWMAN resided at DYER's home located at 515 S. Queen St. York, PA 17401. BOWMAN reported DYER struck her in the face with a "Hi-Point .40" causing visible injuries. This agent knows "Hi-Point .40" refers to a .40 caliber pistol manufactured by Hi-Point.

7. This affiant conducted a criminal history check of DYER (FBI# 946646TA2) and identified a felony conviction (a) on 2/10/1994 in New Jersey for Possession with Intent to Deliver (Heroin) and (b) on 1/2/2007 in Pennsylvania for Possession with Intent to Deliver. DYER is prohibited from possessing firearms or ammunition per Title 18 U.S.C. § 922(g)(1).

8. BOWMAN stated DYER recruits women to distribute drugs for him and trafficks those women by having them perform sex acts for money with strangers. BOWMAN indicated 19 year old victim, Summer BECHTOLD, was at 515 S. Queen St. and being trafficked by DYER. DYER provides BECHTOLD with drugs to keep

her under the influence. BOWMAN stated BECHTOLD confided to her that she wants to run away to escape DYER but has been unable to get away from him.

9. BOWMAN stated DYER sells the drugs, "molly, diesel and hard". Based on your affiant's training, experience and knowledge, this agent knows "molly" refers to the drug MDMA/Ecstasy (methylenedioxymethamphetamine); "diesel" refers to the drug heroin; "hard" refers to the drug "crack" or cocaine base. DYER's son, Raekwon GRANT, also lives with DYER and is involved in drug trafficking for DYER.

10. Detective Mark Baker of Northern York Regional Police Department executed a search warrant at 515 S. Queen St. York, PA on Friday, 7/7/2017 that your affiant was present for and participated with along with other law enforcement officers.

11. During the execution of the search warrant, officers located BECHTOLD in bed with DYER and she appeared to be under the influence of narcotics. During the search of the residence, officers located a .40 caliber, Hi-Point semi-automatic pistol model JCP, S/N X7259647, loaded with (10) RP .40 caliber cartridges hidden in the kitchen. It was photographed and seized by Det. Baker. DYER was arrested that day by Det. Baker.

12. On Wednesday, 7/12/2017, your affiant and Det. Mark Baker interviewed BECHTOLD. BECHTOLD stated DYER had been trafficking her since the beginning of June 2017. During that time Dyer would charge \$50.00 a "date". Your

affiant knows the term "date" refers to the exchange of sexual acts for money between two people. DYER would arrange the "dates" with the sex buyers and provide condoms. All of BECHTOLD's "dates" occurred in the 3rd floor bedroom of DYER's residence.

13. BECHTOLD stated DYER would not give her any money paid by the sex buyers, but instead would supply her drugs, to include molly and heroin. DYER would not allow BECHTOLD to leave the residence alone and would require GRANT to go out with BECHTOLD if she left the house. BECHTOLD stated she told DYER she wanted to leave, but DYER told her she could not leave until he got the money he is owed for the drugs she used.

14. BECHTOLD advised law enforcement if she "misbehaved" GRANT physically assaulted her by choking her while verbally threatening her. DYER made 19 year old BECHTOLD perform sex acts on both DYER (age 44 years old) and his son, GRANT (age years old). DYER would make BECHTOLD call him "GOD" and she has witnessed him physically assault Starr BOWMAN when she (BOWMAN) "misbehaved".

15. BECHTOLD stated DYER and GRANT are both involved in the drug trafficking of molly and heroin. GRANT uses public transportation to transport drugs to DYER from an unknown source in New Jersey. BECHTOLD described observing both DYER and GRANT packaging molly for sale and they did this every time in DYER's bedroom. During the processing, DYER and GRANT used rubber gloves and wore hospital style face masks. BECHTOLD described how GRANT

would disassemble fentanyl patches and believed they added the fentanyl to their molly. She stated this is why there is such a high demand for the molly DYER sells.

16. BECHTOLD stated she observed DYER carrying an all-black semi-automatic pistol on his person "24/7". BECHTOLD described that DYER used a black stretchy holster that wrapped around his waist to conceal the gun. Det. Baker seized a belly-band holster matching that description from DYER's bedroom during the execution of his search warrant.

17. BECHTOLD stated she witnessed DYER shoot the pistol in the backyard of 515 S. Queen St. York, PA 17401 on the evening of July 3, 2017.

18. Your affiant observed numerous condoms, gloves, and hospital style face masks in a shoe caddy in DYER's bedroom on the 7/7/2017, however those items were not seized by Det. Baker at that time.

19. BECHTOLD was arrested on 7-7-17, when the the search warrant was executed, on an outstanding warrant for failure to appear in York County and she was transported to York County Prison in the same transport vehicle as GRANT. GRANT also had an extraditable outstanding warrant from the state of New Jersey for larceny, and he was taken into custody on 7-7-17 as well. BECHTOLD stated, at that time, GRANT told BECHTOLD he discarded 5 grams of Molly outside the window sill of the upstairs bedroom as police were entering the house and the police did not find those drugs. GRANT also stated he had approximately \$700.00 hidden in the ceiling tiles that the police also missed.

CONCLUSION

20. Based upon your affiant's training and experience, and the experience conveyed to me by veteran Law Enforcement Officers, your affiant knows that persons involved in sex trafficking are also known to be involved in drug trafficking and often carry firearms to protect themselves, their drugs, and their money. Your affiant also knows that large quantities of condoms are items commonly possessed by persons involved in sex trafficking, gloves and hospital style masks are commonly used by drug traffickers, and semi-automatic pistols expel spent cartridge casings during the firing cycle upon discharging of the firearm. Your affiant also knows that during the ejection of the spent cartridge casing the trajectory could enable the casing to expel over barriers like fences, shrubs, and property lines.

21. Therefore, your affiant believes there is probable cause that evidence of crimes, including violations of 18 U.S.C. § 922(g)(1) (possession of firearm by any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year), 21 U.S.C. §841 (possession of a controlled substance with the intent to deliver) and 18 U.S.C §1591 (sex trafficking by force, fraud, or coercion) will be found inside and/or about the curtilage of 515 S. Queen St. York, PA 17401.

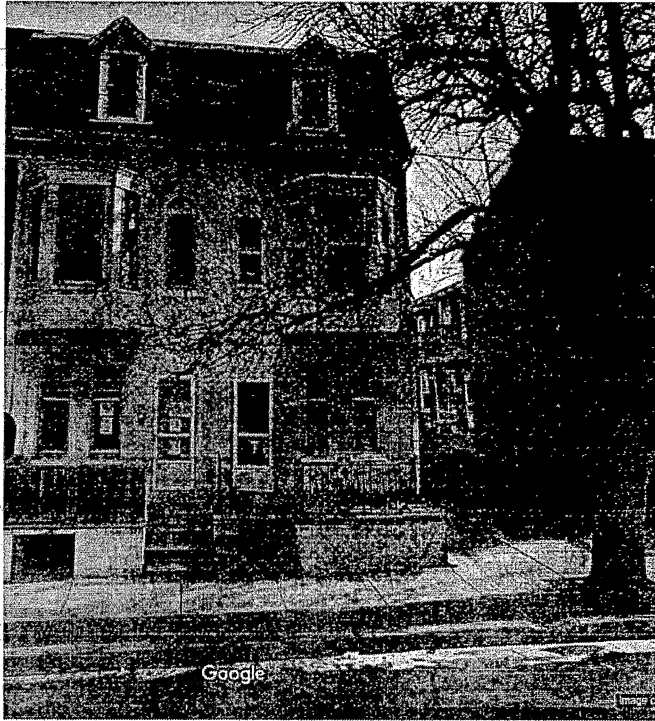
22. Your affiant respectfully requests the issuance of a search warrant for 515 S. Queen St. York, PA 17401 to include the curtilage, the detached garage, and the adjoining curtilage of 519 S. Queen St. York, PA 17401, more specifically described

in attachment A, and the person of any individuals present on those premises, and any vehicles owned, rented, and/or used by them that are parked on or near those premises.

23. Because of the ongoing nature of the criminal investigation, your affiant requests that the affidavit and application of the search warrant be sealed to protect the witnesses/victims and subjects of the investigation, and prevent the destruction and/or concealment of evidence, intimidation or influencing of witnesses, and other conduct intended to impede or obstruct the investigation.

ATTACHMENT A:

515 S. Queen St. York, PA 17401 can be described as a three story, semi-attached row home, yellow in color with the numbers 515 on the front door. The curtilage of the home extends to the south and is adjacent to the curtilage of 519 S. Queen St. York, PA 17401.



ATTACHMENT B: Items to be seized

- Firearms and ammunition.
- Firearms and ammunition related documents, including transaction records, price tags, and photographs.
- Financial records to include but not limited to rental car records, credit cards and/or records, and hotel records.
- Firearms accessories.
- Controlled substances and related paraphernalia to include but not limited to packaging materials, bags, gloves and masks.
- Sex trafficking paraphernalia to include but not limited to condoms.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)

NO. 1:17-CR-226

v.)

(JUDGE RAMBO)

ERNEST KYLE DYER,)

aka "K,")

RAEKWON GRANT and)

ANNIE RUTH DYER)

FILED
HARRISBURG, PA

MAR 14 2018

SUPERSEDING INDICTMENT

PER 
DEPUTY CLERK

COUNT 1

(Felon in Possession of a Firearm)

THE GRAND JURY CHARGES:

On or about July 7, 2017, in the Middle District of Pennsylvania,
the defendant,

ERNEST KYLE DYER,

having previously been convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess a firearm, that is a Hi-Point .40 caliber semi-automatic handgun, model JCP, serial number X7259647, loaded with ten (10) RP .40 caliber cartridges, that was manufactured outside the Commonwealth of Pennsylvania, and therefore had been shipped and transported in interstate and foreign commerce.

In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

COUNT 2

(Possession of a Firearm in Furtherance of Drug Trafficking)

THE GRAND JURY FURTHER CHARGES:

On or about July 7, 2017, in the Middle District of Pennsylvania,
the defendant,

ERNEST KYLE DYER,

did knowingly possess a firearm, that is, a Hi-Point .40 caliber semi-automatic handgun, model JCP, serial number X7259647, in furtherance of drug trafficking crimes for which he may be prosecuted in a court of the United States, specifically, possession with intent to distribute a controlled substance and conspiracy to distribute and possess with intent to distribute a controlled substance.

In violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT 3
**(Criminal Conspiracy to Distribute and Possess
With the Intent to Distribute Pentylone)**

THE GRAND JURY FURTHER CHARGES:

Beginning on or about February 1, 2017 through on or about July 7, 2017, in the Middle District of Pennsylvania, the defendants,

ERNEST KYLE DYER and RAEKWON GRANT

and others known and unknown to the Grand Jury did intentionally and knowingly unlawfully conspire and agree with each other and with others to distribute and possess with the intent to distribute pentylone, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Section 846.

COUNT 4

(Distribution and Possession With the Intent
to Distribute a Controlled Substance)

THE GRAND JURY FURTHER CHARGES:

On or about July 7, 2017, in the Middle District of Pennsylvania,
the defendants,

ERNEST KYLE DYER and RAEKWON GRANT,

did knowingly and intentionally possess with the intent to distribute
pentylone, a Schedule I controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT 5

(False Statement During Purchase of a Firearm)

THE GRAND JURY FURTHER CHARGES:

On or about May 23, 2017, in the Middle District of Pennsylvania,
the defendant,

ANNIE RUTH DYER,

in connection with the acquisition of a firearm, that is, a Hi-Point .40
caliber semi-automatic handgun, model JCP, serial number X7259647,
from Gander Mountain, a licensed dealer of firearms within the
meaning of Chapter 44, Title 18, United States Code, knowingly made a
false written statement to Gander Mountain, which statement was
intended to and likely to deceive Gander Mountain as to a fact material
to the lawfulness of such sale of the firearm to the defendant under
Chapter 44 of Title 18; that is, the defendant executed a Department of
Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives Form
4473 and represented she was the actual buyer of the firearm, when she
was not the actual buyer of the firearm.

In violation of Title 18, United States Code, Sections 922(a)(6) and
924(a)(2).

A TRUE BILL

A large black rectangular redaction box covering a signature.

FOREPERSON, GRAND JURY

DAVID J. FREED
UNITED STATES ATTORNEY

BY: Meredith A. Taylor
MEREDITH A. TAYLOR
ASSISTANT U.S. ATTORNEY

3-14-18
DATE

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

UNITED STATES OF AMERICA : CRIMINAL NO: 1:17-CR-226
:
v. :
: (JUDGE SYLVIA H. RAMBO)
ERNEST KYLE DYER : *Electronically Filed*

MOTION TO SUPPRESS EVIDENCE

AND NOW comes the Defendant, Ernest Kyle Dyer, by and through his attorney, Paul J. Kovatch, and files this Motion to Suppress Evidence.

The Defendant requests this Honorable Court enter an order suppressing the evidence which was seized in this case as a result of two illegal searches of 515 South Queen Street, York, Pennsylvania.

This Motion is filed pursuant to Illinois v. Gates, 462 U.S. 213, 76 L.Ed.2d 527 (1983) and United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L.Ed.2d 677 (1984).

The Defendant avers that the affidavit which was submitted in support of a search warrant issued by Magisterial District Judge Barry L. Bloss, Jr., on July 6, 2017, and executed on July 7, 2017, did not on its face contain sufficient information to establish probable cause. Defendant avers that the affiant, Detective Baker, never

had interaction or conversation or first-hand knowledge of the informant, Ms. Bowman's allegations to support his probable cause affidavit and was directed to file his search warrant through a third party, a Federal Agent. The Federal Agent's second search warrant affidavit was similarly executed in violation of Defendant's rights to be secure from unreasonable search and seizure.

Detective Baker's affidavit in support of his search warrant contains no information from other sources to suggest that the Defendant was involved in criminal activity at this location (i.e., calls from Crime Stoppers, complaints from neighbors, controlled purchases of narcotics, 911 calls from alleged other victims, surveillance monitored telephone calls or videos, etc.).

A second search warrant, executed on July 14, 2017, at the Defendant's residence, while the Defendant was held in custody, is similarly devoid of any probable cause to support the issuance or execution of the warrant. At that time, the Defendant was incarcerated and multiple persons were inhabiting the subject premises at the date and time of the second search warrant.

Both search warrant applications were conceived, drafted and executed in violation of the Defendant's rights under the Fourth and Fourteenth Amendments of the United States Constitution.

The exclusionary rule prevents illegally obtained evidence from being admitted in a court of law. Evidence gathered on the basis of illegally obtained

evidence (known as “fruit of the poisonous tree.” *see Wong Sun v. United States*, 371 U.S. 471 (1963)) must also be excluded.

Procedural History

1. By Indictment filed July 26, 2017, Ernest Kyle Dyer was charged with violation of federal firearms offenses pursuant to of Title 18, United States Code, §922(g)(1), 924(a)(2).

2. On August 8, 2017, the Defendant, Ernest Kyle Dyer, appeared before The Honorable Martin C. Carlson and entered a plea of not guilty to the one-count Indictment of illegal possession of a gun by a convicted felon.

3. Eight months later, on March 14, 2018, a Superseding Indictment was filed, under seal, charging Defendant, Ernest Kyle Dyer with three additional offenses, including Possession of a Firearm in Furtherance of Drug Trafficking in violation of Title 18, United States Code §924(c)(1)(A) (Count 2); Criminal Conspiracy to Distribute and Possess With the Intent to Distribute a Schedule I Controlled Substance in violation of Title 21, United States Code, §846 (Count 3); and Distribution and Possession with Intent to Distribute a Controlled Substance in violation of Title 21, United States Code, §841(a)(1) (Count 4). It is unclear why an 8 month delay occurred, given federal authorities’ decision to file the Superseding Indictment after execution of a second search warrant which was executed on July 14, 2017.

4. On March 20, 2018, the Defendant, Ernest Kyle Dyer, appeared before The Honorable Martin C. Carlson and entered a plea of not guilty to the Superseding Indictment.

5. Defendant filed his Motion for Leave to File Motion to Suppress *Nunc Pro Tunc* and Continue Trial Date (Document #101), and a Brief in Support, which was granted by This Honorable Court by Order filed on April 30, 2019.

Statement of Facts

1. On June 24, 2017, Starr Bowman, the Defendant's 'girlfriend,' alleged she was raped. She did not identify the rapist. She alleged she went to a domestic violence shelter.

2. On June 26, 2017, Federal Special Agent Donald Asper participated in an interview with Bowman. Bowman provided a statement to Federal Agents, relating that Summer Bechtold (age 19) was 'picked up' by Defendant Dyer one or two weeks ago. Bowman also stated that Bechtold had been with Dyer since age 17. Bowman stated that the police are in Defendant Dyer's pocket and he has people everywhere to keep an eye on Bowman. Bowman related she is forced to take drugs as punishment for bad behavior, but has been clean 12 years. Ms. Bowman provided no description of the substance or nature of the drugs which were allegedly forced upon her person. There was simply no basis for the issuing Judge in this this case to believe that the information before him supported a

finding that this informant was being truthful and was basing her accusations on an actual, personal experience.

Bowman, in her Federal Agent interview, disclosed allegations of sex trafficking and drug activity by Defendant Dyer. Bowman admitted her involvement, implicating her as a madam co-conspirator in the alleged sex trade. She stated she feeds the girls, gets the girls water and exercise, and most importantly, drives the girls and drugs for Defendant Dyer. She does not identify the girls other than mentioning Bechtold. She does not state how many girls she feeds, waters, exercises, and drives. Bowman stated she keeps a machete for protection when driving Defendant Dyer's girls and drugs.

3. On July 5, 2017, a "known domestic violence victim" reported a disturbance on the 500 block of South Queen Street to York Police Department Officer Joshua Phillips at 10:21 p.m. The known victim, Bowman, filled out a domestic violence form dated July 5, 2017.

4. On July 6, 2017, York Police Officer Joshua Phillips wrote a Supplemental Report: He averred that on July 6, 2017, he and fellow Officer Engle met Bowman at a Sunoco station at 10:20 p.m. He wrote that Bowman stated she's in a lot of trouble. Bowman reported to Officer Phillips that Defendant Dyer shot at her. Bowman told the officers the incident happened tonight (July 6, 2017).

The domestic incident described by Bowman to Officers Phillips and Engle alleged that Defendant Dyer hit her in the eye with a pistol.

Bowman stated she left the home where she lived with Dyer to pick up her thyroid medications at a neighbor's house. She did not provide facts regarding the neighbor's name or address. Bowman stated that Defendant Dyer watched her leave, then ran back in the back yard bedroom door and then hit her in the left eye with a gun and, 'cocked the gun and pointed it.' Bowman ran away to her car. She stated, "I'm ready to cooperate with the feds Melissa human trafficking feds." Officer Phillips' report on his interview documented that ATF Agent Anderson stopped by and verified that Bowman is working with the FBI with Melissa Howard.

5. On July 6, 2017, Special Agent Asper apparently related the aforesaid events to Detective Mark Baker of York County.

6. It is unknown why the first search warrant was not sought in Federal Court since the investigative team included multiple federal agents who were not only experienced in narcotics investigations, but versed in their apparent facts developed in this week-long investigation which preceded the execution of the search warrant.

7. Also on July 6, 2017, Detective Baker filed a criminal complaint alleging state law violations of two counts of simple assault (18 Pa.C.S. §2701),

terroristic threats (18 Pa.C.S. §2706) and possession of firearm prohibited by convicted felon (18 Pa.C.S. §6105)¹. The detective procured an Arrest Warrant issued by Magisterial District Judge Bloss. Detective Baker's affidavit alleged that Defendant Dyer's alleged gun incident with Bowman occurred on July 6, 2017, at 8:00 a.m.

8. Also on July 6, 2017, Detective Baker applied for a search warrant of Defendant Dyer's residence. It was granted by Magisterial District Judge Bloss at 8:40 p.m.

9. On July 7, 2017, the Arrest Warrant and Search Warrant were executed at the Defendant's property at 6:00 a.m. Law enforcement present at the execution of the search warrant included:

Phillip Lewis, Kyle Pitts, Clayton Gladfelter, Cory Aimes, Zach Felton, Nate Payne, Cody Myers, Larry Smith, Rob Roland, Scott James, Don Asper, Angela Strause, Ryan Anderson and Mark Baker.

Also present at execution of search warrant were:

Ernest Dyer
Annie Dyer (Defendant's mother)
Taquan Holmes
Summer Bechtold

Defendant Dyer was completely cooperative and directed law enforcement to a pistol hidden in a vacuum cleaner in the kitchen. Holmes and Bechtold were arrested on outstanding warrants.

¹ This case is still pending in York County at No. CP-67-CR-0001010-2019.

No other contraband was located during the search, except paraphernalia in a ladies handbag in Ernest Dyer's bedroom. Officers found a box with unknown pills and/or drug paraphernalia along with Mr. Holmes identification, in Holmes' bedroom. Bullets, holsters and a HiPoint gun box also were seized in Annie Dyer's bedroom closet.

10. On July 7, 2017, Special Agent Ryan Anderson applied for a federal arrest warrant. SA Anderson's affidavit in support of his application for complaint and arrest warrant alleged violation of 18 U.S.C. §922(g)(1) relating to the alleged possession of a firearm and nothing more.

11. On July 7, 2017, Defendant Dyer made his first federal appearance pursuant to a federal writ at 3:00 p.m. and was assigned undersigned counsel.

12. On July 13, 2017, Special Agent Anderson applied for a federal search warrant which was granted by Magistrate Judge Martin C. Carlson.

13. On July 14, 2017, Federal Agents executed the federal search warrant at 515 South Queen Street in York, Pennsylvania. Defendant Dyer had been in custody for seven days at the time of the search, and multiple other persons occupied the residence at the time of the federal search. The Superseding Indictment alleging additional violations – apparently related to seizures acquired under the federal search, was not filed for a period of eight (8) months.

14. In both warrant probable cause affidavits, there was no mention of the reliability or veracity of the informants in any arrest warrant or search warrant probable cause affidavit, nor does it appear from the face of affidavits that any corroborating surveillance or investigation had taken place.

15. The first search resulted in the Defendant's initial Federal Indictment. The second search resulted in a Superseding Indictment. Both searches yielded the evidence which the Defendant seeks to have suppressed as the fruit of an illegal search.

