APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2196, 22-2368

UNITED STATES OF AMERICA

v.

JAMES PERRIN,
Appellant 22-2196

UNITED STATES OF AMERICA

v.

PRICE MONTGOMERY,
Appellant 22-2368

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Nos. 2:14-cr-00205-002, 2:14-cr-00205-001)
Chief District Judge: Honorable Mark R. Hornak

Argued September 19, 2024

BEFORE: RESTREPO, McKEE and SMITH, *Circuit Judges*

(Filed: August 25, 2025)

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OPINION OF THE COURT

RESTREPO, *Circuit Judge*

Price Montgomery and James Perrin ran a profitable drug distribution business, trafficking hundreds of thousands of dollars' worth of heroin into Pennsylvania. A jury convicted both men of numerous drug and gun possession offenses. Additionally, Montgomery was convicted of witness tampering offenses arising from the killing and attempted killing of two women, respectively. On appeal both men raise multiple claims of trial and sentencing errors. We will affirm Perrin's convictions and judgments of sentence. As for Montgomery, we will affirm his convictions and judgments of sentence except the term of imprisonment ordered for using a firearm to

kill a witness, which we will vacate and remand for resentencing consistent with this opinion.

I.

a. The wiretap application.

In the summer of 2013, an informant provided information about Montgomery's drug dealing to the Organized Crime Unit of the Pennsylvania Attorney General's Office. Working with the federal Drug Enforcement Agency (DEA) and the Pittsburgh police, the Unit began an investigation into Montgomery's heroin-trafficking business. The investigation progressed until it became a topic of discussion at the Office's senior leadership meetings, attended by both then-Attorney General Kathleen Kane (AG Kane) and First Deputy Attorney General Adrian King.

Beginning in early 2014, AG Kane expressed her support for pursuing a wiretap to further the investigation, which had become a top priority for the Office's criminal division. Agents from the Organized Crime Unit and DEA began preparing the application to wiretap Montgomery's cellphone with the intention of having AG Kane authorize and submit it on April 14, 2014. On that day, however, AG Kane was scheduled to travel outside the country. Before she left, AG Kane had her assistant Kathryn Smith prepare a letter designating First Deputy King as the acting Attorney General in her absence. AG Kane reviewed the letter but did not sign it, instructing Smith to call and get her permission before signing her name. The evening before her departure, AG Kane spoke with King about the wiretap and verbally authorized him to sign the application in her absence.

On the morning of April 14th, First Deputy King informed Smith that the designation letter needed to be signed before the wiretap application could be submitted. After making numerous attempts to reach AG Kane, Smith signed Kane's name at King's direction. Upon hearing the letter had been signed, AG Kane expressed displeasure but made no attempt to rescind the designation letter or withdraw the wiretap application. The wiretap application, signed by King, was approved by Pennsylvania Superior Court Judge Mary Jane Bowes on April 16, 2014.

Over the course of that summer, AG Kane approved a continuation of the original wiretap as well as submitted

additional applications to wiretap Perrin's phone and a second phone belonging to Montgomery. These applications were also approved by a Pennsylvania state court judge. All told, these wiretaps provided a significant amount of evidence, establishing both the participants and innerworkings of the drug trafficking conspiracy.

b. Evidence of drug trafficking and witness tampering.

The investigation revealed that Montgomery ran a drug-trafficking operation that sourced heroin from Newark, New Jersey to be sold in Pittsburgh, Pennsylvania. Tina Crawford acted as a courier, driving the heroin into Pittsburgh in the trunk of a rental car. Co-defendant Perrin, who agents saw with Montgomery "countless times," supported the business in numerous ways, including traveling with Montgomery to Newark and buying the heroin. A1272.

On June 8, 2014, agents observed Perrin and Montgomery return to Montgomery's house from a trip to Newark. Both men carried bags from the car into the house; Perrin had a suitcase and Montgomery had a brown backpack that agents had seen him carry when meeting with his source. After several hours, the two men left the house and returned to the car. This time the agents stopped the car, arrested both men, and conducted a search. The brown backpack had been at Perrin's feet and contained approximately 125 bricks of heroin, $1,600 in cash, and seven cell phones. After securing a warrant, the agents searched Montgomery's house. There they found a suitcase containing 1,500 bricks of heroin, over $21,000 in cash, 16 firearms, and multiple rounds of ammunition.

Seven of the firearms recovered had been acquired illegally in January 2014. Acting on Montgomery's behalf, Perrin exchanged cash and heroin for 10 guns and ammunition from Jeremiah Pashuta, a heroin addict who had stolen the guns from his brother.[1] One of the guns was a rare .22 Magnum Kel-Tec PMR-30. Pashuta provided ammunition for the Kel-Tec, which required a particular brand of .22 Magnum bullets.

[1] Pashuta's brother later testified at trial and identified seven of the guns recovered from Montgomery's home as among those stolen from him.

While the Kel-Tec gun was not recovered during the search of Montgomery