16. Defendant Dyer reserves the right to amend the Motion following a hearing in this matter.

WHEREFORE, the evidence should be suppressed as obtained in derogation of the constitutional guarantees against unreasonable search and seizure. For the foregoing reasons, the Defendant, Ernest Kyle Dyer, respectfully requests the Court schedule an evidentiary suppression hearing.

Respectfully Submitted,

/s/ Paul J. Kovatch

Paul J. Kovatch, Esquire

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Attorney for Defendant Ernest Dyer

Date: May 10, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document, Defendant's Motion to Suppress Evidence was electronically served on the individuals listed below.

Michael A. Consiglio, Esquire
Assistant United States Attorney

/s/ Paul J. Kovatch
Paul J. Kovatch, Esquire
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Attorney for Defendant Ernest Dyer

Dated: May 10, 2019

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

UNITED STATES OF AMERICA : CRIMINAL NO: 1:17-CR-226
:
v. :
: (JUDGE SYLVIA H. RAMBO)
ERNEST KYLE DYER : Electronically Filed

ORDER OF COURT

AND NOW, this _____ day of _____, 2019, upon consideration of the Motion to Suppress Evidence filed by the Defendant, it is hereby Ordered that an evidentiary hearing be held on the ____ day of _____, 2019 at _____ m. in Courtroom _____, Ronald Regan Federal Building, 228 Walnut Street, Harrisburg, PA 17101.

BY THE COURT:

SYLVIA H. RAMBO
United States District Judge

Distribution via Efiling

AUSA Michael Consiglio, Esquire – Michael.Consiglio@usdoj.gov

Paul J. Kovatch, Esquire – attorneypkovatch@gmail.com

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
 HARRISBURG DIVISION

3 UNITED STATES OF AMERICA,) CASE NO.
) 1:17-CR-00226-SHR-01
4) vs.
5 ERNEST KYLE DYER,)
) Defendant
)
)

7 TRANSCRIPT OF EVIDENCE SUPPRESSION HEARING
8 BEFORE THE HONORABLE SYLVIA H. RAMBO
9 UNITED STATES DISTRICT JUDGE
 7 AUGUST 2019 - 9:32 A.M.

10 APPEARANCES:

11 For the Government:

12 Michael A. Consiglio, Esq., AUSA
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16 Harrisburg, PA 17108
17 (717) 221-4482

16 For the Defendant:

17 Paul J. Kovatch, Esq.
18 Law Offices of Paul J. Kovatch
19 2080 Linglestown Road, Suite 202
20 Harrisburg, PA 17110
21 (717) 233-1055

20 Court Reporter:

21 Wesley J. Armstrong, RMR
22 Official Court Reporter
23 U.S. Courthouse & Federal Building
24 228 Walnut Street
25 Harrisburg, PA 17101
 (717) 542-5569

25 Proceedings recorded by machine shorthand; transcript
 produced by computer aided transcription.

I N D E X7 AUGUST 2019

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P R O C E E D I N G S

THE COURT: Good morning, everyone.

MR. CONSIGLIO: Good morning, Your Honor.

MR. KOVATCH: Good morning, Your Honor.

THE COURT: Mr. Consiglio?

MR. CONSIGLIO: If it pleases the court, the government calls its case against Ernest Dyer, docket number 17-CR-226. He is present today in court with counsel, and we are scheduled for a suppression hearing.

THE COURT: You may proceed.

MR. CONSIGLIO: Thank you, Your Honor. I guess even though the defense is the moving party, the government is ready to proceed.

THE COURT: You may proceed.

MR. CONSIGLIO: The government calls its first witness, which is Special Agent Ryan Anderson.

(Special Agent Ryan Anderson was called to testify and was sworn by the courtroom deputy.)

COURTROOM DEPUTY: State your name, please.

THE WITNESS: Ryan Anderson, A-N-D-E-R-S-O-N.

THE COURT: May proceed.

MR. CONSIGLIO: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. CONSIGLIO:

Q. Where are you employed, sir?

A. I'm currently employed with the Bureau of Alcohol,

1 Tobacco, Firearms and Explosives as a special agent.

2 Q. And how long have you been with ATF?

3 A. A little over four and a half years.

4 Q. Were you employed in law enforcement before you worked for
5 ATF?

6 A. Yes, I was.

7 Q. Where were you employed?

8 A. I was a police officer with the city of York in York
9 Pennsylvania for just shy of fifteen years.

10 Q. And obviously with fifteen years of employment with York
11 city police, you're familiar with that department?

12 A. Yes, I am.

13 Q. Are you familiar with the location and some of the
14 individuals involved in criminal activity in that location?

15 A. Yes, I am.

16 Q. Now, has that translated into any duties associated with
17 your position at ATF?

18 A. It is. One of my primary areas that I work in is the city
19 of York and the county of York.

20 Q. And as a result of that do you pay any attention to radio
21 broadcasts or law enforcement activities that are occurring in
22 the city of York?

23 A. I do.

24 Q. How do you do that?

25 A. I have a radio, just like a patrol officer, we're all on

1 the same frequencies and I work with them on a pretty regular
2 basis, almost on a daily basis, and I'm on details with them as
3 well.

4 Q. Now, you used the present tense in describing how you're
5 doing this. Was this also occurring back in June and July of
6 2017?

7 A. Yes, it was.

8 Q. Drawing your attention to the events that brought us to
9 this particular case, do you recall being involved in the
10 investigation of Ernest Kyle Dyer?

11 A. Yes.

12 Q. How did you first get involved with this investigation as
13 best as you can recall?

14 A. Sometime towards the end of June, I don't have an exact
15 date, assistant United States Attorney Meredith Taylor, who at
16 the time I was working closely with regarding another
17 investigation that was occurring in York city, reached out to
18 me and inquired if I was familiar with Ernest Dyer, the address
19 of 515 South Queen Street, summer Bechtold, and a Starr Bowman.

20 Q. And as a result of that contact from AUSA Taylor did you
21 take any steps to familiarize yourself with those individuals
22 at that location, etc.?

23 A. I was familiar with the name Summer Bechtold. I was not
24 familiar at the time with Ernest Dyer, but I was familiar with
25 the area of where Mr. Dyer's home is located at 515 South Queen

1 Street. I'm familiar with the criminal activity that is
2 transpiring in that near vicinity.

3 Q. Now, let's move forward from that particular first contact
4 with Meredith Taylor. Did you hear -- were you listening to
5 radio broadcasts on or around July 5th, 2017?

6 A. I was.

7 Q. And what did you hear?

8 A. I was actually just finishing up a detail that I had been
9 working that evening, and I overheard the dispatchers send two
10 officers out to the A-Plus, which is located in the 200 block
11 of North Sherman Street, for an assault. The caller had
12 reported that her ex-boyfriend Ernest Dyer had assaulted her
13 with a firearm, and I overheard continued radio traffic and the
14 name also of Starr Bowman relayed over the radio, and it dawned
15 on me that that was the same individuals that AUSA Taylor had
16 asked me about.

17 Q. And do you remember what you did in response?

18 A. I gave Ms. Taylor a phone call and advised her of the
19 dispatch. I at that point had known that FBI agents were
20 involved with Ms. Bowman and also more specifically with Ms.
21 Bechtold, and so I shared that information with her and she
22 asked if I could stop by that location, and she was then going
23 to pass that information on to the agents.

24 Q. And is that what you did?

25 A. That is what I did.

1 Q. Do you remember where the location was where Starr Bowman
2 was supposed to be?

3 A. Yes. She was at the A-Plus, which is in the 200 block of
4 North Sherman Street. I believe it's 260 North Sherman Street,
5 in the city of York.

6 Q. Now, describe for the judge what happened when you got
7 there as best as you can recall.

8 A. Okay. When I arrived I was in plainclothes. I also drive
9 an unmarked vehicle, and when I pulled up into the parking lot
10 I saw there was two marked patrol cars, and then Starr Bowman
11 was with the two uniformed officers.

12 Again I've been working in that area for at that
13 point seventeen years or so, and there was two younger patrol
14 officers that I was not familiar with. So when I pulled up and
15 I got out of the vehicle and I started to approach them, I drew
16 their attention because I'm in plainclothes and they didn't
17 know who I was.

18 I identified myself to them and then I spoke with one
19 of the officers and also could overhear Ms. Bowman discussing
20 what was transpiring and what her complaint was with the other
21 officer.

22 Q. And did you hear the general nature of the complaint that
23 Ms. Bowman was providing to the York police?

24 A. She was stating that she was assaulted, she was pistol
25 whipped by her ex-boyfriend Ernest Dyer, again a name I was

1 familiar with at that point. She had identified to the officer
2 that she had been working with the FBI and that she wanted them
3 to know that this happened.

4 I did see the left side of her face was visibly
5 injured and her eye was swelling, and the injury looked new and
6 the officers, I was able to confirm with the officer that she
7 indeed was working with the FBI and that I was able to pass
8 that information on, which relieved them a little bit because
9 they didn't know who to get in contact with, and they then
10 continued doing their investigation, you know, getting a
11 report. I believe they also got a statement and I asked them
12 to make sure they photographed the injuries.

13 Q. Okay. That's your initial involvement with this is having
14 this visible and hands on contact with Ms. Bowman on July 5th?

15 A. Yeah, I didn't really have too much interaction with
16 Bowman, Ms. Bowman, at the time, I really didn't question her.
17 The only discussion I kind of had with her is when the officers
18 were kind of asking her where could you go to be safe, and then
19 I kind of helped mitigate that a little bit discussing, and she
20 provided an address that she could be safe at and then the
21 officers said they would make sure she got to that address, and
22 then at that point I left the scene.

23 Q. Now, you made reference to the fact that there was, they
24 did their investigation, the local police department, is that
25 right?

1 A. Yes, sir.

2 Q. I believe it's already been identified in the government's
3 brief, there was attachments to the brief, and this would be
4 Attachment E in front of you, and in front of you is --

5 THE COURT: Attachment what?

6 Q. Attachment E.

7 THE COURT: E?

8 Q. And in front of you is tabbed exhibits, Agent Ryan
9 Anderson.

10 A. Yes.

11 Q. Attachment E, does this appear to be the incident report
12 from York city police department related to this contact that
13 you were involved with?

14 A. Yes, it is.

15 Q. And Attachment F, is this a black and white photograph of
16 Starr Bowman?

17 A. Yes, it is.

18 Q. Just so you can, can you explain in a little more detail
19 for the judge, is this photograph a clear depiction of what the
20 injury really looked like?

21 A. This particular photograph is not. This version is in
22 black and white. It's kind of hard to make out. I do have,
23 I have seen this same photograph in color and even the color
24 photograph does not give the injury justice. In the presence
25 of Ms. Bowman I could tell her eye was swelling, and based on

1 my experience I knew that injury would swell up and look worse
2 like the following day or two, because it was still swelling.

3 Q. Has that been your experience in other criminal
4 investigations where you see an injury on the, within the hour
5 after it's occurred and then see the injured person days later?

6 A. Yes, it has. And this particular photograph was taken
7 while she was sitting in the back of the patrol car.

8 Q. You also made reference to the fact that there was, you
9 believed that there was a statement that was taken from Ms.
10 Bowman, is that right?

11 A. That's correct.

12 Q. Now, in the marked exhibits in front of you is Attachment
13 G. Does this appear to be the statement taken from Ms. Bowman?

14 A. Yes, it does.

15 Q. Okay. So let's move forward. This is July 5th, 2017 you
16 had this contact. What happened from there?

17 A. After that contact I received a follow-up phone call the
18 next day, it was actually in the evening, from, again from the
19 U.S. Attorney Meredith Taylor asking me if I could assist with
20 obtaining what's called an ATF Form 4473, and that's to check
21 on the purchase acquisition of a firearm.

22 Ms. Taylor provided me information that it's believed
23 that the defendant Ernest Dyer's mother Anne Dyer, along with
24 Starr Bowman, had gone to Gander Mountain, which is a sporting
25 goods store located in West Manchester, which is also York

1 County, Pennsylvania, I want to say in the month of May 2017,
2 and Ms. Dyer purchased a HiPoint .40 caliber pistol, it was a
3 straw purchase for Ernest Dyer, and I agreed to assist with
4 that and I responded to the Gander Mountain that evening and
5 quite quickly was able to locate the transaction the ATF Form
6 4473 that shows that Ms. Dyer purchased a HiPoint .40 caliber
7 pistol on that date.

8 Q. And let's just walk through this briefly. What is a 4473?

9 A. Okay, I'm going to pull out my copy here.

10 MR. CONSIGLIO: Your Honor, I did not make enough
11 copies for the court. I will make --

12 THE COURT: That's okay.

13 THE WITNESS: You don't have an extra copy there I
14 could borrow, do you?

15 MR. CONSIGLIO: I do.

16 (Brief pause.)

17 MR. CONSIGLIO: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes.

20 THE WITNESS: Thank you.

21 MR. CONSIGLIO: I believe the letters I have attached
22 to the exhibit brief go down to J. So we'll make this one K
23 just for consistency's sake.

24 THE COURT: Question on the floor?

25 BY MR. CONSIGLIO:

1 Q. Agent Anderson, is this the form that you recovered?

2 A. Yes, this is a copy of the form.

3 Q. And just so the court and the record is clear, what does a
4 4473 form do? What's its function?

5 A. So this is a required form for, that needs to be filled
6 out any time a firearm is purchased or transferred for
7 ownership, and specifically a pistol, and this form was filled
8 out at the Gander Mountain sporting goods store, and there's a
9 series of questions here and the questions, you know, ask is
10 this, are you a U.S. citizen, is this firearm, are you
11 purchasing it for yourself, are you a, you know, convicted of
12 any crimes, are you addicted to any substance abuses or do you
13 have any mental health, and it's used to determine, help
14 determine the eligibility of an individual to possess a
15 firearm.

16 Q. Now, was this particular form, which we'll identify as
17 Government's Exhibit K, was that related specifically to this
18 transaction, to this particular case?

19 A. Yes, it is.

20 Q. And describe what the form indicates as far as the
21 particulars for this case.

22 A. So the form indicates that Annie Ruth Dyer of 515 South
23 Queen Street in York, Pennsylvania, and it has her
24 demographics, her date of birth is June 22nd, 1953, it
25 indicates here that she is the actual buyer of the firearm and

1 that it is intended to be bought solely for her purpose and
2 use. It indicates that she's currently not under any
3 indictment or any felonies. It also indicates here that she's
4 not a fugitive, that she is not addicted to any type of
5 controlled substances, that she is not subject to any of the
6 mental health and that she has not been dishonorably discharged
7 from the military, she does not have a court order or a
8 restraining order or PFA in place, and she hasn't been
9 convicted of any misdemeanor crimes or domestic violence.

10 **Q.** Does this form also specify the particular firearm that
11 was acquired?

12 **A.** It does, and it's also signed by Annie Dyer and it's dated
13 May 23rd, 2017. The firearm that was purchased is identified
14 as an Iberia, that's I-B-E-R-I-A, Firearms Incorporated model
15 JCP, John Charles Paul, with a serial number X, as in x-ray,
16 7259647. It is a .40 caliber Smith & Wesson pistol, and the
17 .40 caliber Smith & Wesson is the ammunition, not that the
18 firearm is made by Smith & Wesson.

19 THE COURT: What was your last comment?

20 **A.** It's the .40 caliber Smith & Wesson is the caliber of the
21 ammunition, not that the firearm is made by Smith & Wesson, and
22 this firearm is commonly referred to as a HiPoint firearm.
23 That is the identification on the firearm itself, like the
24 brand.

25 **Q.** Let's just talk about that for a moment. This form says

1 Iberia Firearms with that serial number, is that right?

2 A. Correct.

3 Q. But you just mentioned that it's commonly referred to or
4 that some Iberia Firearms are known as HiPoint.

5 A. That's correct.

6 Q. Can you help explain that for the court just in a little
7 more detail based upon your personal experience and experience
8 as an ATF agent?

9 A. The easiest way to explain is it's a brand, and Iberia
10 Firearms is a manufacturer that makes the firearm, but then
11 it's branded as a HiPoint.

12 Q. So if someone were to buy this firearm, an Iberia firearm
13 with this serial number, they would look at the firearm and it
14 might say HiPoint engraved on its side in different areas?

15 A. That's correct.

16 Q. But it's really manufactured by Iberia?

17 A. Yes.

18 Q. Okay. So you went to Gander Mountain and you got the
19 form?

20 A. That's correct.

21 Q. Do you recall what you did with this information?

22 A. I did -- or I do, excuse me. I sent this information to
23 Meredith Taylor that evening. I sent it via e-mail from my
24 cell phone, and it was about -- actually I have the exact time.
25 Oh, here it is, sorry.

1 (Brief pause.)

2 A. I sent that at 7:53 p.m. on July 6th.

3 Q. And you're doing that by way of, you've done some search
4 of your e-mail or phone to see what the date and time you sent
5 an e-mail to Meredith Taylor?

6 A. That's correct.

7 Q. Now --

8 A. And she was forwarding that information to the FBI agents.

9 Q. Now, was it your understanding at the time that you went
10 off to Gander Mountain that the FBI were dealing with Starr
11 Bowman at that point?

12 A. Yes.

13 Q. And what was your role? Were you just assisting in this,
14 following up this investigation?

15 A. That's correct. I was at that point just merely
16 assisting.

17 Q. Okay. So let me just take a step back to get our timeline
18 straight. You respond to an assault that happened on July 5th.
19 Do you remember what time of night that was approximately, day
20 or night?

21 A. It was evening time. It was pretty late in the evening.
22 I could refer to some notes to get an exact time, but it was
23 late.

24 Q. That's fine. So it was late in the evening on the 5th.
25 On July 6th you have follow-up contact with Meredith Taylor,

1 is that right?

2 A. That is correct.

3 Q. Asked to go to Gander Mountain?

4 A. Correct.

5 Q. Again is that the evening?

6 A. That is the evening.

7 Q. It's your understanding the FBI is interviewing Starr
8 Bowman before this?

9 A. Of course today I know that they had already interviewed
10 her. I don't recollect whether I knew that specifically that
11 they had interviewed her or not. I might have been provided
12 that information. I just don't recall that specific detail as
13 to when I knew that.

14 Q. But had you been provided with specific information
15 regarding what type of firearm and/or person's name to inquire
16 of at Gander Mountain?

17 A. Yes.

18 Q. And that's -- does that help explain why you were able to
19 get this 4473 form in this time?

20 A. I do remember I was able to get this quite quickly. I've
21 been to Gander Mountain many times before. I've obtained
22 copies of this same form in relation to other matters, and not
23 every time do I have such a narrowed down window to find the
24 information I'm looking for, and the way many of the federal
25 firearms licensees maintain their paperwork, because they're

1 required to maintain the 4473's, is they break them down into
2 months in a year.

3 So when you go back you go through them manually, and
4 because I knew what month to look at, I was able to find this
5 document quite quickly, and I remember saying to myself wow, I
6 got that really fast, because that's not normally the case.

7 Q. And the month that you were focused on was what month?

8 A. Was May of 2017.

9 Q. So you have this form, you forward it to the prosecutor,
10 is that right?

11 A. That's correct.

12 Q. And it's your understanding it's getting forwarded to
13 other folks at the FBI who are involved with the investigation?

14 A. That is correct.

15 Q. Did you become involved with the next step of the
16 investigation specifically related to July 7th, 2017?

17 A. Yes. I was asked to if I could assist with the execution
18 of a search warrant.

19 Q. And who was preparing the search warrant, what law
20 enforcement agency or --

21 A. It was Detective Baker from Northern York County Regional
22 Police Department who was also a, that I knew as an FBI task
23 force officer, and a county detective.

24 Q. And you asked to get involved and to assist in the search?

25 A. Yeah. Yes. I work a lot down there, and we work as a

1 team, and the U.S. Marshals was assisting with the execution of
2 this search warrant as far as like securing the premise because
3 the likelihood that there was a firearm involved, and it's
4 common for us to all work together. So I assisted with the
5 task force and the Marshals Fugitive Task Force, and the other
6 officers that helped do warrants like this.

7 Q. So July 7th, 2017 were you there for the execution of the
8 warrant?

9 A. I was.

10 Q. And describe for the judge, did you participate in the
11 initial entry?

12 A. I did not participate in the initial entry. On this
13 particular occasion I was assisting as a perimeter unit.

14 Q. And after initial entry is made did you enter the premise?

15 A. I do.

16 Q. And describe for the judge what you encounter when you get
17 inside.

18 A. When I made my way inside, at this point the persons
19 inside the home had already been secured and handcuffed.
20 Mr. Dyer was standing kind of in the threshold between his
21 bedroom, which was located on the first floor rear of the home.
22 So when you come through the first, the front door of that home
23 you enter into a living room area.

24 Further into the home there's like a dining room area
25 and then a kitchen, and then past the kitchen there's a doorway

1 and then there's an addition added onto the home, and that was
2 the bedroom of Mr. Dyer. Also in that vicinity was Summer
3 Bechtold, who at the time was also a fugitive, and she was in
4 custody as well. They were gathering some belongings of hers.

5 Q. Were you there for any contacts with Ernest Dyer?

6 A. I was. While standing in the kitchen I was present when
7 Detective Baker read the search warrant to Mr. Dyer and then
8 provided him with his Miranda warnings, and Mr. Dyer stated
9 that he understood the warnings and then he agreed to waive
10 those, waive his rights and answered questions and engaged in
11 conversation.

12 Q. Was Ernest Dyer asked about a firearm?

13 A. Yes, he was.

14 Q. And what did Ernest Dyer first say about the firearm?

15 A. He said there was a legal gun but it's owned by his
16 mother, and that he had taken that firearm to his sister's
17 house and there was no firearm in the house.

18 Q. Was Ernest Dyer confronted with the truthfulness of that
19 assertion?

20 A. Yes. There was a little banter back and forth and
21 Mr. Dyer's answers were kind of clear that he wasn't being
22 completely truthful when inquired as to where does your sister
23 live.

24 MR. KOVATCH: Your Honor, I'm going to object to this
25 line of questioning. This is speculation as to what was

1 subjectively in my client's head at the time.

2 THE COURT: I'll overrule your objection. Go ahead.

3 Go ahead.

4 A. Oh. When questioned as to -- I'm sorry, when questioned
5 as to where his sister lived or who the sister was, he then
6 would, you know, didn't want to answer those questions, and
7 then he got frustrated and said, "Fine, you know, I'll show you
8 where it's at," and at the same time -- or no, I'm sorry, he
9 says, "I can get it like that," and then he quickly like, and
10 he's handcuffed with his hands behind his back, he's standing
11 in the kitchen, and he bends down handcuffed, and it happens
12 really fast, and he grabbed the waste container of a Dirt Devil
13 like carpet cleaning machine that was actually in the kitchen,
14 and obviously we stopped him from doing that really quick and
15 then noticed that in that vacuum machine, that carpet cleaning
16 machine was a plastic, like a grocery bag, which was obviously
17 there's no purpose for that being in that bag, and when opened
18 up the canister all the way there was the HiPoint .40 caliber
19 pistol which had the, was the same model caliber and serial
20 number as the firearm purchased by Ms. Dyer back in May, and it
21 was also loaded. The magazine was loaded with ammunition.

22 Q. And just so we're clear, the firearm that you helped
23 recover from this Dirt Devil, is this the same serial number as
24 the Iberia firearm form that you referenced earlier?

25 A. Yes.

1 Q. And the exterior of this firearm, is it marked as HiPoint,
2 is that right?

3 A. That is correct.

4 Q. Was there a search done of Mr. Dyer's residence?

5 A. Yes, there was.

6 Q. And did you participate in that search?

7 A. I did.

8 Q. In the course of participating in that search did you make
9 any observations as to some of the materials that were in the
10 residence?

11 A. I did. One of the things I noticed was a black belly band
12 holster. That's a commercially produced holster. It's made
13 from an elastic material with Velcro, and it's got like a
14 pocket. It's designed to be worn around your waist area, and
15 you can conceal a firearm in that pocket and that's what it's
16 intended for. I saw that sitting on like a nightstand to the
17 right side of the bed.

18 THE COURT: Now where in the house is this?

19 Q. Yes, where was it?

20 A. I'm sorry, this is in Ernest Dyer's bedroom.

21 Q. And you described earlier that Ernest Dyer's bedroom was
22 on the first floor of the premises?

23 A. That's correct. First floor rear of the home.

24 Q. And were there other materials that you observed as you
25 were going through that, let's stay with that bedroom.

1 A. Yes. I noticed there were medical style masks, gloves,
2 condoms, you know, large quantity. There was a television that
3 had an -- or not a television, a monitor that had a digital
4 surveillance system set up. Vitamin supplements. There were
5 numerous bottles of that.

6 Q. Now, did you -- were there other law enforcement there
7 responsible for collecting some of this evidence?

8 A. There was, yes.

9 Q. And were you specifically involved in collecting evidence
10 at this particular search?

11 A. No, I was not.

12 Q. And did you search or examine any other portions of the
13 house?

14 A. I did go upstairs to the second floor rear bedroom, which
15 was at that point identified as the bedroom that Anne Dyer was
16 utilizing. FBI Agent Angela Strauss was up there. I stopped
17 up there to see if she needed any assistance and she had said
18 that she was just about wrapped up, and I noticed that there
19 were a couple of purses hanging off of a hanger in the closet,
20 and when I walked over to the purse I asked if she looked at
21 these and noticed that the purse had some boxes of ammunition
22 in them. I relayed that information to her and she collected
23 those items.

24 Q. Now, was there a search done of the garage or the
25 surrounding curtilage of the property?

1 A. There was not. The search warrant that Mr. Baker had at
2 the time did not include the detached garage or the curtilage.

3 (Brief pause.)

4 Q. Besides Ernest Dyer and Summer Bechtold, was there anybody
5 else who was taken into custody during this search warrant on
6 July 7th, 2017?

7 A. Yes. One of Ernest Dyer's sons, Raekwan Grant, and that's
8 R-A-E-K-W-A-N, Grant, G-R-A-N-T, and then his mother Anne Dyer
9 was also at the residence at the time. Annie was not,
10 Mrs. Dyer was not taken into custody at the time, but Raekwan
11 Grant was. It was discovered that he had an outstanding
12 warrant.

13 Q. Now, did you -- you weren't involved in the transport of
14 Raekwan Grant to the local facilities for processing on this
15 warrant, were you?

16 A. I was not.

17 Q. And you weren't involved in the transport of Summer
18 Bechtold?

19 A. No, I was not.

20 Q. And she was also to be processed for her outstanding
21 warrant, is that right?

22 A. That is correct.

23 Q. And Ernest Dyer, did he first face processing and arrest
24 in York?

25 A. Yes, he was.

1 Q. With the local officials?

2 A. Correct.

3 Q. Now, did you take steps on July 7th, 2017 to charge Ernest
4 Dyer federally for these events?

5 A. Yes, I did.

6 Q. What steps did you take?

7 A. Mr. Dyer was a prohibited person from possessing firearms,
8 and a criminal complaint was completed for Mr. Dyer for federal
9 charges on his possession of the firearm.

10 Q. And were you the affiant on that criminal complaint?

11 A. Yes, I was.

12 Q. And does that criminal complaint charge Ernest Dyer with
13 violation of at least Title 18 United States Section 922(g)?

14 A. That is correct.

15 Q. Did you go to a U.S. magistrate to swear out that
16 affidavit?

17 A. Yes, I did.

18 Q. And was there finding of probable cause by the magistrate?

19 A. Yes.

20 Q. Okay. So let's move forward. That's July 7th, 2017.

21 Were you involved in any other investigative steps in the days
22 after July 7th, 2017 related to following up on the information
23 that you gathered on that day?

24 A. Yes, I was.

25 Q. What did you do?

1 A. I sat in on an interview that took place on July 12th at
2 the York County district attorney's office with Summer
3 Bechtold.

4 Q. Now, in the meantime had you gathered some information
5 from your fellow law enforcement officers related to what Starr
6 Bowman had indicated?

7 A. Yes, I did.

8 Q. Now, do you recall the specific details of how much detail
9 you had gathered at that point?

10 A. At this point I understood that Starr had identified
11 herself as, you know, being, actually being forced to assist
12 Mr. Dyer with trafficking of girls, and that Mr. Dyer would use
13 a combination of drugs and violence to control the persons,
14 including Starr and Summer Bechtold, and then there was
15 potentially some other victims.

16 Q. So you were generally aware of this before you went in to
17 interviewing Summer Bechtold?

18 A. That's correct.

19 Q. Now, your interview of Summer Bechtold, did she describe
20 for you any information that you found relevant towards going
21 back to 515 South Queen Street with another search warrant?

22 A. Yes, I did.

23 Q. What did she provide to you that would cause this?

24 A. One of the things that she stated was that when she was
25 transported from the York County booking center to the prison,

1 she was transported in the same vehicle as Raekwan grant, and
2 during that transport Grant had told her that he was able to
3 put five grams of what she called molly outside the window when
4 the police were entering the home and that the police did not
5 recover that item, and they also did not recover money,
6 specifically \$700, that he had stuffed up in the ceiling tile.

7 Q. Did she describe anything with respect to firearms or
8 firearms evidence that may be outside of the residence?

9 A. Yes, a couple of things. In regards to the firearms, she
10 had identified Ernest Dyer as possessing the firearm regularly,
11 and that on July 3rd she witnessed him discharge that firearm
12 in the backyard, and she also described the belly band holster
13 as the holster that Mr. Dyer would use to conceal that gun,
14 that firearm.

15 Q. Now, you made reference to this belly band holster a
16 couple of times. Can you explain in a little more detail what
17 a belly band holster is?

18 A. A belly band holster is an elastic style holster. It
19 looks -- it's stretchy, it's wide. It's about maybe six
20 different models, six, seven inches wide. It goes around, it's
21 got Velcro, you basically wrap it around your waist and you
22 Velcro it together to hold it around your waist, and then
23 there's a pocket that is in the material, and because it's
24 stretchy it is used to conceal a firearm in that pocket, and
25 the tension from the material kind of holds the firearm in

1 place. It's a concealment only holster. It really doesn't
2 offer any type of retention characteristics as other holsters
3 do, but it allows you to carry a firearm on your person in an
4 area that you don't, is not traditional so that you can conceal
5 it in a better fashion.

6 Q. And you described this elastic band that's what it's
7 wrapped around, is it designed to be wrapped around like the
8 skin as opposed to around clothing?

9 A. It can be utilized directly on your skin. You can wrap it
10 around an undershirt and then put a shirt over the top of it.
11 It's not, it's not made one way or the other.

12 Q. Okay. So you spoke to -- when we left off you were
13 speaking to Summer Bechtold on July 12th, and she had described
14 her conversation with Grant about the five grams of molly
15 hidden on the outside window sill.

16 A. Correct.

17 Q. And she also described Ernest Dyer discharging a firearm
18 July 3rd, 2017 outside.

19 A. That's correct.

20 Q. Did she also describe any activities that were going on in
21 the house with respect to sex trafficking?

22 A. She did.

23 Q. And specifically with respect to the sex trafficking, did
24 she describe any physical materials that were used to help
25 facilitate the sex trafficking?

1 A. She described that Mr. Dyer would set up dates and would
2 provide her with condoms to utilize for the dates, most of
3 which she described would take place on the third floor of that
4 residence. She explained how she was kept in a constant state
5 of under the influence of narcotics. She described the mollies
6 that was being provided to her by Mr. Dyer as being good, and
7 she believed that it was mixed with fentanyl.

8 She described seeing Mr. Dyer and his son Raekwan
9 Grant disassembling fentanyl patches, and she also described
10 that Mr. Dyer would give her like protein shakes and vitamins
11 so that she could stay, you know, healthy, because while she's
12 under the influence of the drugs she said she didn't have a
13 desire to eat, and so he would make sure that she was getting
14 nutrients so that she could still work for him, and that she
15 was not allowed to go anywhere on her own, that he would make
16 Raekwan Grant go with her if she needed to go somewhere.

17 And then she also showed an injury that she had on
18 her back that was pretty new. It was still red, and that
19 injury was there from when she was arrested and she described
20 that she was under the influence of molly and fell back against
21 a wall in the house, and there was a protruding nail and she
22 kind of slumped down and it scratched her whole back.

23 Q. The description that Summer Bechtold provided to you and
24 the other officers that you were with, did that description
25 correspond with some of the physical evidence that you had seen

1 in the residence?

2 A. That's correct, it did.

3 Q. And what was some of the physical evidence that you had
4 seen in the residence that corresponded with what Sumner
5 Bechtold was saying?

6 A. I had seen the multiple bottles of supplements, and maybe
7 I had forgot to mention, but she had described that when they
8 were taking these fentanyl packages apart, they were using
9 gloves and then wearing hospital style masks so they didn't
10 inhale.

11 I remember seeing these masks in like a shoe caddy
12 that was in Ernest Dyer's bedroom. You know, she described the
13 belly band holster which I knew we already had as evidence.
14 She also described that Mr. Dyer and his son Raekwan Grant
15 utilized the garage frequently and would go in and out of the
16 garage and that she believed that they were storing, using the
17 garage as a place to store, you know, the narcotics and items.

18 Q. Now, based upon this combination of additional information
19 provided by Summer Bechtold did you take any investigative
20 steps to get a warrant for 515 South Queen Street?

21 A. Yes, I did.

22 Q. What did you do?

23 A. I obtained, based on that information I authored a search
24 warrant for 515 South Queen Street, and in that search warrant
25 I included the curtilage and also the detached garage of the

1 home, and then executed that search warrant on July 14th, 2017.

2 Q. And what's in front of you is the marked exhibit

3 Attachment D?

4 A. I'm sorry, which attachment?

5 Q. Attachment D, as in dog. Is that the search warrant?

6 A. Yes, sir, it is.

7 Q. And you indicated there was executed the next day, is that
8 right?

9 A. It was executed, correct, executed on July 14th.

10 Q. Now, what happened when the warrant was executed on July
11 14th?

12 A. There were two juveniles that were present at the time of
13 the execution. They identified themselves as children of
14 Mr. Dyer, and then shortly thereafter another female identified
15 as the mother of the children and also Mr. Dyer's I believe
16 ex-girlfriend, or I'm not sure what her exact status was, was
17 now taking up residency in the home.

18 Q. And then during the execution of that warrant were you
19 able to recover materials as listed in the search warrant?

20 A. Yes, I was. The first thing I did is I went up, on up to
21 the second floor and I looked out the second floor window, and
22 just as Summer Bechtold had described to her from Raekwon Grant
23 was a pill bottle, an unlabeled pill bottle sitting on the
24 outside window sill of the window.

25 That window, it's on the second floor front bedroom.

1 It is a bay style window. I think there's three or four panes
2 that individually open. The window that that item was sitting
3 on was actually painted shut and/or maybe screwed, like I could
4 not open it, and the paint was still intact and it was obvious
5 that that window had not been opened in a lengthy period.

6 The window adjacent to it opened up and I was able to
7 put my arm out and grab that item and I recovered that item
8 that had some, a baggy in it with some gel cap pills and a
9 substance that was sent to the lab and later identified as bath
10 salts.

11 Q. And were there other searches of the rest of the house?

12 A. There was. I checked the ceiling for the money. There
13 was no money in any of the ceiling tiles. I checked the
14 additional house again, did a once over on that. A lot of
15 things were, you know, cleared out and emptied already. Then
16 checked the backyard. Did a pretty extensive search of the
17 backyard for any potential discharged cartridge casings.

18 Used a metal detector, used several agents, and in
19 fact even requested a K-9 that had the ability to detect
20 gunpowder and see if the dog would be able to find anything.
21 The dog only alerted on a cooler, and underneath the cooler was
22 a BB gun that was in the yard. That was, that was the only
23 thing. So no cartridges were found.

24 Q. Did you search the garage?

25 A. And the garage was searched, yes.

1 Q. What did you find in the garage?

2 A. In the garage was, we found -- or I should say I found
3 several used digital scales that had some residue visible on
4 them. I found some package materials. They were clear zip lock
5 baggies, you know, they have an apple symbol on the exterior of
6 the main bag and it was filled with a bunch of other bags, zip
7 lock bags, and these bags I recognize that are commonly used
8 for packaging narcotics. Those items were collected, and I sent
9 the scales to the lab as well, and they came back positive
10 residue for cocaine.

11 Q. Before we leave this, Agent Anderson, if you take a look
12 at government's exhibit, or Attachment J?

13 A. Okay.

14 Q. Is this a summary of the interview that you wrote related
15 to the interview of Summer Bechtold on July 12, 2017?

16 A. Yes, it is.

17 Q. If you flip back a couple of pages, there's also a
18 supplemental narrative by Detective Mark Baker?

19 A. Yes.

20 Q. I guess that's also a supplemental report related to the
21 same interview, is that right? We're going to be calling
22 Detective Baker here in a moment. We can go through that.

23 (Brief pause.)

24 MR. CONSIGLIO: Your Honor, I believe that's all the
25 questions I have for this witness.

1 THE COURT: Mr. Kovatch?

2 MR. KOVATCH: Thank you, Your Honor.

3 CROSS EXAMINATION BY MR. KOVATCH:

4 Q. Agent Anderson, I kind of want to back up, go right from
5 the beginning and start over here, but you indicated in the
6 begin of your testimony that you were aware of this area and of
7 this kind of neighborhood since your experience here in York
8 County?

9 A. Yes, sir.

10 Q. Specifically this address, 1515 South Queen Street, prior
11 to your involvement with this case were there any complaints or
12 were there any issues with that address?

13 A. I'm not positive on specifically that address. I've been
14 to that address before, but I believe that's prior to Mr. Dyer
15 residing there. But what I was familiar with was some of the
16 things that were going on right around where that home is
17 located as far as narcotics trafficking, you know, lot of drug
18 users, you know, you could see in that area. There's also a
19 lot of shots fired calls right there, you know. I have seen
20 some of the girls that I know are users that I'm familiar with
21 that are also prostitutes, you know, down in that area as well.

22 Q. Fair to say this is a high crime area?

23 A. Yes, sir.

24 Q. How big of a high crime area is -- this at least two to
25 three blocks, correct?

1 A. Yeah, I would say that's a fair statement, but the two to
2 three blocks is if the house is the center point, if you were
3 to go to the west and it's two or three blocks worth of the
4 high crime area, but only really about like one block to the
5 east behind the home, if that makes sense.

6 Q. Now, prior to your involvement on July 5th, were you aware
7 of Ernest Dyer? Did you have any knowledge of him or was he
8 alleged of being involved in any criminal activity?

9 A. I had just a real brief knowledge that he was subject of a
10 potential human trafficking investigation.

11 Q. Okay. And how did you obtain that knowledge?

12 A. Meredith Taylor, the AUSA Meredith Taylor had given me a
13 call, had asked me if I was familiar with Mr. Dyer and then
14 also Summer Bechtold and Starr Bowman, and if I recall
15 correctly the conversation, at the time I was working, I had
16 just started working with Ms. Taylor and I had a pretty
17 involved case, that prostitution case that I was working with
18 her that also centered in York city, and she had become aware
19 of my experience and knowledge of that area, and at that time
20 Summer Bechtold was a victim/witness of hers that was going to
21 be needed for trial, and she had stated that they were trying
22 to find her and, you know, so I was trying to keep on eye out
23 for her as well.

24 Q. Not to interrupt you, so Summer Bechtold was actually an
25 informant with the federal government prior to this incident?

1 A. I don't know if she was an informant or not. I knew that
2 she was a victim and a witness.

3 Q. For the U.S. government?

4 A. For the U.S. government, correct.

5 Q. And that would be prior to July 5th or 6th, anything like
6 that?

7 A. Correct.

8 Q. Now, Starr Bowman, did you have any contact with her
9 whatsoever?

10 A. At what point?

11 Q. Prior to your involvement with this case and this
12 incident.

13 A. The only, my first encounter with her was on the -- what
14 was the date? I don't want to get my dates mixed up. On the
15 5th, just that evening when I saw her with those officers, that
16 was the first time I had come in contact can her.

17 Q. And that would be when Officer Phillips I believe was
18 called to the scene at the Sunoco?

19 A. Yes. There were two officers called there. I apologize,
20 I don't remember their names off the top of my head, but yes.

21 Q. And you indicated you actually had your radio on and I
22 believe you heard the call come over the airwaves, correct?

23 A. Yes. I heard a portion of the call. I don't know if it
24 was the initial call that caught my attention, but I did
25 remember hearing the address of 515 South Queen Street. I

1 heard Ernest Dyer's name and I believe also Starr Bowman's
2 name.

3 Q. And what about a gun being discharged in the backyard?

4 A. I don't recall whether that was dispatched. I don't
5 remember that detail. I remember the detail that there was a
6 gun involved. I have, of course I have reviewed the 911 calls
7 since, you know, in preparation, and I'm familiar with what was
8 in that, but I just don't recall that part.

9 Q. Okay. When you have the radio, or the broadcast on, I
10 assume that's like a dispatch radio that you're listening to?

11 A. Correct.

12 Q. And it does monitor 911 calls?

13 A. Well, that is the form of dispatching 911 calls, and also
14 the form of the police officers communicating with 911 and
15 amongst themselves and each other. So I have that radio on and
16 I'm listening to it in the background, and a lot of times I'm
17 listening to it subconsciously, and when I hear something, some
18 key words it catches my attention.

19 MR. KOVATCH: Okay. Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 MR. KOVATCH: If I could have this marked as Defense
23 Exhibit Number 1?

24 COURTROOM DEPUTY: Number 1?

25 MR. KOVATCH: Yes, please. Thank you.

1 (Brief pause.)

2 BY MR. KOVATCH:

3 Q. Agent Anderson, I'm showing you a five-page document
4 that's been marked Defense Exhibit Number 1. Do you recognize
5 that?

6 A. Yes, sir, I do.

7 Q. And can you tell the court what that is?

8 A. This is the CAD report.

9 THE COURT: The what?

10 A. CAD. Computer aided dispatch report. This is the report
11 generated from the, when the 911 call was taken in, and then
12 the dispatcher's narrative and dialogue that's transponded,
13 it's not a word for word of what's being said, it's just their,
14 you know --

15 Q. Summarization as to what's going on, dispatching units to
16 the units, who's responding, things like that, what unit is
17 responding?

18 A. That's correct. And the date and the time.

19 Q. And specifically you recognize this is the incident that
20 Starr Bowman had alleged my client shot at her or assaulted
21 her?

22 A. That's correct.

23 Q. And would you agree with me, if you turn to page 3, it
24 does indicate approximately 10:23 p.m. that the caller has
25 advised that her ex-boyfriend just shot at her with a HiPoint

1 caliber at 1515 South Queen Street?

2 A. That's correct.

3 Q. She specifically names the type of gun?

4 A. She does.

5 Q. And for brief summarization, the call came in at
6 approximately 10:21 p.m. on July 5th?

7 A. Okay. Yes.

8 Q. Is that accurate?

9 A. Yes, correct.

10 Q. It appears the date was a little after midnight on July
11 6th, correct? Top of the front page there I think.

12 A. Yes. The call was cleared at 12:20, or 12:19. Was that
13 your question?

14 Q. Yes. Now, Officer Anderson, in York city there are gun
15 sensors attached to poles throughout the city, correct?

16 A. No, sir.

17 Q. There's not?

18 A. No, sir.

19 Q. What about the area, are there any gunshot sensors or
20 anything like that that would detect that a gun has been fired
21 in the city?

22 A. No, sir. The system that you're referring to is called
23 *Shots Fired*. That system has been implemented and it is no
24 longer in use for greater than ten years.

25 Q. And why is that, do you know?

1 A. It never properly worked in York city. The installation
2 was not adequate and the system eventually just stopped working
3 to the point where it wasn't cost effective to repair it.
4 That's my understanding. And it's been easily ten years that
5 that's been out of service.

6 Q. On July 5th you were monitoring the 911 calls. Not
7 necessarily monitoring, but listening in. Were there any other
8 calls regarding gunshots that evening?

9 A. I don't recall.

10 Q. Did you have an opportunity to look through 911 records
11 for York County Dispatch that evening?

12 A. No, sir.

13 Q. Now, you indicated that you knew Summer Bechtold from a
14 prior case where she was a witness or potential victim?

15 A. I knew that she was.

16 Q. Did that case involve human trafficking?

17 A. To the best of my knowledge yes.

18 Q. Now, at any point did you speak with Agent Asper?

19 A. Yes, at some point I did.

20 THE COURT: The name again and spelling?

21 MR. KOVATCH: Asper, Your Honor. It is Donald W.
22 Asper. D-O-N-A-L-D, middle initial W, last name Asper,
23 A-S-P-E-R.

24 THE COURT: Thank you.

25 BY MR. KOVATCH:

1 Q. Agent Anderson, what is your involvement with Agent Asper?
2 Do you work together?

3 A. Occasionally. In fact, I think this is the only case that
4 we really have worked together, because he's I think -- to the
5 best of my knowledge he's no longer in this field office.

6 Q. Okay. Prior to showing up at the scene on July 5th did
7 you have any contact with Agent Asper?

8 A. No, sir.

9 Q. You weren't aware of any sort of prior incident with Starr
10 Bowman?

11 A. No, I didn't have any specific details of any specific
12 incidents. The only information I had was that she had
13 reported human trafficking with Mr. Dyer there as the main
14 perpetrator and that I knew of her to be a victim witness of
15 potential human trafficking occurring at that address.

16 Q. So you weren't aware of Ms. Bowman being an alleged victim
17 of a rape two weeks prior?

18 A. I don't know if I had that information at that point, no.

19 Q. You say you arrived at the scene at Sunoco, correct?

20 A. Yes, sir.

21 Q. And you met with the two officers that were on scene?

22 A. Yes, sir.

23 Q. Did you have the opportunity to review either one of those
24 police officers' police reports?

25 A. After the fact, yes.

1 Q. Okay.

2 (Brief pause.)

3 Q. And, Agent Anderson, did you have the opportunity to
4 review Agent Phillips's police reports in this case?

5 A. I'm sorry, who?

6 Q. Agent Phillips. Joshua Phillips.

7 A. Is that the patrol officer?

8 Q. Yes.

9 A. Okay. Let me look.

10 Q. It's actually been marked previously as Government's
11 Exhibit E, Attachment E to the brief.

12 A. Yes, this is the report that I looked at.

13 MR. KOVATCH: Your Honor, may I approach the witness?

14 THE COURT: Go ahead. Are you introducing that as a
15 defendant's exhibit?

16 MR. KOVATCH: Yes, Your Honor.

17 THE COURT: D what? 2?

18 MR. KOVATCH: 2, please, Your Honor.

19 BY MR. KOVATCH:

20 Q. Agent Anderson, I'm showing you what's a five-page
21 document that's been marked as Defense Exhibit Number 2.
22 Do you recognize that document?

23 A. Yes, sir.

24 Q. And can you describe for the court what that is?

25 A. This is the York city police incident report that Officer

1 Joshua Phillips completed as it relates to the complaint made
2 by Starr Bowman of the day in question.

3 Q. And at the top of the report it indicates that on July
4 5th, 2017, at about 2221 hours a known domestic violence victim
5 reported a disturbance to police in the 500 block of Green
6 Street. Do you have any knowledge of any prior domestic
7 dispute involving Ms. Bowman?

8 A. I do not. Let me rephrase it. At the time I did not.
9 I know there has since been that some of the officers were more
10 familiar with them than I.

11 Q. But as of July 5th you had no knowledge of that?

12 A. I did not.

13 Q. You did not speak with Agent Asper prior to July 5th?

14 A. No.

15 Q. At any point did you review Agent Asper's report regarding
16 a domestic violence incident that occurred on June 24th?

17 A. I don't think so. I don't think -- yes, I don't believe
18 so.

19 Q. Since this incident, since July 5th did you have the
20 opportunity to review his report?

21 A. I'm not sure which report. I know I have not had copies
22 of all reports that they had, so I don't know which one
23 specifically that is.

24 Q. I'll draw your attention to Government's Exhibit letter C.
25 Do you have that in front of you, Agent?

1 A. I do.

2 Q. And I believe it's a five-page document. Can you identify
3 that for the court?

4 A. It's a five-page document looks like the date of entry is
5 July 10th of 2017. I believe these documents are also commonly
6 referred to as a 302 by the Federal Bureau of Investigation,
7 which is the equivalent to what we call an ROI in the ATF, and
8 it's, they're identified as an interview with Starr Bowman
9 dated 6-26-2017, four pages, and it looks like it's authored by
10 Agent Donny Asper, Donald Asper.

11 Q. Now, part of the search warrants that were applied for
12 this residence, it indicates that Starr Bowman lived there, is
13 that correct?

14 A. It does on the first, yep, on the first line.

15 Q. Now, the contents of this report allege that a rape
16 occurred, correct?

17 A. I don't know that. I don't think I've read this report.

18 Q. Okay. So prior to July 5th you were unaware of Starr
19 Bowman alleging that my client actually had her physically
20 raped?

21 A. Yes. Prior to July 5th I did not know that information.
22 I did hear that information later on. I don't recall when I
23 learned it. It might have been after my search warrant, but
24 I'm not certain. I didn't, as far as the ATF's mission
25 statement, my kind of, my lane is more for the gun, the drugs

1 type of the violence associated with that. The FBI had primary
2 jurisdiction over human trafficking, so I didn't really get
3 involved in any of the human trafficking investigation at all.

4 Q. Okay. Now, the night of the incident of the gunshot, did
5 you talk to any potential witnesses to corroborate Ms. Bowman's
6 statements?

7 A. No, I don't think I knew that there was a shot fired that
8 evening.

9 Q. Okay.

10 A. Are you referring to the 5th I believe?

11 Q. Yes.

12 A. I don't know if -- I don't think I knew that.

13 Q. You listed in the dispatch report which indicates that
14 shots fired was part of the dispatch report at least.

15 A. That's what's written in the CAD, but I didn't have a CAD
16 system in my car, so I didn't read this on that evening. All I
17 did was hear some key words that were, that was dispatched. If
18 they dispatched that there were shots fired from that, I don't
19 know if I necessarily picked up on that.

20 I picked up on 515 South Queen Street, Ernest Dyer.
21 I picked up on the name Starr Bowman. And I picked up a
22 HiPoint .40 caliber and that the victim was assaulted. Those
23 are the key words that I picked up on and that's when I made
24 the phone call to the U.S. attorney, and when I got there I
25 could see she was visibly injured and then I was, you know, she

1 said that she was pistol whipped, so -- or struck, excuse me,
2 not pistol whipped, but she was struck as she called it with
3 the HiPoint .40.

4 Q. Now, you said you reviewed Officer Phillips's report.
5 Did you have an opportunity to review the statement that Starr
6 Bowman gave that evening on July 5th?

7 A. I did. Not on the 5th I didn't.

8 Q. When did you review that statement?

9 A. I don't recall specifically when I reviewed it.

10 Q. At any point did you talk to Officer Baker prior to July
11 7th?

12 A. I think I might have sent him, I got him a copy of the
13 incident report, but I think that might have been it. I don't,
14 I didn't -- him asking if I, I think, I think he asked if I
15 could help -- actually I'll take that back. Actually no, I
16 don't remember who specifically asked me if I could help with
17 the search warrant that morning.

18 Q. So if Officer Baker included some of Ms. Bowman's
19 statements in his affidavit to support his search warrant,
20 that knowledge wasn't from you?

21 A. I don't believe so.

22 Q. At any point did you check Starr Bowman's license or
23 anything like that to indicate that this actually was a
24 residence she lived in?

25 A. No, sir.

1 Q. Were you involved with the initial search of the house on
2 July 6th? July 7th, I'm sorry.

3 A. I was involved, yes.

4 Q. At any point was the yard searched for shell casings at
5 that time?

6 A. I don't believe so.

7 Q. So specifically on the 7th your knowledge would be
8 specifically looking for a gun?

9 A. Yes, I believe that it was, there was potentially a
10 firearm there. That was my concern is if a gun was found,
11 so --

12 Q. So you really had no knowledge of any human trafficking
13 allegations as of --

14 A. I had knowledge of the allegations. You know, we do a
15 briefing before we go and execute a search warrant. I didn't
16 have in depth knowledge. Just that an investigation of
17 potential human trafficking may be occurring out of that
18 residence and that specifically that there was a probability
19 that a Summer Bechtold, who is a victim and witness of a human
20 trafficking case that was, that was being prosecuted by the
21 U.S. Attorney's Office, might have been, may potentially be
22 there and that Ernest Dyer, that this was his residence and
23 that he possibly was armed with a .40 caliber pistol and that
24 he's a prohibited person.

25 Q. So you had, prior to executing the search warrant you had

1 at least reviewed notes from someone within the agency
2 indicating that human trafficking may be something, evidence we
3 may be looking for here?

4 A. I didn't review notes. Just being told.

5 Q. From who?

6 A. I think a combination maybe between Donny Asper and
7 Detective Baker just during the briefing, and also Meredith
8 Taylor had told me that, you know, there was some human
9 trafficking allegations, but I didn't have any, I don't recall
10 any specific details.

11 Q. Did you ever review the interview of Starr Bowman or
12 review Agent Asper's personal notes of his interview?

13 A. No.

14 Q. You never watched the video?

15 A. Briefly yesterday I watched the video for the first time.

16 Q. And that video occurred when, are you aware?

17 A. I don't. I could look through maybe some notes, but I
18 didn't even know that video existed until yesterday.

19 Q. You indicated that you were contacted by Meredith Taylor
20 on I believe it was July 6th to obtain the affidavit for the
21 gun purchase by Ms. Dyer?

22 A. Yeah. The Form 4473?

23 Q. Correct.

24 A. Yes.

25 Q. And when did Ms. Taylor contact you regarding that?

1 A. That evening.

2 Q. On July --

3 A. July 6th.

4 Q. And I believe you indicated that Ms. Taylor indicated to
5 you that they were speaking with Starr and that that's why they
6 wanted you to go out and try to see who purchased the gun at
7 Gander Mountain.

8 A. That sounds about right, that they had a conversation with
9 her. Again at that point I didn't, I didn't ask too many
10 questions or get involved as to what the meats and the potatoes
11 were. She relayed to me that there was a potential straw
12 purchase violation, that Annie Dyer may have purchased a
13 firearm, a HiPoint firearm for Ernest Dyer, and basically I was
14 asked can I go look into that and see if that's accurate
15 information.

16 Q. And the basis of that knowledge comes from who?

17 A. I'm not sure.

18 Q. Now, you obtain the gun application and the gun purchase
19 from Ms. Dyer, correct?

20 A. No, I get it from Gander Mountain.

21 Q. Indicating that Ms. Dyer purchased it?

22 A. That is correct.

23 Q. Was she allowed to carry a weapon? Was there anything
24 preventing her from purchasing a gun?

25 A. I'm not a hundred percent sure, and because she was not

1 completely truthful on the form, I don't know if she was
2 completely truthful on all questions on the form.

3 (Brief pause.)

4 Q. So you really have no basis as to where Ms. Taylor was
5 getting this information from?

6 A. I believe it was from Starr Bowman, but I don't remember
7 if she specifically told me, you know, at that time I would
8 have had a better understanding being that it's two years
9 later, I just don't recall the details of that conversation.

10 Q. On July 5th you made a stop at this Sunoco after you heard
11 the 911 call regarding the assault. You said you indicated to
12 Agent Phillips and you confirmed that Starr Bowman was involved
13 in a human trafficking investigation.

14 A. Yes. That she had been in contact with the FBI.

15 Q. And where did you get that information from?

16 A. I had that information from Ms. Taylor.

17 Q. And when did she provide that to you?

18 A. That would have been sometime end of June I think. I
19 don't know a specific date. Our conversation, it wasn't, it
20 wasn't very lengthy and it was kind of more of hey, are you
21 familiar with this, this, you know, you're down there all the
22 time, can you help keep on eye out for Summer, we're trying to
23 find her. I knew Detective Baker, that that was a case that he
24 was working and that, you know, if I was to come across Summer
25 if I could give him a call. And then that the FBI was looking

1 into Ernest Dyer for potentially human trafficking as well.

2 Q. So Officer Baker would have more information as to that
3 than you, is that fair to say?

4 A. I would believe so.

5 Q. Now, you were present when the search warrant was executed
6 on July 7th, correct?

7 A. Yes, sir.

8 Q. And you indicated that my client's demeanor, he was
9 somewhat agitated when you started questioning him about any
10 sort of weapons or anything like that?

11 A. I don't know if I would say he was agitated. He just was
12 not being truthful initially.

13 Q. Okay. Do you indicate that in any of your notes, reports,
14 anything like that?

15 A. I'm not sure. I don't know.

16 Q. You would agree with me in the application for the charge
17 to be brought against Mr. Dyer you indicate that he freely
18 showed you where the weapon was, correct?

19 A. Yeah, initially, you know, he had provided inaccurate
20 information, and, you know, that's reflected in my report, and
21 then he bent down and clearly knew where the firearm was and
22 did that without us asking him to do that.

23 Q. At any point did anyone ever tell Mr. Dyer if he didn't
24 show you where the gun was or admit that the gun was located in
25 the house that his mother would be charged?

1 A. I'm not sure.

2 Q. Now, one of the things that you did obtain in the house
3 following this search, there were security cameras, correct, in
4 the home?

5 A. There was.

6 Q. And did you have an opportunity to review any of that
7 security footage?

8 A. I did.

9 Q. Are you aware of how many cameras there were and where
10 they were pointed at?

11 A. Yes. There were four cameras. Let me refer to my notes
12 here. I do recall that, just to kind of paint the picture,
13 Mr. Dyer's bedroom, again it was located on the first floor in
14 the rear of the home. The room appears to have been added on
15 at some point to the home and there was two doors that had
16 exterior access from that bedroom.

17 So that bedroom actually has three doorways. One
18 that goes into the kitchen, if you walk through the kitchen
19 into his bedroom, immediately to the right is one door that
20 exits to the outside of the home that's on the south side of
21 the home where there's some grass and a sidewalk which leads to
22 the front of the home.

23 And then if you were to, when you walk through the
24 kitchen, just walk right straight to the rear wall, that's
25 another door, and that door when opened leads directly to

1 another concrete sidewalk that takes you directly to the
2 detached garage, and --

3 Q. So --

4 A. -- there was cameras located on that side door, I believe
5 on that rear door, and then on the front door of the home.

6 Q. So two cameras total?

7 A. No, there's four cameras total. Camera one and camera two
8 capture the exterior side door, which is the one that I
9 mentioned has the sidewalk that goes to the front of the home,
10 which is on the south side. And then channel three captured the
11 rear entrance door and kind of the backyard. And then channel
12 four captured the front door and a little bit of the street.

13 Q. Now, my client was actually arrested on July 7th and taken
14 to jail, correct?

15 A. Excuse me, that is correct.

16 Q. And are you aware he's been incarcerated since that date?

17 A. I believe so.

18 Q. At some point were you present for the interview of Summer
19 Bechtold?

20 A. I know her as Summer Bechtold.

21 Q. Bechtold, I'm sorry.

22 A. Yes, I was.

23 Q. And when did that interview occur?

24 A. That interview occurred on July 12th.

25 Q. Now, that would be approximately five days after the

1 initial search?

2 A. Correct.

3 Q. Are you aware or did Ms. Bechtold and Starr Bowman have
4 any conversations in between that time?

5 A. That I don't know of.

6 Q. Now, Ms. Bowman was not incarcerated, correct?

7 A. No, I don't believe so.

8 Q. And where did your interview with Ms. Bechtold take place?

9 A. At the York County courthouse. I'm sorry, York County
10 District Attorney's Office.

11 Q. Was she incarcerated at the time?

12 A. That is correct.

13 Q. And Ms. Bechtold was either the subject or the victim of
14 the prior federal case? She was at least a witness, is that
15 fair?

16 A. Yes.

17 Q. Did you prior to the second search of my client's home
18 ever review the interview with Ms. Bowman, the video?

19 A. No.

20 Q. Were you ever provided with a summary from Agent Asper?

21 A. No.

22 Q. You weren't present nor was it recorded when this alleged
23 conversation occurs between Ms. Bechtold and Raekwon Grant,
24 correct?

25 A. Are you referring to when they're transported?

1 Q. Yes.

2 A. That's correct. I was not present and I don't believe it
3 to be recorded.

4 Q. And that's kind of where I was going next. The
5 transportation vehicle, was it a city unit or was it like a
6 paddy wagon for a better --

7 A. It was the sheriff's department's vehicle. Which vehicle
8 specifically I don't know. I do know that there was a policy
9 in place that males and females need to be separated so they
10 can't be in line of sight of each other. Other than that I
11 don't know which vehicle they transported the two of them in,
12 but I do know they have vehicles that they regularly transport
13 both males and females in the same vehicle that they're
14 separated by a partition. They can't see each other, but they
15 can hear each other.

16 Q. At some point in this process it's alleged that Mr. Grant
17 indicated to Ms. Bechtold that he put drugs on the outside of
18 the window sill?

19 A. That's correct.

20 Q. Now, Ms. Bechtold also indicated that there were numerous
21 times where my client was actually shooting a gun in the
22 backyard?

23 A. I don't remember the term numerous, but she specifically
24 said that she witnessed him discharging a firearm specifically
25 on July 3rd.

1 Q. And did you have the opportunity to review any sort of
2 police reports or anything like that to indicate or corroborate
3 Ms. Bechtold's indication that shots were fired?

4 A. I attempted to search the backyard when I executed my
5 search warrant specifically to look for any potential evidence
6 of a discharged firearm. I did not find any, but from my
7 training and experience that's kind of common and doesn't mean
8 that a firearm was or was not discharged.

9 Q. Did you speak with any of the neighbors around 515 South
10 Queen --

11 A. I don't, I don't --

12 Q. Regarding the --

13 A. I want to say no, but I don't recall specifically.

14 Q. So there was no corroboration other than from Ms. Bowman
15 and Ms. Bechtold regarding human trafficking that you're aware
16 of?

17 A. Correct.

18 Q. There was no high traffic coming in and out of the
19 residence that you're aware of?

20 A. That particular area, again back to it being the high
21 crime area, there is a lot of foot traffic in that area, and so
22 that's a really hard question to ask anybody. All the
23 residences in that area, there's just a lot of foot traffic,
24 more so than in many other areas of the city.

25 Q. But specifically regarding this residence at 515 you

1 hadn't reviewed or seen any complaints of an abnormal amount of
2 traffic coming or going from this residence?

3 A. I personally did not, but at the same point, I would not
4 get those complaints just in the capacity I'm in right now.

5 Q. Now, are you aware of any sort of drug transactions or
6 purchases out of that home?

7 A. From Summer and from Starr, you know, their statements
8 physically, but if you're asking if I had anybody else tell me
9 specifically of that address, no.

10 Q. Summer and Starr both indicated that they were actually
11 selling drugs from that home?

12 A. I don't remember if they said that they were selling
13 drugs.

14 Q. Other than their statements was there any other
15 corroborating evidence prior to the searches that any drugs
16 were being sold out of the home?

17 A. I don't believe so.

18 Q. When you executed the second search warrant you indicated
19 that you searched the ceiling and there was no money found in
20 the ceiling tiles?

21 A. That's correct.

22 Q. Other than the items that were found on the window sill,
23 any additional drugs found in the house?

24 A. No. Just the items that were recovered in the garage.

25 Q. And they were I believe trace amounts, correct?

1 A. Correct.

2 Q. And they were only things like baggies and scales?

3 A. That is correct.

4 Q. No shell casings found in the backyard after being
5 searched with metal detectors?

6 A. None.

7 MR. KOVATCH: Court's indulgence, please?

8 (Brief pause.)

9 MR. KOVATCH: Your Honor, no further questions for
10 Agent Anderson.

11 THE COURT: Mr. Consiglio, is your redirect going to
12 be long?

13 MR. CONSIGLIO: It's going to be short, Your Honor.

14 THE COURT: Go ahead.

15 REDIRECT BY MR. CONSIGLIO:

16 Q. Agent Anderson, there was a couple of questions on cross
17 examination at the end that I want to make sure we got a clear
18 record on. The question was asked by counsel in reference to
19 Summer Bechtold and Starr Bowman being at this residence at 515
20 South Queen, I think the question was asked whether they were
21 selling drugs from the home. Do you remember that question?

22 A. I do.

23 Q. Now, I just want to clarify, what you understood when you
24 made the answers to "they," were you answering that in terms of
25 Summer Bechtold and Starr Bowman were selling drugs from the

1 home, or was it Raekwon Grant and Ernest Dyer? Just clarify
2 what, first of all what you understood Summer Bechtold told you
3 about who was selling drugs from the home.

4 A. Summer told me that Raekwon Grant and Ernest Dyer were
5 selling drugs out of the home.

6 Q. And you couldn't recall whether Summer Bechtold said she
7 was selling drugs from the home?

8 A. No, she -- I don't believe she ever mentioned she sold
9 drugs. She specifically mentioned they were selling drugs and
10 that Ernest Dyer was giving her drugs and maintaining her in a
11 state of under the influence.

12 Q. Now, Starr Bowman, you never interviewed Starr Bowman?

13 A. That's correct.

14 Q. So what she told other law enforcement officers about what
15 was occurring in the home was what those officers had relayed
16 to you, is that right?

17 A. Yes.

18 (Brief pause.)

19 Q. And finally the last series of questions that defense
20 counsel asked about what information was provided to you and
21 what was corroborated, I just want to probe that for a moment.
22 When you first responded to where Starr Bowman was at the
23 Sunoco on July 5th, did you understand that she had reported
24 that there was a .40 caliber HiPoint gun involved in this
25 episode?

1 A. At some point I did, yes.

2 Q. Whether it's before you had gotten there or when you had
3 dealt with her at the scene?

4 A. I think it came over the dispatch that there was a .40
5 caliber HiPoint, and then it was reiterated at the scene
6 because she stated that Ernest Dyer had struck her with, and I
7 believe she called it a HiPoint .40, and she had a visible
8 injury consistent with somebody being struck with a firearm in
9 the face.

10 Q. Now, you knew on July 6th, 2017 that law enforcement,
11 federal law enforcement were still dealing with Starr Bowman,
12 is that right?

13 A. Yeah, I knew that there was a potential for a federal
14 investigation with Ernest Dyer as far as the trafficking
15 aspect, but at the point on that day I was more under the
16 impression that Detective Baker was following up on the assault
17 and then, you know, and the fact that Starr Bowman had a
18 physical injury, she was struck with a firearm, that Mr. Dyer
19 is a prohibited person, and that then also that Summer Bechtold
20 may potentially be at the residence and she was very concerned
21 with making sure that we located her.

22 Q. And again back to the last couple of questions asked by
23 counsel about corroboration, on July 6th, 2017, that evening
24 you went to Gander Mountain to inquire about a firearm, is that
25 right?

1 A. That's correct.

2 Q. And the firearm that you found, at least from the records,
3 was a .40 caliber Iberia manufactured firearm, is that right?

4 A. Correct.

5 Q. Did that corroborate the information that you had heard a
6 day earlier from Starr Bowman?

7 A. It did. It was all plausible and made sense, and appeared
8 accurate.

9 Q. And that was connected to the address 515 South Queen
10 Street, is that right?

11 A. That is correct.

12 Q. You were asked questions about corroboration. Let's move
13 forward five days. Well, what Starr Bowman said on July 5th.
14 On July 7th you're in the house, is that right?

15 A. That's correct.

16 Q. And the weapon you were looking for, the defendant locates
17 it for you?

18 A. Correct.

19 Q. And it was a .40 caliber Iberia manufactured HiPoint?

20 A. That's correct.

21 Q. Moving forward, July 12th, you were interviewing Summer
22 Bechtold, is that right?

23 A. Yes.

24 Q. And the description of what Summer Bechtold described to
25 you about what was happening in the home with the masks, the

1 gloves, the condoms, some of the drug trafficking material that
2 had been recovered during the first search warrant, is that
3 right?

4 A. Correct.

5 Q. Was that corroborated with what Summer Bechtold was
6 saying?

7 A. Yes, and there was some obvious things as well.
8 Everything that I had heard was substantiated what we found.

9 Q. Which was previously found?

10 A. Correct.

11 MR. CONSIGLIO: I have no further questions.

12 THE COURT: Recross?

13 MR. KOVATCH: Just real brief, Your Honor.

14 RECROSS BY MR. KOVATCH:

15 Q. Agent Anderson, Starr Bowman you never spoke with prior to
16 applying for your search warrant?

17 A. Just that brief interaction on the 5th.

18 Q. Okay. And you were present when she gave that statement?

19 A. The written statement?

20 Q. Yes.

21 A. No.

22 Q. Did you review that?

23 A. Prior to that, to the execution of my search warrant?

24 Q. Yes.

25 A. I likely did.

1 Q. What about prior to the search warrant on July 7th?

2 A. Maybe. It's possible. I don't remember:

3 Q. We have this search on the 7th and those items are found
4 in the home, the masks, the things like that. Then five days
5 later you meet with Summer regarding the case and you take a
6 statement, correct?

7 A. Correct.

8 Q. Summer was present during this search? She was in the
9 home when warrant was executed?

10 A. When it was executed I don't know if she was present
11 during the search. I don't recall that.

12 Q. And we don't know who Summer may have spoken with in
13 between those five days from when the first warrant was
14 executed until when the second warrant was executed?

15 A. I don't know. I know she spoke to Raekwan. I know that
16 she spoke with Raekwon Grant during the transport. That's the
17 only person I know that she told me she spoke with.

18 Q. But other than Summer is there any way to corroborate this
19 conversation with Mr. Grant?

20 A. With Mr. Grant himself.

21 MR. KOVATCH: That's all the questions.

22 THE COURT: We'll take a recess for ten minutes.

23 You're excused.

24 THE WITNESS: Thank you, Your Honor.

25 (Hearing recessed at 11:24 a.m.)

1 (Hearing resumed at 11:35 a.m.)

2 THE COURT: Next witness, Mr. Consiglio?

3 MR. CONSIGLIO: Detective Mark Maker.

4 (Detective Mark Baker was called to testify and was
5 sworn by the courtroom deputy.)

6 COURTROOM DEPUTY: State your name for the record,
7 please.

8 THE WITNESS: Mark Baker.

9 THE COURT: You may proceed.

10 MR. CONSIGLIO: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. CONSIGLIO:

12 Q. Where are you employed?

13 A. I'm currently a police officer with the Northern York
14 County Regional Police Department.

15 Q. And how long have you been a law enforcement officer?

16 A. Close to almost twenty years now.

17 Q. And how long have you been affiliated with Northern York
18 Regional Police Department?

19 A. Fifteen years.

20 Q. Back in 2017 were you designated to any particular task
21 forces associated with the FBI?

22 A. Yes. I was part of the Child Crime Task Force in
23 Harrisburg for the FBI.

24 Q. And what's the Child Crime Task Force?

25 A. They investigate child pornography, child exploitation,

1 and human trafficking.

2 Q. At the same time that you were affiliated with the FBI
3 were you also affiliated with any other task forces associated
4 with York County?

5 A. Yes. I was part of the Cyber Crime Task Force, and in
6 that capacity I was a special sworn county detective.

7 Q. And what did that, what does that designation get you?

8 A. It's the same type of function, investigating child
9 pornography, child crimes, digital forensics, things of that
10 nature.

11 Q. As a county detective were you able to bring charges
12 throughout York County?

13 A. Yes, I was.

14 Q. And were you also able to bring federal charges as a task
15 force member with the FBI?

16 A. Yes, I was.

17 Q. Let me take you back to June of 2017. Were you involved
18 in an investigation involving Summer Bechtold?

19 A. Yes, I was.

20 Q. And without getting too far into the particulars of it,
21 was Summer Bechtold a witness for you in a federal case?

22 A. She was actually a victim for a human trafficking case.

23 Q. And that human trafficking case is not this case with the
24 defendant?

25 A. That is correct.

1 Q. It's a different person?

2 A. Yes, it is.

3 Q. And who was that person?

4 A. His name was Willie James Johnson.

5 Q. Now, at that time in the June of 2017 were you familiar
6 with a woman by the name of Starr Bowman?

7 A. In passing. I had heard of her just, any human
8 trafficking allegation that's brought up in York County will
9 somehow find its way to me, even if I'm not investigating it,
10 so I know who all the players are. So I knew her name prior to
11 this incident.

12 Q. Now, how did you get involved in this particular
13 investigation?

14 A. I was contacted by the FBI, Special Agent Donny Asper --
15 sorry, Donald Asper. He had interviewed Starr Bowman in
16 regards to the incident that occurred.

17 Q. Now, I'm going to direct your attention to Attachment C,
18 which I think is labeled in a binder in front of you. Do you
19 see what that is?

20 A. Yes. This is an FBI 302. It's a, like what we call our
21 supplemental report to an investigation.

22 Q. And is this a report prepared by Donald W. Asper?

23 A. Yes, it is.

24 Q. And it looks like on the bottom left corner of the first
25 page, an investigation on June 26th, 2017.

1 A. That's correct.

2 Q. And is this a summary of an interview with Starr Bowman as
3 it appears?

4 A. Yes, it appears to be that.

5 Q. I want you to move forward a couple of pages, actually to
6 the third page. Is there a reference to a person by the name
7 of Summer?

8 A. Yes.

9 Q. Now, it's been a couple of years. Do you specifically
10 remember when Detective, Agent Asper contacted you about his
11 investigation in identifying Summer Bechtold?

12 A. I think if I remember correctly I was contacted by the
13 victims specialist of FBI Melissa Howley after the
14 investigation was started with Starr Bowman, and she relayed
15 the information just so I was kept in the loop. The
16 investigation with Starr Bowman as it pertains to human
17 trafficking was not mine. That was being handled by Donald
18 Asper and Special Agent Angela Strauss.

19 Q. But you were kept in the loop because of why?

20 A. Just so I knew who the subjects were and who the victims
21 potentially were, and also Summer's name came up, and she's my
22 victim.

23 Q. And at that point were you trying to find Summer?

24 A. Yes, I was.

25 Q. Why were you trying to find Summer?

1 A. Because we had a pending grand jury indictment for
2 Mr. Johnson, and she's my victim.

3 Q. That's Willie Johnson?

4 A. That's correct.

5 Q. So that's how you kind of get involved in this case?

6 A. That's correct.

7 Q. Let's move forward a handful of days, July 5th or 6th,
8 2017. Were you involved in the interview with Starr, the
9 second interview with Starr Bowman as I'll reference the
10 specific interview?

11 A. No, not directly. I was provided the information from
12 Special Agent Asper.

13 Q. Now, to your knowledge was that interview with Starr
14 Bowman on July 6th, 2017, was that audio recorded?

15 A. Yes, it was.

16 Q. And did Starr Bowman also provide a handwritten statement
17 to police about what had transpired on July 5th?

18 A. Yes, she did.

19 Q. Were you given -- describe for the judge how it came to be
20 that you prepared a search warrant on July 6th and then
21 ultimately executing on July 7th.

22 A. Your Honor, I was contacted by victim specialist Howley.
23 She was in the process of conducting an interview with Special
24 Agent Asper and Special Agent Strauss in Lancaster of Starr
25 Bowman. She had contacted me two or three times during the day

1 and keeping me in the loop of what the goings on, basically
2 what Ms. Bowman was stating. I had learned of the assault that
3 occurred the night before involving Mr. Dyer and Ms. Bowman,
4 and that's how I got involved.

5 Once the information was provided to me I believe at
6 that point in the afternoon Special Agent Anderson forwarded me
7 a copy of the York City police report. I was able to see the
8 injury sustained by Ms. Bowman, and then that's when I decided
9 to take action.

10 Q. So you had photographs of Ms. Bowman's injury?

11 A. Yes.

12 Q. You had a signed statement from Ms. Bowman?

13 A. That's correct.

14 Q. And the FBI agents had interviewed her that day about what
15 had taken place?

16 A. That's correct.

17 Q. There was an audio recorded statement?

18 A. That's correct.

19 Q. What steps did you take to prepare or to execute a search
20 at this location?

21 A. That -- once I had gotten done my duty tour that day I
22 typed up the affidavit for the search warrant. I met with the
23 magistrate, the local magistrate who was on duty that night.
24 I believe it was Magistrate Bloss. I can't recall where I met
25 him at. I can't recall whether it was at the county courthouse

1 or at his office. I swore to the affidavit, and then that's
2 when the search warrant was able to be executed the next
3 morning. I made contact with the U.S. Marshals fugitive
4 apprehension team. They were going to assist me since it was
5 in York city and we were going to do it the next morning.

6 Q. If front of you is tabbed Attachment A. Can you identify
7 what that is, please?

8 A. This is my local search warrant for the residence located
9 at 515 South Queen Street in York, Pennsylvania.

10 Q. And the signature two-thirds of the way down, that's Judge
11 Bloss?

12 A. That's correct.

13 Q. And then further down there's another signature by Judge
14 Bloss authorizing the issuance of the warrant, is that right?

15 A. That's correct.

16 Q. Is there a time when Judge Bloss signed off on the
17 warrant?

18 A. It was 8:40 p.m. on the 6th of July, 2017.

19 Q. Now, is that the time that Judge Bloss that you had
20 presented this affidavit to the judge and he signed off on it?

21 A. That is correct.

22 Q. Now, let's turn to the second page of the document, which
23 is the affidavit of probable cause. In this affidavit of
24 probable cause, if you could just review it? This information
25 that you obtained, did you obtain it directly from Starr

1 Bowman?

2 A. No, I did not. I did not speak with Starr Bowman until
3 after the fact. This information was obtained from the police
4 report taken by York city, Special Agent Asper and then victim
5 service specialist Howley, during the day.

6 Q. Based upon the information relayed to you by federal law
7 enforcement you prepared the affidavit?

8 A. Yes. I worked with Special Agent Asper for I think upon
9 two years before that. So I had had contact with him and we
10 worked cases together.

11 Q. Now, you heard testimony earlier today about the
12 involvement of Assistant United States Attorney Meredith
13 Taylor.

14 A. Yes.

15 Q. Were you involved in communicating directly with Meredith
16 Taylor regarding how this matter was going to proceed?

17 A. I don't recall that. I don't believe I was.

18 Q. Were you familiar with whether AUSA Taylor was dealing
19 with the FBI regarding the interview and the investigation?

20 A. Yes.

21 Q. While it was going on?

22 A. That's correct.

23 Q. Now, before I leave this topic, you said this warrant was
24 signed off, with the document says it was signed off at 8:40
25 p.m. on July 6th.

1 A. That's correct.

2 Q. You heard testimony earlier this morning from Special
3 Agent Ryan Anderson from ATF about tracking down a 4473 form.

4 A. That's correct.

5 Q. You also heard testimony that this form was obtained by
6 Agent Anderson and forwarded to the assistant U.S. attorney at
7 7:53 p.m.

8 A. That's correct.

9 Q. That's about fifty minutes or so before you actually went
10 to get your search warrant?

11 A. That's right.

12 Q. As you testify here today, do you recall whether you had
13 personal knowledge of the consents of that 4473 form at the
14 time you went to the judge to get a warrant?

15 A. I do not recall. I don't believe I did until after the
16 warrant was already signed.

17 Q. You're not sure whether that had been relayed to you at
18 that time?

19 A. That's right.

20 Q. Now, when you relayed this information to the magistrate
21 judge, did the magistrate judge appear to understand the
22 information you had sworn out in the affidavit?

23 A. Yes.

24 Q. And did you go through all the appropriate processes of
25 swearing to the truthfulness of the information?

1 A. Yes, I did.

2 Q. And the judge gave you authorization to execute the search
3 under the conditions and terms that you had outlined?

4 A. That's correct.

5 Q. What specifically were you looking for per the warrant?

6 A. I was looking for any firearms, specifically the pistol
7 that was used in the assault. I was looking for any illegal
8 drugs that might be contained on the premises, the cell phones
9 that might have been located that might have belonged to
10 Mr. Dyer.

11 Q. And this is all supposed to be in 515 South Queen Street,
12 is that correct?

13 A. That's correct.

14 Q. Let's move forward to the next day. Did you utilize any
15 additional law enforcement services to help you execute this
16 warrant?

17 A. The U.S. Marshals fugitive task force assisted. Special
18 Agent Anderson was also there, as well as Special Agent Asper
19 and Special Agent Strauss.

20 Q. Actually before we leave this, you said reports were
21 forwarded to you for consideration in your warrant before you
22 actually got it executed.

23 A. Yes.

24 Q. And photographs?

25 A. That's correct.

1 Q. Attachment F?

2 A. Yeah, this is the photograph, but it was in color.

3 Q. Attachment G?

4 A. This is the statement provided by Ms. Bowman to the York
5 city police.

6 Q. I think this is a receipt of the information page behind
7 that, too. What's that?

8 A. This is victims' rights. It's a booklet that's provided
9 to all victims of crimes in York County. This is the last page
10 of the book. This is sworn off and signed and she provided the
11 book detailing her rights to the victim.

12 Q. Now, while we're still on the pamphlet, let's move forward
13 to Attachment I. You had mentioned earlier that you enlisted
14 the services of United States Marshals Service to help execute
15 this warrant?

16 A. That's correct.

17 Q. Is this a report from the U.S. Marshals Service regarding
18 this warrant's execution?

19 A. Yes, it appears to be.

20 Q. Okay. Why don't you describe for us what happened.

21 A. At the warrant?

22 Q. Yes, please.

23 A. So we arrived at the house in the morning. We had known
24 that there were cameras outside. The cameras were also visible
25 as we approached the property. Several of the officers that

1 were with us secured the rear of the property to ensure that
2 nobody fled from the scene. We knocked on the door, announced
3 ourselves, and then made entry.

4 At that time I believe there were three people
5 inside, not including Mr. Dyer. Mr. Dyer's mother was there.
6 Summer Bechtold was there. And there was another male, and I
7 don't recall his name off the top of my head. Everybody was
8 secured and then the property was searched.

9 Q. And we've already heard testimony regarding the
10 interaction in the kitchen with Ernest Dyer --

11 A. Yes.

12 Q. -- and the firearm. Is your testimony consistent with
13 what we've already heard about how that happened?

14 A. That's exactly how it happened.

15 Q. And the search of this property just with the four walls
16 of 515 South Queen Street, is that right?

17 A. That's correct.

18 Q. The garage was not searched?

19 A. That's correct.

20 Q. And the curtilage was not searched?

21 A. That's correct.

22 Q. Look at Attachment B.

23 THE COURT: B as in boy?

24 Q. B as in Boy, yes. There's nineteen items that were
25 seized?

1 A. That's correct.

2 Q. Let's walk through them one by one if we can. The first
3 one what is that?

4 A. The first one is a HiPoint .40 caliber bearing serial
5 number X, as in x-ray, 7259647, with ten rounds, plus the
6 magazine.

7 Q. Is that the firearm that we just described as recovered in
8 the kitchen in the interaction with Ernest Dyer?

9 A. That's correct.

10 Q. The second item, what's that?

11 A. Is a Swann DVR and charger.

12 Q. What's a Swann DVR?

13 A. That was the DVR system that was used to record the
14 cameras and record entry and exit in the property.

15 Q. And that was taken from the property as well?

16 A. That's correct.

17 Q. What's the third item?

18 A. Plastic packaging with a, it says with an apple brand.
19 This is commonly drug packaging material with a stamp on it
20 that looks like an apple.

21 Q. And your warrant had authorized you to take illegal drugs?

22 A. That's correct.

23 Q. Why did you take this packaging material?

24 A. It's normally used for packaging drugs. It would fall
25 into the same context as the illegal drugs themselves.

1 Q. Was it immediately apparent to you and the officers who
2 observed it that this is evidence of contraband?

3 A. Yes.

4 Q. What about the Swann DVR and charger?

5 A. That was taken as just a precautionary measure since it's
6 a digital piece of equipment and it's easily disposed.

7 Q. And was it evident from looking at it that evidence
8 related to the activities alleged in the conduct in the
9 affidavit would be on this device or devices at that time?

10 A. That was the hope. Based on the positioning of the
11 cameras it might have caught a lot of the incident as it
12 occurred, and if examination would have been done of that DVR a
13 second search warrant would have been obtained to search the
14 DVR itself.

15 Q. Items 4 and 5 are cash, is that right?

16 A. That's right.

17 Q. Items 6, 7, 8, and 9 are phones?

18 A. That's correct.

19 Q. And you had a specific indication on the warrant asking
20 for authorization to take cell phones?

21 A. That's correct.

22 Q. Is that why those materials were taken?

23 A. Yes.

24 Q. Items 10 is drug paraphernalia?

25 A. That's correct.

1 Q. And it's been a couple of years. Do you recall
2 specifically what the drug paraphernalia was?

3 A. No, I don't. I believe pictures were taken of it, but I'm
4 not exactly sure what it was.

5 Q. But immediately apparent to you as evidence of drug
6 trafficking and therefore evidence of a crime?

7 A. That's correct.

8 Q. Black pad folio with paperwork and receipt book?

9 A. Yes.

10 Q. What was that?

11 A. There was, so the pad folio containing receipts. The
12 receipts did not appear to legitimate for lack of a better
13 word. They looked like they were made up receipts or it might
14 have been something involving the drug trafficking trade like
15 he was trying to keep track of how much was being sold to
16 certain people in certain ways that way.

17 Q. And was that immediately apparent to you that this was
18 evidence of a crime and that's why you took it?

19 A. That's what it appeared at the time.

20 Q. Item number 12, a box containing green pills and packaging
21 material and an ID for T. Holmes.

22 A. Yes. There was a box containing green pills, which were
23 unidentified. It was unclear what they were at that time. It
24 could have been illegal drugs and at the time needed to be
25 tested. Inside that box there was also an ID for T. Holmes.

1 Q. And the again the pills were taken because of the
2 authorization to seize drugs?

3 A. That's correct.

4 Q. And the packaging material and identification as evidence
5 that it might be immediately apparent to you that this was
6 evidence of another crime?

7 A. It's possible, that's correct.

8 Q. Item 13, .40 caliber ammunition, 106 bullets.

9 A. Yes, it was associated with the firearm that was seized.

10 Q. HiPoint box?

11 A. That's the box that the gun came in, plus the receipts for
12 the purchase of the gun.

13 Q. Again immediately apparent to you that's evidence of
14 actual possession of the firearm?

15 A. That's correct.

16 Q. Item 15, two flash drives.

17 A. Yes.

18 Q. Why were those taken?

19 A. Again they were computer items. They were seized within
20 the same area as the weapons and the cash and everything else,
21 and they would have gotten a second search warrant to search
22 those later on as well.

23 Q. Was there thoughts maybe that flash drives contained
24 storage information associated with the surveillance?

25 A. That's correct.

1 Q. Item 16, an Alcatel cell phone.

2 A. That's another cell phone.

3 Q. Again listed on the warrant as something that could be
4 taken?

5 A. That's correct.

6 Q. 17, the belly band type pistol holster, why was that
7 taken?

8 A. It was the holster for the pistol that was associated with
9 the firearm, too, as well.

10 Q. So immediately apparent to you it's evidence of possession
11 of the firearm?

12 A. That's correct.

13 Q. Item 18, a black pistol holster.

14 A. Yes. I believe that was a fabric holster, not -- it's
15 separate from the belly band holster. It would be like a waist
16 borne holster.

17 Q. And that was taken because it was immediately apparent to
18 you it's evidence of possession of a firearm?

19 A. That's correct.

20 Q. And item 19, clear empty sandwich bags from freezer,
21 what's that?

22 A. They were just regular clear plastic sandwich bags that
23 were tossed into the freezer, and if I recall correctly I don't
24 believe there was anything else in the freezer, or there may
25 have been just a couple of things, but the way the bags were

1 laying in there, they appeared to be part of the drug packaging
2 operation.

3 Q. Again immediately apparent to you as evidence of drug
4 trafficking that was alleged to have occurred in the home?

5 A. That's correct.

6 Q. Okay. Let's move forward if we can to, I think it's item
7 J, identified as item J there. Do you have it, officer?

8 A. Yes.

9 Q. The first two pages were identified previously as a
10 summary of an interview conducted by Agent Anderson, a report
11 prepared by Agent Anderson related to an interview of Summer
12 Bechtold on July 12th, 2017. Two pages deeper into that is a
13 supplemental narrative. Whose supplemental narrative is that?

14 A. That's mine.

15 Q. And that relates to the same interview?

16 A. That's correct.

17 Q. So just in summary fashion describe for us what happened
18 on July 12th, 2017.

19 A. Summer Bechtold was transported from York County prison
20 to the district attorney's office, where an interview was
21 conducted. It was basically a debrief for her being with
22 Mr. Dyer to find out what crimes might have been occurring in
23 the house as well. Also to check on her state, because like I
24 said she was a victim of mine from this other case. Present at
25 that interview was victim special Melissa Howley, ATF Special

1 Agent Latoya Stewart, and Special Agent Ryan Anderson.

2 Q. And following that interview with Summer Bechtold you
3 wrote this report?

4 A. That's correct.

5 Q. That's the three-page report that's attached?

6 A. That's correct.

7 Q. Part of the description by officer, or Agent Ryan Anderson
8 earlier regarding this interview with Summer Bechtold?

9 A. It's also accurate.

10 Q. To the best of your recollection?

11 A. That's correct.

12 Q. And is your report and the summary of what she had to say
13 in this report that we've just identified as Attachment I, is
14 that accurate, too?

15 A. Yes, it is.

16 Q. Did you participate in the search, execution of the search
17 warrant, the second search warrant on the property on July
18 14th, 2017?

19 A. No, I did not.

20 MR. CONSIGLIO: Your Honor, I don't believe I have any
21 more questions for this witness.

22 THE COURT: All right. Cross?

23 CROSS EXAMINATION BY MR. KOVATCH:

24 Q. Detective Baker, to kind of back up here a little bit,
25 is it fair to say your involvement initially in this case is

1 regarding the human trafficking component of this?

2 A. No, not as it involves Mr. Dyer. No, I was looking for
3 Summer at the time. She was involved in the human trafficking
4 case that I was already working. My only involvement with
5 Mr. Dyer and Starr Bowman was the alleged assault that
6 occurred.

7 Q. Okay. So that's your first involvement with Mr. Dyer
8 directly?

9 A. That's correct.

10 Q. There's been no allegations regarding human trafficking
11 and Summer prior to this?

12 A. No, not as far as I'm aware, unless Special Agent Asper
13 had that information.

14 Q. The individual that you were alleging trafficked Summer
15 Bechtold, he has since entered a plea to those charges?

16 A. Yes.

17 Q. And Summer at the time of this incident occurred with
18 Mr. Dyer was actually a material witness and there was a
19 warrant out for her?

20 A. She had a probation warrant. She violated her probation.

21 Q. Do you know what she was on probation for?

22 A. I cannot recall.

23 Q. Okay. Initially how do you get involved with this case?
24 You're contacted by AUSA Taylor?

25 A. No, I was contacted by victim specialist Howley, who

1 advised me of the assault that occurred, and then things
2 starting flowing from there.

3 Q. And when did that first initial contact with Ms. Howley
4 occur.

5 A. July 6th.

6 Q. And what time?

7 A. I'm not sure. I don't recall.

8 Q. There's been reference to a video of an interview with
9 Agent Howley and Agent Asper. Did you have an opportunity to
10 review that video?

11 A. After the fact.

12 Q. After the fact of the warrant or --

13 A. After the arrest was made, after the search warrant, it
14 was obtained later on.

15 Q. Okay. Now, prior to requesting the warrant from the
16 district justice office you did have contact with Agent Asper,
17 correct?

18 A. That's correct.

19 Q. And what was the subject of that conversation? What did
20 he discuss with you?

21 A. He basically relayed the statements that Starr had
22 provided -- I'm sorry, Ms. Bowman provided to him during that
23 interview, what had occurred. He also relayed the fact that
24 she did have an obvious injury to the left side of her face,
25 and just basically what had occurred.

1 Q. Did he provide you with any summary notes or anything like
2 that?

3 A. No, not at that time.

4 Q. Okay. He essentially just summarized the video itself?

5 A. Yes.

6 MR. KOVATCH: Your Honor, we do have a stipulation
7 from the U.S. government. I'm going to ask to introduce the
8 actual video of Summer Bowman. Your Honor, the interview was
9 approximately an hour and a half. I've asked the government if
10 they would stipulate to entering that as an exhibit. A lot of
11 the cross examination with Detective Baker would be based on
12 the video itself and what he was aware of and at what point he
13 was aware of that.

14 Not to belabor the issue, Your Honor, but I would
15 like to introduce the video and then have the opportunity to
16 receive the transcript and then potentially brief the argument.
17 Would that be acceptable to the court? In other words, Your
18 Honor, a lot of the cross examination is going to be based on
19 what knowledge Detective Baker had at the time.

20 He did not actually view the video, but was provided
21 with a summary from Agent Asper. I think the best evidence in
22 the case would be the video itself, and the government is not
23 opposed to introducing the video into evidence.

24 THE COURT: Do you agree, Mr. Consiglio?

25 MR. CONSIGLIO: Yes, I have no objection to the video

1 being introduced into evidence. My understanding of the gist of
2 their argument is law enforcement had a wealth of information
3 about different circumstances, and some of those details were
4 not reported in the affidavit of probable cause, and then
5 potentially the affidavit of probable cause was incomplete in
6 some form or other, and I think he wants to introduce the video
7 to support that argument, because the affidavit is a page and a
8 half long dealing essentially with whether there's drugs and a
9 firearm at the house and the assault.

10 THE COURT: All right.

11 MR. KOVATCH: Your Honor, I would ask -- Your Honor,
12 I would just ask that this be marked, I guess it would be
13 Defense Exhibit 3, or C.

14 THE COURT: 3. Do you have an envelope to protect
15 that?

16 MR. KOVATCH: I do, Your Honor. I just need to
17 locate it.

18 THE COURT: So you want to file a supplemental brief
19 addressing this interview only?

20 MR. KOVATCH: Yes, Your Honor. I believe that would
21 be the easiest way to expedite, and I do have an envelope that
22 I will provide. And, Detective baker, just briefly regarding
23 the actual search warrant and the affidavit of probable cause,
24 I believe the affidavit of probable cause for the search
25 warrant has already been admitted in the government's exhibit.

1 However, Your Honor, I don't believe the initial application
2 has been submitted. May I approach the witness?

3 THE COURT: Yes.

4 MR. KOVATCH: If I could have this marked as Defense
5 Exhibit 4, please?

6 BY MR. KOVATCH:

7 Q. Detective Baker, I just handed you a three-page document
8 that's been marked as Defense Exhibit Number 4. Do you
9 recognize that document?

10 A. Yes. It's the same one as United States Exhibit A, too.

11 Q. In particular the search warrant application and
12 authorization, you were actually the one who filled out this
13 search warrant, is that correct?

14 A. That is correct.

15 Q. The first part of the search warrant indicates that the
16 items to be searched are firearms, illegal drugs, cell phones
17 possessed or belonging to Ernest Dyer?

18 A. That's correct.

19 Q. Now, during the search various items were taken, including
20 a DVR, certain cell phones that were found in other areas of
21 the home other than Mr. Dyer's room, is that fair?

22 A. That's correct.

23 Q. And what specifically is being asked for in the warrant
24 are items that are possessed or belong to Mr. Dyer
25 specifically?

1 A. That's correct.

2 Q. Now, some of the items that were taken did not belong to
3 Mr. Dyer, correct?

4 A. Yes. At the time I had no idea whether they did or not.

5 Q. But as you do today you are aware of that, correct?

6 A. I'm -- again I don't really know. I'm not sure if the
7 analysis was ever done on the phone to determine who the actual
8 owners were or not.

9 Q. Some of the locations of the items that were found, the
10 Alcatel cell phone in particular, that was found in the bedroom
11 of Ms. Holmes?

12 A. It's possible.

13 Q. Sandwich bags were found in the freezer I believe?

14 A. That's correct.

15 Q. And in particular I believe there were bullets in this
16 incident that were actually located in Ms. Dyer's bedroom,
17 correct?

18 A. That's correct.

19 Q. You had the opportunity to review Officer Phillips's
20 police report of the initial incident on July 5th when Starr
21 Bowman contacted the police regarding the domestic dispute?

22 A. Yes, I did.

23 Q. And have you had the opportunity to review it?

24 A. No, not recently. Not since the incident.

25 Q. I believe the government has already introduced it as

1 Exhibit E.

2 A. Okay.

3 Q. You would agree with me contained in the supplemental
4 narrative by Officer Phillips he does indicate that Starr had
5 told him that the firearm was discharged, correct?

6 A. Yes, I believe it does.

7 Q. Now, there's also an indication in Officer Phillips's
8 police report that while Starr is writing this statement, a
9 P.T. Cruiser pulled up to the scene?

10 A. Yes, it does say that.

11 Q. Were you aware, or are you aware now that my client was
12 under ankle monitor house arrest during this period?

13 A. I believe he was, yes.

14 Q. At any point was there an investigation to determine
15 whether or not he violated the ankle monitor house arrest?

16 A. No, there was not.

17 Q. There was no investigation or there were no violations?

18 A. No, there was not.

19 Q. You would agree with me that it's indicated that she
20 believed Ernest Dyer or his associates were following her that
21 evening?

22 A. I'm sorry, can you repeat the question?

23 Q. In Officer Phillips's report, on the first paragraph of
24 the supplemental narrative Officer Phillips indicates that
25 Starr indicated to dispatch that Ernest Dyer and his associates

1 were following her.

2 A. Yes.

3 Q. And there was no verification as to his ankle monitor if
4 Mr. Dyer ever left his residence?

5 A. No, there was no verification.

6 Q. Ms. Bowman actually wrote a statement that night to
7 Officer Phillips, correct?

8 A. That's correct.

9 Q. And I believe that's already been attached to Exhibit E as
10 submitted by the government?

11 A. Yes.

12 Q. Just in reviewing Ms. Bowman's statement, does she
13 indicate anywhere in that statement that the gun actually
14 discharged?

15 A. No, it does not say in the statement.

16 Q. You would agree with me it is indicated in Officer
17 Phillips's report, correct?

18 A. That's correct.

19 Q. Now, prior to requesting this search warrant did you
20 determine if there was any other witnesses or any other reports
21 of shots being fired?

22 A. No, to be honest I wasn't concerned about the shot being
23 fired.

24 Q. You did not know Summer Bowman at all, correct, prior to
25 this incident?

1 A. No, Starr Bowman I did not.

2 Q. Sorry, Starr Bowman. Did you become aware of the
3 allegation of being raped on June 24th?

4 A. I did become aware of it, but not exactly when that
5 occurred.

6 Q. Was it prior to your search warrant request or after?
7 Can you remember that?

8 A. I believe it was after.

9 Q. Now, you indicate in your affidavit of probable cause,
10 specifically on number 5, you indicated that Starr Bowman
11 indicated that she had left her dwelling to go to the
12 neighbor's house to get some prescription medications.

13 A. Yes.

14 Q. I assume that means that Starr Bowman was residing at 515
15 South Queen Street?

16 A. Yes.

17 Q. Now, did you verify that information at all prior to
18 requesting the search warrant?

19 A. No, she said that she lived at 515 South Queen Street.

20 Q. Other than her statement were there any further
21 investigations done to determine whether she actually lived
22 there or not?

23 A. No. She just claims that she lived at 515 South Queen.

24 Q. At any point did you speak to any of the neighbors to
25 verify or confirm or corroborate Ms. Bowman's statement prior

1 to issuing the police report?

2 A. No, I did not.

3 Q. Or the affidavit of probable cause?

4 A. No, I did not.

5 Q. Did you speak with Agent Asper prior to requesting the
6 affidavit of probable cause?

7 A. Yes, I did.

8 Q. And he was just provided a summary of what was told?

9 A. Yes, we were on the phone for probably twenty minutes.

10 Q. Okay.

11 (Brief pause.)

12 Q. Starr indicates in her statement that there was an
13 incident where my client allegedly dumped cooking oil on her
14 car.

15 A. Yes.

16 Q. Do you recall that? Was there any police reports or any
17 fire department dispatched to this area?

18 A. Not that I'm aware. The only way I can substantiate her
19 claim is I saw her car after the fact, and there was damage to
20 it.

21 Q. So you have not reviewed any police reports regarding the
22 incident?

23 A. That's correct.

24 Q. Are you aware that Starr indicated that she didn't contact
25 police or anything like that?

1 A. No, I'm not aware either way.

2 Q. Now, you reviewed the photos of the injury that Starr
3 alleged my client caused from the pistol whipping?

4 A. That's correct.

5 Q. Are you aware that Starr had previously indicated back on
6 June 24th that she had been assaulted?

7 A. No. Not at that time I was not aware of that.

8 Q. She actually went to a shelter in York and they referred
9 her to York Hospital. Are you aware of that?

10 A. No, I was not aware of that.

11 Q. You're not aware of any photos or any injuries that may
12 have occurred from that assault?

13 A. No.

14 Q. Other than Starr indicating that my client had assaulted
15 her, is there any other corroborating information to indicate
16 that my client pistol whipped her?

17 A. Just her account and the injury that she claimed to happen
18 during that assault.

19 (Brief pause.)

20 Q. Detective Baker, there's been an indication that Annie
21 Dyer purchased this firearm. Were you aware of that prior to
22 the search warrant?

23 A. I was, but I think it occurred either the morning of or
24 later after the warrant was already obtained. I don't recall
25 exactly how that information was disseminated.

1 Q. Okay. Starr indicated that she actually purchased the
2 firearm. Are you aware of that?

3 A. Yes.

4 Q. And Starr indicated that she purchased it following a PFA
5 hearing, correct?

6 A. Yes. I watched the video of the interview and I'm aware
7 of that yes.

8 Q. Were you able to research any of the PFA documents to
9 determine what that PFA hearing was for?

10 A. No, I did not.

11 Q. You're unaware that Ernest actually took out a temporary
12 PFA against her?

13 A. I'm not aware of that.

14 Q. And as of May she was actually evicted from that
15 residence. You are aware of that?

16 A. I was not aware.

17 Q. In your police report -- or I'm sorry, in your affidavit
18 of probable cause you indicate that after the incident Dyer
19 started to threaten her via phone, stating such things as bring
20 a body bag. .

21 A. Yes.

22 Q. Did you review any text messages or were you provided with
23 any messages?

24 A. I don't recall if I was or not. That's the reason the
25 phones were seized though.

1 Q. But it's included in your affidavit of probable cause?

2 A. That's correct.

3 Q. And you also indicated that Bowman stated Dyer had
4 threatened her life in the past and she currently fears for her
5 safety?

6 A. Correct.

7 Q. Were you able to determine if there were any prior
8 threats?

9 A. Just based on her account.

10 Q. You said you reviewed the video of Starr Bowman. Do you
11 recall hearing Starr saying that she returned to the residence
12 after this incident occurred approximately a week later?

13 A. No, I don't recall that. It does ring a bell, but I'm not
14 exactly sure, I couldn't tell you in total about that.

15 Q. Okay. And, Detective Baker, you actually filed charges in
16 York County against Mr. Dyer arising out of this incident?

17 A. That's correct.

18 MR. KOVATCH: Your Honor, may I approach the witness?

19 THE COURT: Yes.

20 MR. KOVATCH: If I could have this marked as Defense
21 Exhibit Number 5?

22 BY MR. KOVATCH:

23 Q. Detective Baker, I'm showing you a two-page document
24 that's been marked as Defense Exhibit Number 5. Do you
25 recognize that?

1 A. Yes. This is my charging document and the affidavit of
2 probable cause.

3 Q. Okay, and you would agree with me on page 1, at the bottom
4 of page 1 it does ask when this incident occurred, correct?

5 A. Yes.

6 Q. And according to your charging document you have it listed
7 that it occurred on July 6th at approximately 8:00 a.m.?

8 A. Yes, I do.

9 Q. You had the opportunity to review Ms. Bowman's statement
10 and, I'm sorry, her recorded video statement to Agent Asper,
11 correct?

12 A. Yes.

13 Q. Is it clear when Ms. Bowman is alleging this assault
14 occurred?

15 A. The assault occurred on July 5th, but I'm not exactly sure
16 what time. Yes, this is a clerical mistake.

17 Q. Part of her statement, and I don't recall if you note this
18 or not, she indicates it was light outside. Bright out.

19 A. Okay.

20 Q. The phone call to 911 occurs approximately 10:30 p.m.,
21 is that accurate?

22 A. I'd have to look at the report from York city.

23 MR. CONSIGLIO: I'm sorry, you said something about it
24 being light out?

25 MR. KOVATCH: During the course of her interview with

1 Agent Asper Ms. Bowman indicates that this assault occurred and
2 it was daylight out at the time.

3 MR. CONSIGLIO: We'll let the video speak for itself
4 to some of those factual points, and I didn't jump up and raise
5 an objection to a lot of these facts. The video will speak for
6 itself.

7 THE COURT: Okay.

8 MR. KOVATCH: And, Your Honor, that's part of why
9 we're asking the video, to introduce the video to point out
10 these discrepancies.

11 (Brief pause.)

12 BY MR. KOVATCH:

13 Q. Detective Baker, just to finish up here, prior to issuing
14 or requesting the search warrant did you review any other 911
15 calls or any dispatches to the 515 South Queen Street address?

16 A. No, I did not.

17 Q. Are you aware if there has been police contact with that
18 address prior to the search warrant being executed?

19 A. No, I'm not aware of any contact.

20 (Brief pause.)

21 Q. Detective Baker, following this allegation of assault were
22 there any interviews done with any other witnesses other than
23 Starr Bowman and Summer Bechtold?

24 A. No, there were not.

25 Q. Are you aware of any other officers doing any other

1 reports regarding witnesses or following up on or corroborating
2 Starr Bowman's statements?

3 A. I'm not aware of any other officers conducting this
4 investigation.

5 MR. KOVATCH: Your Honor, I don't believe I have any
6 further questions for Detective Baker. I would just ask that
7 all the exhibits be admitted into evidence at this time.

8 THE COURT: Defendant's Exhibit 1 through 5?

9 MR. KOVATCH: Yes, I believe so, Your Honor.

10 THE COURT: Any objection?

11 MR. CONSIGLIO: No objection Your Honor.

12 THE COURT: Redirect?

13 MR. CONSIGLIO: Just a couple of redirect questions to
14 our time line and whatever confusion on the record is clear,
15 and I believe Defense Exhibit Number 1 is this CAD report, is
16 that right?

17 MR. KOVATCH: Yes. Exhibit 2 is Agent Phillips's
18 report.

19 MR. CONSIGLIO: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 MR. CONSIGLIO: It'll make things move a little
23 faster.

24 REDIRECT BY MR. CONSIGLIO:

25 Q. Officer Baker, Defense Exhibit Number 1 is a CAD report.

1 Does that indicate a date for the incident?

2 A. Yes. This was created on July 5th, 2017.

3 Q. And is there a time?

4 A. 10:21.

5 Q. P.M.?

6 A. Yes.

7 Q. And this CAD report reflects some of the first contact
8 that law enforcement had with Ms. Starr Bowman, is that right?

9 A. That's right.

10 Q. And just utilizing the first page and the bottom of the
11 call narrative summary, it looks at 10:23:11 p.m., C.O. against
12 her ex-boyfriend, just shot at her with a HiPoint caliber gun
13 at 515 South Queen.

14 A. That's correct.

15 Q. So is it fair to say at least according to the CAD report
16 the first call that came in was that she had been shot at?

17 A. That's the first narrative that the dispatcher entered
18 into the CAD dispatch, that's correct.

19 Q. You're brought in -- the officers respond on that day, at
20 least as far as I understand, and interviewed Ms. Bowman, is
21 that right?

22 A. That's correct.

23 Q. And you have been shown Government's Exhibit G, which I
24 believe is also Defense Exhibit 2, which is her statement.

25 A. That's correct.

1 Q. Included with that statement is the receipt of
2 information? Right?

3 A. That's correct.

4 Q. For victim witness by York city police?

5 A. Yes, that's correct.

6 Q. And that document is signed by Starr Bowman?

7 A. Yes.

8 Q. And it indicates a date of signature of July 5, 2017?

9 A. That's correct.

10 Q. You indicated that on July 6th, 2017, so the next day,
11 you're contacted by Melissa Howley?

12 A. That's correct.

13 Q. And she said that they were in the middle of interviewing
14 Starr Bowman?

15 A. That's correct.

16 Q. Or had just completed interviewing Starr Bowman, something
17 along those lines. You were being updated on that?

18 A. Yes.

19 Q. You also received a report or information from the York
20 city police officer that conducted the investigation the
21 evening before?

22 A. That's correct.

23 Q. I'll show you what's been identified as Government Exhibit
24 Attachment E, which is the police report for Officer Joshua
25 Phillips. Do you see the beginning of the report, the first

1 section of it? It says Joshua Phillips, July 5, 2017.

2 A. Right.

3 Q. It says on July 5, 2017 at about 2221 hours a known
4 domestic violence victim reported a disturbance to police on
5 the 500 block of South Queen Street, investigation continues,
6 detective follow-up requested.

7 A. That's correct.

8 Q. There is a supplemental report that appears to be written
9 the next day at 2:45.

10 A. That's correct.

11 Q. That's only three hours later, or four hours later, is
12 that right?

13 A. Yes.

14 Q. But in that supplemental report what's the first line of
15 the date indicate?

16 A. On 7-6-2017 at about 2221 hours.

17 Q. Based on the CAD report and the document which is
18 identified above, that appears to be a typo, doesn't it?

19 A. That does.

20 Q. So this is reporting something that's happening eighteen
21 hours in the future?

22 A. That's correct.

23 Q. If he's writing this report at 2:45 a.m.?

24 A. That's correct.

25 Q. You were shown a document, your police criminal complaint.

1 So it looks like at the bottom of your police criminal
2 complaint, I think this is Defense Exhibit 5, where you had
3 July 6th, 2017 identified as 8:00 a.m., the date of the event,
4 6 July 2017 at 8:00 a.m., do you know how this --

5 A. Yes.

6 Q. -- confusion of the dates got in your complaint and the
7 reports in which you read and how it got that way?

8 A. Yes. What it --

9 Q. Well, let me withdraw the question and back from it.
10 Let's look at your affidavit of probable cause. In your
11 affidavit supporting the criminal complaint do you have a date
12 and time that this event happened?

13 A. Yes. July 5th, 2017.

14 Q. This is paragraph 5 of your affidavit, July 5th of 2017?

15 A. Yes.

16 Q. Starr Bowman indicated that she had left her dwelling to
17 go to a neighbor's house to get some prescription medication
18 which were hers. Then she advised she left 515 South Queen
19 Street. Her boyfriend Ernest Dyer Bowman indicated that when
20 she returned to the house a verbal altercation ensued between
21 her and Dyer and so forth. So July 5th, 2017 in your
22 affidavit?

23 A. Yes.

24 Q. But on the bottom of the page you mistakenly put July 6th?

25 A. Yes. I think that was entered by the recording system.

1 I don't think I entered this. It's a typo, clerical mistake.

2 Q. Yes, had to be corrected, didn't get corrected?

3 A. Yes.

4 Q. Just to be clear, in your affidavit of probable cause for
5 the search warrant you did not indicate that Starr Bowman said
6 that Ernest Dyer shot at her?

7 A. That's correct.

8 Q. At that point on July 6th, 2017 had you interviewed Starr
9 Bowman, you had not personally interviewed Starr Bowman, is
10 that right?

11 A. That's correct.

12 Q. You had not interviewed?

13 A. No, I had not.

14 Q. You were relying on what was summarized in her statement,
15 is that right?

16 A. That's correct.

17 Q. I'm showing you as I ask the questions Government's
18 Exhibit G, Attachment G. That written statement doesn't
19 indicate that she was shot at?

20 A. That's correct.

21 Q. But what she was telling the officers that day about what
22 had happened will be on the audio and video recording what she
23 said on July 6th, is that right?

24 A. That's correct.

25 Q. And also memorialized in the moment that she was calling

1 the 911 as identified in this CAD report, Defense Exhibit
2 Number 1?

3 A. That's correct.

4 Q. Which says she was shot at July 23rd -- sorry, July 5,
5 2017, and this is in the report again at 10:23 and 11 seconds
6 p.m.?

7 A. That's correct.

8 MR. CONSIGLIO: Okay. Your Honor, with that I have no
9 further questions for this witness.

10 THE COURT: Recross?

11 MR. KOVATCH: Very briefly, Your Honor.

12 Q. Officer Baker, regarding the questions Attorney Consiglio
13 just asked you, is it fair to say that the affidavit of
14 probable cause and her written statement do contain
15 inconsistencies?

16 A. Which inconsistencies are you speaking of? Sorry.

17 Q. Well, specifically in your affidavit of probable cause,
18 number 5, you indicated on 7-5-17 Starr Bowman indicates she
19 had left her dwelling to go to the neighbor's house to get some
20 prescription medication which were hers. Number 6, Bowman
21 advised she lives at 515 South Queen Street in York with Bowman
22 -- or with Dyer. 7, Bowman indicates that when she returned to
23 the house, a verbal altercation ensued between her and Dyer.
24 And that's when he brandished the weapon and struck her.

25 A. Yes.

1 Q. In the statement that she provides on July 5th she
2 indicates that she went to her neighbor's house to grab thyroid
3 medication, but then Ernest seen her leaving and confronted her
4 in the backyard.

5 A. Okay.

6 Q. So you would agree with me that the affidavit of probable
7 cause is not specifically what Starr Bowman said on the 5th?

8 A. It's not verbatim what she said on the 5th --

9 Q. But --

10 A. -- in the statement.

11 Q. But she indicates in the statement that the assault
12 occurred because he saw her leaving the neighbor's house.
13 In the affidavit of probable cause it indicates she returned
14 back to her residence at 5:15, an altercation occurred, and
15 that's when she was struck.

16 A. Well, but this can be construed either way. I don't know
17 if she's leaving out the back door, coming back from getting
18 the medication, leaving out the back door of -- I mean, Starr
19 Bowman is going to have to be the one who testifies to this.
20 I'm not --

21 Q. So, Detective, you would agree with me that we have the
22 call log from Starr Bowman indicating that this event occurred
23 at 10:23 p.m. on the 5th, and we have Summer Bowman's
24 statements indicating that this -- or Starr Bowman's statements
25 that this assault occurred. But other than Starr, do we have

1 any sort of corroborating evidence --

2 A. No.

3 Q. -- prior to your search warrant on 7-7?

4 A. No, prior -- her statements and the injuries sustained,
5 which is based on her statements, that's correct.

6 Q. No medical records?

7 A. No, there was no medical treatment for her injuries.

8 Q. Nothing to corroborate her?

9 A. That's correct.

10 MR. KOVATCH: That's all the questions, Your Honor.

11 THE COURT: You may step down. You're excused.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Any other witnesses?

14 MR. CONSIGLIO: No other witnesses, Your Honor.

15 MR. KOVATCH: Your Honor, the defense is not
16 presenting any witnesses today.

17 MR. CONSIGLIO: I apologize, Your Honor, one thing
18 before I leave the record on this. I do have Attachments A
19 through K that I made reference to throughout the proceedings.
20 I ask that they be admitted.

21 THE COURT: I don't have K.

22 MR. CONSIGLIO: Oh.

23 THE COURT: Back here is through J.

24 MR. CONSIGLIO: J? I added the 4473 exhibit during
25 the proceedings.

1 THE COURT: Any objection to their admission? Any
2 objection?

3 MR. KOVATCH: No, Your Honor, no objection.

4 THE COURT: They are admitted. Now, as I understand
5 it, defendant wishes to file a supplemental brief addressing
6 the video only.

7 MR. KOVATCH: I would like to opportunity to review
8 the transcript, Your Honor, and supplement it with any
9 testimony that was provided.

10 (Discussion held off the record.)

11 MR. KOVATCH: Your Honor, I would request that the
12 transcript be provided.

13 THE COURT: All right. When I know the transcript has
14 been filed I'll issue an order giving deadlines for any
15 supplemental briefing.

16 MR. KOVATCH: Thank you, Your Honor.

17 THE COURT: Court is adjourned.

18 (Hearing concluded at 12:40 p.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

USA vs. Ernest Kyle Dyer

1:17-CR-00226-SHR-01

Evidence Suppression Hearing

7 August 2019

I, Wesley J. Armstrong, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 14th day of August 2019

/s/ Wesley J. Armstrong

Wesley J. Armstrong

Registered Merit Reporter

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : NO. 1:17-CR-
:
v. : (Judge Rambo)
:
ERNEST DYER, : (electronically filed)
Defendant. :

PLEA AGREEMENT

The following Plea Agreement is entered by the United States Attorney for the Middle District of Pennsylvania and the above-captioned defendant. Any reference to the United States or to the Government in this Agreement shall mean the Office of the United States Attorney for the Middle District of Pennsylvania.

A. Violation(s), Penalties, and Dismissal of Other Counts

1. Guilty plea. The defendant agrees to plead guilty to Count One of the Superseding Indictment, which charges the defendant with a violation of Title 18, United States Code, § 922(g), felon in possession of a firearm. The maximum penalty for that offense is imprisonment for a period of ten years, a fine of \$250,000, a maximum term of supervised release of three years, which shall be served at the conclusion of, and in addition to,

any term of imprisonment, as well as the costs of prosecution, imprisonment, probation, or supervised release ordered, denial of certain federal benefits, and an assessment in the amount of \$100. At the time the guilty plea is entered, the defendant shall admit to the court that the defendant is, in fact, guilty of the offense(s) charged in that count. After sentencing, the United States will move for dismissal of any remaining counts of the indictment. The defendant agrees, however, that the United States may, at its sole election, reinstate any dismissed charges, or seek additional charges, in the event that any guilty plea entered or sentence imposed pursuant to this Agreement is subsequently vacated, set aside, or invalidated by any court. The defendant further agrees to waive any defenses to reinstatement of any charges, or to the filing of additional charges, based upon laches, the assertion of speedy trial rights, any applicable statute of limitations, or any other ground. The calculation of time under the Speedy Trial Act for when trial

must commence is tolled as of the date of the defendant's signing of this Plea Agreement.

2. Term of Supervised Release. The defendant understands that the court must impose a term of supervised release following any sentence of imprisonment exceeding one year, or when required by statute. In addition, the defendant understands that as a condition of any term of supervised release or probation, the court must order that the defendant cooperate in the collection of a DNA sample if the collection of a sample is so authorized by law.
3. No Further Prosecution, Except Tax Charges. The United States Attorney's Office for the Middle District of Pennsylvania agrees that it will not bring any other criminal charges against the defendant directly arising out of the defendant's involvement in the offense(s) described above. However, nothing in this Agreement will limit prosecution for criminal tax charges, if any, arising out of those offenses.

B. Fines and Assessments

4. Fine. The defendant understands that the court may impose a fine pursuant to the Sentencing Reform Act of 1984. The willful failure to pay any fine imposed by the court, in full, may be considered a breach of this Plea Agreement. Further, the defendant acknowledges that willful failure to pay the fine may subject the defendant to additional criminal violations and civil penalties pursuant to Title 18, United States Code, § 3611, et seq.
5. Alternative Fine. The defendant understands that under the alternative fine section of Title 18, United States Code, § 3571, the maximum fine quoted above may be increased if the court finds that any person derived pecuniary gain or suffered pecuniary loss from the offense and that the maximum fine to be imposed, if the court elects to proceed in this fashion, could be twice the amount of the gross gain or twice the amount of the gross loss resulting from the offense.
6. Inmate Financial Responsibility Program. If the court orders a fine or restitution as part of the defendant's sentence, and the

sentence includes a term of imprisonment, the defendant agrees to voluntarily enter the United States Bureau of Prisons-administered program known as the Inmate Financial Responsibility Program, through which the Bureau of Prisons will collect up to 50% of the defendant's prison salary, and up to 50% of the balance of the defendant's inmate account, and apply that amount on the defendant's behalf to the payment of the outstanding fine and restitution orders.

7. Special Assessment. The defendant understands that the court will impose a special assessment of \$100, pursuant to the provisions of Title 18, United States Code, § 3013. No later than the date of sentencing, the defendant or defendant's counsel shall mail a check in payment of the special assessment directly to the Clerk, United States District Court, Middle District of Pennsylvania. If the defendant intentionally fails to make this payment, that failure may be treated as a breach of this Plea Agreement and may result in further prosecution, the filing of additional criminal charges, or a contempt citation.

8. Collection of Financial Obligations. In order to facilitate the collection of financial obligations imposed in connection with this case, the defendant consents and agrees:
- a. to fully disclose all assets in which the defendant has an interest or over which the defendant has control, directly or indirectly, including those held by a spouse, nominee, or other third party;
 - b. to submit to interviews by the Government regarding the defendant's financial status;
 - c. to submit a complete, accurate, and truthful financial statement, on the form provided by the Government, to the United States Attorney's Office no later than 14 days following entry of the guilty plea;
 - d. whether represented by counsel or not, to consent to contact by and communication with the Government, and to waive any prohibition against communication with a represented party by the Government regarding the defendant's financial status;

- e. to authorize the Government to obtain the defendant's credit reports in order to evaluate the defendant's ability to satisfy any financial obligations imposed by the court; and
- f. to submit any financial information requested by the Probation Office as directed, and to the sharing of financial information between the Government and the Probation Office.

C. Sentencing Guidelines Calculation

9. Determination of Sentencing Guidelines. The defendant and counsel for both parties agree that the United States Sentencing Commission Guidelines, which took effect on November 1, 1987, and its amendments, as interpreted by *United States v. Booker*, 543 U.S. 220 (2005), will apply to the offense or offenses to which the defendant is pleading guilty. The defendant further agrees that any legal and factual issues relating to the application of the Federal Sentencing Guidelines to the defendant's conduct, including facts to support any specific offense characteristic or other enhancement or adjustment and

the appropriate sentence within the statutory maximums provided for by law, will be determined by the court after briefing, a pre-sentence hearing, and/or a sentencing hearing.

10. 16. Acceptance of Responsibility– Two/Three Levels. If the defendant can adequately demonstrate recognition and affirmative acceptance of responsibility to the Government as required by the Sentencing Guidelines, the Government will recommend that the defendant receive a two- or three-level reduction in the defendant's offense level for acceptance of responsibility. The third level, if applicable, shall be within the discretion of the Government under U.S.S.G. § 3E1.1. The failure of the Court to find that the defendant is entitled to a reduction shall not be a basis to void this Agreement.
11. Specific Sentencing Guidelines Recommendations. With respect to the application of the Sentencing Guidelines to the defendant's conduct, the parties agree to recommend as follows:
A four-level enhancement for possession of a firearm in relation to another felony offense, specifically drug trafficking, shall

apply per U.S.S.G. §2K2.1(b)(6)(B). Each party reserves the right to make whatever remaining arguments it deems appropriate with regard to application of the United States Sentencing Commission Guidelines to the defendant's conduct. The defendant understands that none of these recommendations is binding upon either the court or the United States Probation Office, which may make different findings as to the application of the Sentencing Guidelines to the defendant's conduct. The defendant further understands that the United States will provide the court and the United States Probation Office all information in its possession that it deems relevant to the application of the Sentencing Guidelines to the defendant's conduct.

D. Sentencing Recommendation

12. Appropriate Sentence Recommendation. At the time of sentencing, the United States may make a recommendation that it considers appropriate based upon the nature and circumstances of the case and the defendant's participation in

the offense, and specifically reserves the right to recommend a sentence up to and including the maximum sentence of imprisonment and fine allowable, together with the cost of prosecution.

13. Special Conditions of Supervised Release. If probation or a term of supervised release is ordered, the United States may recommend that the court impose one or more special conditions, including but not limited to the following:
- a. The defendant be prohibited from possessing a firearm or other dangerous weapon.
 - b. The defendant make restitution, if applicable, the payment of which shall be in accordance with a schedule to be determined by the court.
 - c. The defendant pay any fine imposed in accordance with a schedule to be determined by the court.
 - d. The defendant be prohibited from incurring new credit charges or opening additional lines of credit without

approval of the Probation Office unless the defendant is in compliance with the payment schedule.

- e. The defendant be directed to provide the Probation Office and the United States Attorney access to any requested financial information.
- f. The defendant be placed under home confinement.
- g. The defendant be ordered to perform community service.
- h. The defendant be restricted from working in certain types of occupations or with certain individuals, if the Government deems such restrictions to be appropriate.
- i. The defendant be directed to attend substance abuse counseling, which may include testing to determine whether the defendant is using drugs or alcohol.
- j. The defendant be directed to attend psychiatric or psychological counseling and treatment in a program approved by the Probation Officer.
- k. The defendant be denied certain federal benefits including contracts, grants, loans, fellowships and licenses.

1. The defendant be directed to pay any state or federal taxes and file any and all state and federal tax returns as required by law.

E. Information Provided to Court and Probation Office

14. Background Information for Probation Office. The defendant understands that the United States will provide to the United States Probation Office all information in its possession that the United States deems relevant regarding the defendant's background, character, cooperation, if any, and involvement in this or other offenses.
15. Objections to Pre-Sentence Report. The defendant understands that pursuant to the United States District Court for the Middle District of Pennsylvania "Policy for Guideline Sentencing" both the United States and defendant must communicate to the Probation Officer within 14 days after disclosure of the pre-sentence report any objections they may have as to material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the

report. The defendant agrees to meet with the United States at least five days prior to sentencing in a good faith attempt to resolve any substantive differences. If any issues remain unresolved, they shall be communicated to the Probation Officer for inclusion in an addendum to the pre-sentence report. The defendant agrees that unresolved substantive objections will be decided by the court after briefing, or a pre-sentence hearing, or at the sentencing hearing where the standard of proof will be a preponderance of the evidence, and the Federal Rules of Evidence, other than with respect to privileges, shall not apply under Fed. R. Evid. 1101(d)(3), and the court may consider any reliable evidence, including hearsay. Objections by the defendant to the pre-sentence report or the court's rulings, will not be grounds for withdrawal of a plea of guilty.

16. Relevant Sentencing Information. At the sentencing, the United States will be permitted to bring to the court's attention, and the court will be permitted to consider, all relevant information about the defendant's background, character and

conduct, including the conduct that is the subject of the charges that the United States has agreed to dismiss, and the nature and extent of the defendant's cooperation, if any. The United States will be entitled to bring to the court's attention and the court will be entitled to consider any failure by the defendant to fulfill any obligation under this Agreement.

17. Non-Limitation on Government's Response. Nothing in this Agreement shall restrict or limit the nature or content of the United States' motions or responses to any motions filed on behalf of the defendant. Nor does this Agreement in any way restrict the government in responding to any request by the court for briefing, argument or presentation of evidence regarding the application of Sentencing Guidelines to the defendant's conduct, including but not limited to, requests for information concerning possible sentencing departures.

F. Court Not Bound by Plea Agreement

18. Court Not Bound by Terms. The defendant understands that the court is not a party to and is not bound by this Agreement,

or any recommendations made by the parties. Thus, the court is free to impose upon the defendant any sentence up to and including the maximum sentence of imprisonment for ten years, a fine of \$250,000, a maximum term of supervised release of up to three years, which shall be served at the conclusion of and in addition to any term of imprisonment, the costs of prosecution, denial of certain federal benefits, and assessments totaling \$100.

19. No Withdrawal of Plea Based on Sentence or Recommendations.

If the court imposes a sentence with which the defendant is dissatisfied, the defendant will not be permitted to withdraw any guilty plea for that reason alone, nor will the defendant be permitted to withdraw any pleas should the court decline to follow any recommendations by any of the parties to this Agreement.

G. Breach of Plea Agreement by Defendant

20. Breach of Agreement. In the event the United States believes the defendant has failed to fulfill any obligations under this

Agreement, then the United States shall, in its discretion, have the option of petitioning the court to be relieved of its obligations. Whether the defendant has completely fulfilled all of the obligations under this Agreement shall be determined by the court in an appropriate proceeding during which any disclosures and documents provided by the defendant shall be admissible, and during which the United States shall be required to establish any breach by a preponderance of the evidence. In order to establish any breach by the defendant, the United States is entitled to rely on statements and evidence given by the defendant during the cooperation phase of this Agreement, if any.

21. Remedies for Breach. The defendant and the United States agree that in the event the court concludes that the defendant has breached the Agreement:
- a. The defendant will not be permitted to withdraw any guilty plea tendered under this Agreement and agrees not to petition for withdrawal of any guilty plea;

- b. The United States will be free to make any recommendations to the court regarding sentencing in this case;
- c. Any evidence or statements made by the defendant during the cooperation phase of this Agreement, if any, will be admissible at any trials or sentencings;
- d. The United States will be free to bring any other charges it has against the defendant, including any charges originally brought against the defendant or which may have been under investigation at the time of the plea. The defendant waives and hereby agrees not to raise any defense to the reinstatement of these charges based upon collateral estoppel, Double Jeopardy, or other similar grounds.

22. Violation of Law While Plea or Sentence Pending. The defendant understands that it is a condition of this Plea Agreement that the defendant refrain from any further violations of state, local, or federal law while awaiting plea and sentencing under this Agreement. The defendant acknowledges

and agrees that if the government receives information that the defendant has committed new crimes while awaiting plea or sentencing in this case, the government may petition the court and, if the court finds by a preponderance of the evidence that the defendant has committed any other criminal offense while awaiting plea or sentencing, the Government shall be free at its sole election to either: (a) withdraw from this Agreement; or (b) make any sentencing recommendations to the court that it deems appropriate. The defendant further understands and agrees that, if the court finds that the defendant has committed any other offense while awaiting plea or sentencing, the defendant will not be permitted to withdraw any guilty pleas tendered pursuant to this Plea Agreement, and the government will be permitted to bring any additional charges that it may have against the defendant.

H. Deportation

23. Deportation/Removal from the United States. The defendant understands that, if defendant is not a United States citizen,

deportation/removal from the United States is a possible consequence of this plea. The defendant further agrees that this matter has been discussed with counsel who has explained the immigration consequences of this plea. Defendant still desires to enter into this plea after having been so advised.

I. Appeal Waiver

24. Conditional Appeal Waiver. The defendant is aware that Title 28, United States Code, § 1291 affords a defendant the right to appeal a judgment of conviction and sentence; and that Title 18, United States Code, § 3742(a) affords a defendant the right to appeal the sentence imposed. Acknowledging all of this, the defendant knowingly waives the right to appeal the conviction and sentence, on the express condition that the defendant reserve the right to appeal the adverse suppression ruling issued by this court on November 21, 2019, at docket number 154.

This conditional waiver includes any and all possible grounds for appeal, whether constitutional or non-constitutional,

including, but not limited to, the manner in which that sentence was determined in light of *United States v. Booker*, 543 U.S. 220 (2005). The defendant further acknowledges that this conditional appeal waiver is binding only upon the defendant and that the United States retains its right to appeal in this case.

25. Collateral Appeal Waiver. The defendant acknowledges, understands and agrees that, by pleading guilty pursuant to this Agreement, the defendant voluntarily and knowingly waives the right to collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, including but not limited to a motion to vacate judgment under Title 28, United States Code, Section 2255; a petition for a writ of habeas corpus under Title 28, United States Code, Section 2241; or any other motion or writ seeking collateral relief. However, no provision of this agreement shall preclude the defendant from pursuing in an appropriate forum any appeal, collateral attack, writ, or motion claiming that the

defendant received constitutionally ineffective assistance of counsel. In the event the defendant raises a claim of ineffective assistance of counsel, the defendant hereby agrees (a) that the Government retains its right to oppose any such claim on procedural or substantive grounds; and (b) that counsel for the United States may confer with any of the defendant's prior counsel whose performance is attacked in such a claim, for purposes of preparing any response or for any hearing necessitated by the filing of such a claim.

26. Appeal Waiver Breach. The defendant acknowledges that pursuing a direct appeal or any collateral attack waived in the preceding paragraph(s) may constitute a breach of this Agreement. The Government agrees that the mere filing of a notice of appeal is not a breach of the Agreement. The Government may declare a breach only after the defendant or the defendant's counsel thereafter states, either orally or in writing, a determination to proceed with an appeal or collateral attack raising an issue the Government deems barred by the

waiver. The parties acknowledge that the pursuit of an appeal or any collateral attack constitutes a breach only if a court determines that the appeal or collateral attack does not present an issue that a judge may reasonably conclude is permitted by an exception to the waiver stated in the preceding paragraph(s) or constitutes a “miscarriage of justice” as that term is defined in applicable law.

J. Other Provisions

27. Agreement Not Binding on Other Agencies. Nothing in this Agreement shall bind any other United States Attorney’s Office, state prosecutor’s office, or federal, state or local law enforcement agency.
28. No Civil Claims or Suits. The defendant agrees not to pursue or initiate any civil claims or suits against the United States of America, its agencies or employees, whether or not presently known to the defendant, arising out of the investigation, prosecution or cooperation, if any, covered by this Agreement, including but not limited to any claims for attorney’s fees and

other litigation expenses arising out of the investigation and prosecution of this matter. By the defendant's guilty plea in this matter the defendant further acknowledges that the Government's position in this litigation was taken in good faith, had a substantial basis in law and fact and was not vexatious.

29. Plea Agreement Serves Ends of Justice. The United States is entering into this Plea Agreement with the defendant because this disposition of the matter fairly and adequately addresses the gravity of the series of offenses from which the charges are drawn, as well as the defendant's role in such offenses, thereby serving the ends of justice.

30. Merger of All Prior Negotiations. This document states the complete and only Plea Agreement between the United States Attorney for the Middle District of Pennsylvania and the defendant in this case, and is binding only on the parties to this Agreement and supersedes all prior understandings or plea offers, whether written or oral. This agreement cannot be modified other than in writing that is signed by all parties or on

the record in court. No other promises or inducements have been or will be made to the defendant in connection with this case, nor have any predictions or threats been made in connection with this plea. Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the defendant certifies that the defendant's plea is knowing and voluntary, and is not the result of force or threats or promises apart from those promises set forth in this written Plea Agreement.

31. Defendant is Satisfied with Assistance of Counsel. The

Defendant agrees that the defendant has discussed this case and this plea agreement in detail with the defendant's attorney who has advised the defendant of the defendant's Constitutional and other trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, possible defenses, the advisory Sentencing Guidelines and other aspects of sentencing, potential losses of civil rights and privileges, and other potential consequences of pleading guilty

in this case. The defendant agrees that the defendant is satisfied with the legal services and advice provided to the defendant by the defendant's attorney.

32. Deadline for Acceptance of Plea Agreement. The original of this Agreement must be signed by the defendant and defense counsel and received by the United States Attorney's Office on or before 5:00 p.m., May 5, 2021, otherwise the offer may, in the sole discretion of the Government, be deemed withdrawn.

33. Required Signatures. None of the terms of this Agreement shall be binding on the Office of the United States Attorney for the Middle District of Pennsylvania until signed by the defendant and defense counsel and then signed by the United States Attorney or his designee.

ACKNOWLEDGMENTS


I have read this agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

5/5/21
Date

Ernest Dyer
ERNEST DYER
Defendant

I am the defendant's counsel. I have carefully reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

5/5/21
Date


PAUL KOVATCH, ESQ.
Counsel for Defendant

[I certify that the plea agreement was read in its entirety to the defendant in the _____ language and that it was a true and accurate translation.


Date

INTERPRETER]

BRUCE D. BRANDLER
Acting United States Attorney

5/5/2021
Date

By:


MICHAEL A. CONSIGLIO
Assistant United States Attorney

AUSA/mac/May 3, 2021
VERSION DATE: November 27, 2017

1 P R O C E E D I N G S

2 THE COURT: Good morning, everyone.

3 MR. KOVATCH: Good morning, Your Honor.

4 MR. CONSIGLIO: Good morning.

5 THE COURT: Mr. Consiglio, will you call your case?

6 MR. CONSIGLIO: Yes, Your Honor. If it pleases the
7 Court, the government calls its case against Ernest Dyer, at
8 docket number 1:17-CR-226. He is present today in court with
9 his counsel, and we're scheduled for a guilty plea proceeding.

10 THE COURT: Mr. Dyer, before I can accept your change
11 of plea it will be necessary for me to advise you of your
12 rights and the consequences of you plea. You will be placed
13 under oath and I will ask questions of you, and you should be
14 advised that if you give me any false answers you could be
15 subject to be charged with perjury or false swearing. Do you
16 understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you want to take your mask off during
19 this episode? Are you Ernest Kyle Dyer?

20 THE DEFENDANT: Yes.

21 THE COURT: How old are you?

22 THE DEFENDANT: I think about forty-eight.

23 THE COURT: Pardon?

24 THE DEFENDANT: Forty-eight.

25 THE COURT: How far have you gone in school?

1 THE DEFENDANT: Twelfth.

2 THE COURT: Excuse me, I'm going to have you sworn.

3 THE DEFENDANT: Okay.

4 (The defendant was sworn by the courtroom deputy.)

5 EXAMINATION BY THE COURT:

6 Q. Sorry. How far have you gone in school?

7 A. Twelfth grade.

8 Q. You speak English, is that correct?

9 A. Yes.

10 Q. Have you taken any drugs or alcohol before coming into
11 court today?

12 A. No.

13 Q. Have you taken any medicine of any kind before coming into
14 court today?

15 A. No.

16 Q. Now, you do understand that you are entitled to retain a
17 not guilty plea and proceed to a jury trial in this matter.
18 At a jury trial you would participate with counsel in the
19 selection of a jury consisting of twelve persons, and at the
20 trial the government would have the responsibility of proving
21 each and every element of the crime charged against you beyond
22 a reasonable doubt, and you're presumed innocent until that
23 burden is met.

24 At a trial you would have the opportunity to cross
25 examine any witnesses the government would present, and you in

1 turn would have the opportunity to present evidence on your own
2 behalf, although you're not required to do so. Any finding of
3 guilt by a jury would have to be unanimous. That is, all
4 twelve jurors would have to agree. Do you understand your
5 right to a jury trial?

6 A. Yes, ma'am.

7 Q. Is it your intention to give up that right and enter a
8 plea of guilty to this offense?

9 A. Yes, it is.

10 Q. Now, you do understand that this offense carries a penalty
11 of a period of, excuse me, of ten years in prison, a fine of
12 \$250,000, or both, a term of supervised release of three years,
13 costs of prosecution, denial of certain federal benefits, and a
14 special assessment of \$100.

15 The term of supervised release is a term that would
16 be served after any term, after you serve your term in prison,
17 and should you do a violation of any of the terms of supervised
18 release you could be returned to prison. Do you understand
19 that?

20 A. Yes.

21 (Brief pause.)

22 THE COURT: Now, there is a plea agreement in this
23 matter, and I would ask Mr. Consiglio to state the essence of
24 the plea agreement for the record.

25 MR. CONSIGLIO: Thank you, Your Honor. Per the plea

1 agreement the defendant is going to enter a guilty plea to
2 Count 1 of the superseding indictment, which charges a
3 violation of Title 18, United States Code, Section 922(g), a
4 felon in possession of a firearm, and face the maximum
5 punishments and fines as the Court described a few moments ago.

6 In addition, if the defendant appropriately accepts
7 responsibility for his role in the offense, the government will
8 recommend a reduction of a sentence and guideline calculation
9 of up to three levels in light of his acceptance of
10 responsibility.

11 In addition, Your Honor, in paragraph 11 of the plea
12 agreement there is specific guideline recommendations, and the
13 parties will recommend to the Court and the probation office
14 that a four-level enhancement for possession of a firearm in
15 relation to another felony offense, specifically drug
16 trafficking, shall apply, and that's pursuant to sentencing
17 guideline Section 2K2.1B6B. In addition, Your Honor, there is
18 an appellate waiver, and that those conditions are outlined in
19 paragraph 24, 25, and 26 of the plea agreement.

20 BY THE COURT:

21 Q. Is that your understanding of the plea agreement?

22 A. Yes.

23 Q. Have you gone over this plea agreement with counsel
24 paragraph by paragraph?

25 A. Yes.

1 Q. Do you have any questions concerning any paragraph in that
2 plea agreement?

3 (Brief pause.)

4 A. Page 8.

5 Q. 8?

6 A. Bottom, the four-level enhancement.

7 (Brief pause.)

8 Q. What is your question concerning that?

9 A. Can we give just a little bit -- I understand it vaguely.
10 Can you elaborate just a little bit more so I get a better
11 understanding of it?

12 THE COURT: Well, you possessed a firearm in relation
13 to another felony offense. Mr. Consiglio, do you wish to
14 explain it further?

15 MR. CONSIGLIO: Your Honor, yes, I can explain it
16 further. Specifically, Your Honor, and Mr. Dyer, when the Court
17 has to calculate sentencing guidelines, the Court has to decide
18 by a preponderance of the evidence, whether it's more likely
19 than not, certain facts related to the conduct in this case,
20 and what we are agreeing to in this paragraph is that not only
21 did you possess this firearm as a felon, as a person who is not
22 allowed by law to possess a firearm, is that the firearm was
23 possessed in relationship to another crime, and that crime was
24 drug trafficking, and that there was drug trafficking happening
25 in the household, and that part of the possession of the

1 firearm was in relation to that because of some other issues
2 and concerns that were happening in and outside of the
3 household and the community that this firearm was needed
4 essentially for protection.

5 BY THE COURT:

6 Q. Do you further understand that?

7 (Brief pause.)

8 A. Okay, that's what I wanted to know. I understand it
9 better now.

10 Q. You understand it?

11 A. Yes.

12 Q. Do you further understand that if you are not a citizen of
13 the United States you could be deported as a result of this
14 offense? Are you a citizen of the United States?

15 A. Yes, I am, ma'am.

16 Q. Okay. Now, have there been any threats against you or any
17 member of your family to enter into this plea agreement?

18 A. No, ma'am.

19 Q. Have there been any other promises made to you by anyone
20 that have not been set forth in this plea agreement?

21 A. No.

22 Q. Are you satisfied with the representation you have
23 received from your counsel to date?

24 A. Yes.

25 Q. Has he advised you of the elements that go into your

1 pleading guilty to this offense what the elements of the
2 offense are?

3 A. Yes.

4 Q. And has he advised you of your rights to appeal?

5 A. Yes.

6 Q. Now, in this event you are reserving the right to appeal
7 my ruling on the suppression hearing, correct?

8 A. Yes.

9 Q. You do not waive your right to appeal on any allegation of
10 incompetency of counsel however. Do you understand that?

11 A. Yes.

12 Q. I show you a document that is the plea agreement. Do you
13 have the original there?

14 A. Yes.

15 Q. Is that your signature?

16 A. Yes, it is, ma'am.

17 Q. Do you have any other questions of this Court concerning
18 anything in that plea agreement?

19 A. No.

20 THE COURT: Mr. Consiglio, will you state what facts
21 you would present in support of this charge?

22 MR. CONSIGLIO: Yes, Your Honor. If required to go
23 to trial the government would present some of the following
24 evidence to establish the defendant's guilt in this offense,
25 that in late June of 2017 local law enforcement, in conjunction

1 with some federal authorities, began an investigation of
2 Mr. Dyer and his household in the city of York, and
3 particularly the address of 515 South Queen Street in York.

4 On or about July 7, 2017 they executed a search
5 warrant at that location, and in that location they found the
6 defendant Ernest Dyer. When he was found there, they took him
7 into custody, read his Miranda rights. He waived his rights.
8 They asked him questions about whether there was a firearm in
9 the residence, and he indicated there was and he directed them
10 to a location in the home where there was a carpet cleaner.

11 The defendant opened the carpet cleaner and retrieved
12 a Highpoint Iberia Model JCP forty caliber semiautomatic
13 handgun, and this handgun had a serial number of X7295647, and
14 there was a cartridge with ammunition inside of the firearm.

15 If required to go to trial the government would
16 provide evidence, first, that the defendant possessed this
17 firearm, the firearm specifically described that he had
18 directed the officers to, and second, at the time the defendant
19 possessed this firearm he was a prohibited person, specifically
20 he had prior convictions in state court that prohibited him
21 from possessing a firearm because of the period of
22 incarceration was in excess of one year as described by law.

23 And finally, that this particular firearm, the Iberia
24 Highpoint forty caliber semiautomatic handgun, was not
25 manufactured in the Commonwealth of Pennsylvania. Rather, it

1 traveled in interstate commerce. More specifically that this
2 firearm had been purchased approximately a month and a half
3 earlier from Gander Mountain in May of 2017, and that that
4 firearm had traveled in interstate commerce before it had
5 reached Gander Mountain's store.

6 BY THE COURT:

7 Q. Do you agree that you were in possession of this firearm
8 as mentioned by Mr. Consiglio?

9 A. Yes.

10 Q. And that it was your firearm?

11 A. Yes.

12 Q. And do you understand that that firearm had crossed state
13 lines? That's where the interstate commerce element comes in.

14 A. No, I don't understand that part.

15 Q. Okay. He will show, he would show at trial that this gun
16 was transferred into Pennsylvania from another area. That's
17 what we get the interstate commerce. Do you understand that?

18 MR. KOVATCH: Your Honor, may I have one moment?

19 THE COURT: Yes.

20 (Brief pause.)

21 THE DEFENDANT: Okay, I get it now.

22 BY THE COURT:

23 Q. Do you understand?

24 A. Yes.

25 Q. And that you were a prohibited person from carrying a

1 firearm. Do you understand that?

2 A. Yes.

3 Q. Because of the prior felony. Do you understand that?

4 A. Yes.

5 Q. Do you have any questions concerning the facts against or
6 do you agree with the recitation that Mr. Consiglio made
7 concerning the charges against you?

8 A. Yes.

9 Q. Do you have any questions concerning those charges?

10 A. No.

11 Q. You do understand you do have the right to appeal my
12 ruling on your, on the suppression matter?

13 A. Yes.

14 Q. Okay. Do you have any other questions of the Court?

15 Now, what will happen is that you will be interviewed by a
16 probation officer to get your background, your history, your
17 family, organization and so forth, and you will have an
18 opportunity to review that presentence report and you will have
19 an opportunity to file objections to that report. Do you
20 understand that?

21 A. Yes.

22 Q. And that I will make a ruling on those objections. Do you
23 understand?

24 A. Yes.

25 Q. Do you have any questions concerning your rights or the

1 consequences of your plea?

2 A. No.

3 THE COURT: Then we'll enter this order, and now this
4 17th day of May, the year 2021, the Court finds the defendant
5 is acting voluntarily and not as a result of force or threats
6 or promises, apart from the plea agreement, and he understands
7 his rights and the consequences of his plea and voluntarily
8 waives his right to trial.

9 The Court is satisfied that this plea has a basis in
10 fact and contains all the elements of the crime charged. The
11 Court therefore permits the revocation of the not guilty plea,
12 accepts the plea of guilty to Count 1 of the superseding
13 indictment, and directs the entry of judgment of guilty on the
14 plea.

15 Sentencing is deferred pending receipt of the Court
16 of the presentence report, which shall be disclosed no later
17 than July 12, 2021. If counsel desires to file sentencing
18 memoranda, such shall be filed five days prior to the date of
19 sentencing. Anything further, Mr. Consiglio?

20 MR. CONSIGLIO: No, Your Honor.

21 THE COURT: Counsel?

22 MR. KOVATCH: Your Honor, yes. Actually, one thing
23 just for clarity regarding the plea. I just want to clarify
24 for my client's concern that we've entered a plea to a 922(g),
25 not a 924(c). So the 924(c) enhancements would not apply

1 because he has not pled to that charge.

2 The second, Your Honor, we have had a pre-plea
3 investigation in the case, so we would ask if we could expedite
4 sentencing. We would ask if that would be acceptable to the
5 Court if the PSI gets done in a timely fashion, if we could
6 petition the Court maybe to expedite sentencing once we have
7 things together.

8 And third, Your Honor, my client has requested that I
9 make an oral bail motion modification this morning for you to
10 consider a bail reduction in this case. I indicated to my
11 client that it may be appropriate, or more appropriately done
12 through a motion for, with a third party custodian. However,
13 Your Honor, I'm asking for an oral motion to amend bail today.

14 THE COURT: Mr. Consiglio?

15 MR. CONSIGLIO: Your Honor, we're opposed to him being
16 released on bail.

17 THE COURT: I don't have enough information about this
18 point to really grant your motion, sir. That's denied at this
19 time. Now, with regard to expedited, probation is pretty well
20 backlogged, I will tell you this.

21 PROBATION OFFICER: Your Honor, we do -- in this case
22 I did prepare a defendant's criminal history. It's already
23 complete.

24 THE COURT: Okay.

25 PROBATION OFFICER: I could do my best to get it done

1 faster than July, but I think that Mr. Kovatch also may be
2 disinclined if I got it done on time that maybe moving things a
3 little quicker than normal.

4 THE COURT: As soon as she gets done I will set a time
5 for sentencing immediately. Okay?

6 MR. KOVATCH: Thank you very much, Your Honor.

7 THE COURT: Okay. Thank you. Court is in recess until
8 we have an opportunity to look at the plea agreement in the
9 Annie Dyer matter. Okay?

10 (Court recessed at 9:54 a.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

USA vs. Ernest K. Dyer

1:17-CR-00226-SHR-01

Change of Plea Hearing

17 May 2021

I, Wesley J. Armstrong, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 27th day of November 2021

/s/ Wesley J. Armstrong

Wesley J. Armstrong

Registered Merit Reporter

UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

UNITED STATES OF AMERICA

v.

ERNEST KYLE DYER

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17-CR-226-01

USM Number:

Paul Kovatch, Esquire

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1 of the Superseding Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 922(g)(1)	Felon in Possession of a Firearm	7/7/2017	-1s-

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 2-5 of the ss indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/27/2021

Date of Imposition of Judgment

S/Sylvia H. Rambo

Signature of Judge

Sylvia H. Rambo, United States District Judge

Name and Title of Judge

10/27/2021

Date

DEFENDANT: ERNEST KYLE DYER
CASE NUMBER: 1:17-CR-226-01

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

One hundred ten (110) months.

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement at a facility near the York or Lancaster Pennsylvania area.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ERNEST KYLE DYER

CASE NUMBER: 1:17-CR-226-01

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three (3) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ERNEST KYLE DYER

CASE NUMBER: 1:17-CR-226-01

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines or special assessments.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ERNEST KYLE DYER
CASE NUMBER: 1:17-CR-226-01

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court. The defendant must not attempt to obstruct or tamper with the testing methods.
2. The defendant must cooperate in the collection of a DNA sample as directed by the probation officer.
3. The defendant must not use or possess any controlled substances without a valid prescription. If he does have a valid prescription, he must disclose the prescription information to the probation officer and follow the instructions on the prescription.
4. The defendant must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise participation in the program which could include an evaluation and completion of any recommended treatment. The defendant must take all mental health medications that are prescribed by your treating physician.
5. The defendant must apply all monies received from income tax refunds, lottery winnings, judgments, and/or other anticipated or unexpected financial gains to the outstanding Court-ordered financial obligation.
6. The defendant must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
7. The defendant must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.
8. The defendant must pay the financial penalty in accordance with the Schedule of Payments sheet of this judgment. He must also notify the court of any changes in economic circumstances that might affect the ability to pay this financial penalty.
9. The defendant must submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: ERNEST KYLE DYER
CASE NUMBER: 1:17-CR-226-01**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 900.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
---------------	----	-------------	----	-------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ERNEST KYLE DYER
CASE NUMBER: 1:17-CR-226-01

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 1,000.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
During the term of imprisonment, the fine is payable every three months in an amount, after a telephone allowance, equal to 50 percent of the funds deposited into the defendant's inmate trust fund account. In the event the fine is not paid in full prior to the commencement of supervised release, the defendant shall, as a condition of supervised release, satisfy the amount due in monthly installments of no less than \$50.00, to commence thirty (30) days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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

UNITED STATES OF AMERICA : CRIMINAL NO: 1:17-226

v.

: Judge Sylvia H. Rambo

ERNEST KYLE DYER

: Electronically Filed

FILED
HARRISBURG, PA

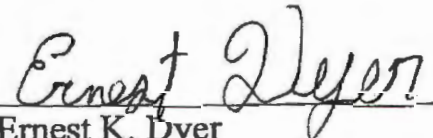
NOV 09 2021

NOTICE OF APPEAL

PER


DEPUTY CLERK

Notice is hereby given that Ernest Kyle Dyer, Defendant, appeals to the United States Court of Appeals for the Third Circuit from the November 21, 2019 Judgment and Order of The Honorable Sylvia H. Rambo (Docs 153-154) denying in part Defendant's Motion to Suppress Evidence (Doc 107) resulting in the October 27, 2021 Judgment of Sentence (Doc 234).


Ernest K. Dyer
Perry County Prison
300 South Carlisle Street
New Bloomfield, PA 17068

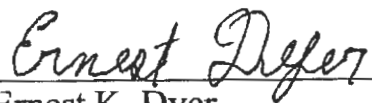
Dated: November 9, 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the individuals in the manner listed below.

Via Hand Delivery:

Assistant United States Attorney Michael A. Consiglio
228 Walnut Street, Suite 220
Harrisburg, PA 17101



Ernest K. Dyer
Perry County Prison
300 South Carlisle Street
New Bloomfield, PA 17068

Dated: November 9, 2021

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 21-3087

USA v. Ernest Dyer

(U.S. District Court No. 1-17-cr-00226-001)

ORDER REGARDING APPOINTMENT OF COUNSEL

Kenneth W. Mishoe, Esq. is hereby appointed to represent Ernest Kyle Dyer on appeal. The appointment will be created in the Court's eVoucher program. Counsel is directed to the eVoucher page for information regarding the appointment terms and procedures.

CJA 20, 30, 21 and 31 vouchers are submitted for payment through the Court's eVoucher program. Upon receiving separate email notification of this appointment from the Court's CJA staff, counsel may create CJA 20, 30, 21 and 31 vouchers for use in maintaining time and expense records and paying for expert services.

Authorization for preparation of transcripts must be obtained in the District Court. Deadlines for ordering and filing the transcripts will be set by this Court. Counsel is required to file the transcript purchase order in this Court and should indicate in Part 1B of the form that the "CJA form submitted to District Court Judge". Counsel must complete the transcript request by filing an "Auth-24" request in the District Court's eVoucher program. Financial arrangements for the transcripts will not be considered complete until counsel has submitted an "Auth-24" request through the District Court's eVoucher program.

For the Court,

s/ Patricia A. Dodszuweit
Clerk

Dated: November 15, 2021
DW/cc: Michael A. Consiglio, Esq.
Kenneth W. Mishoe, Esq.
Meredith A. Taylor, Esq.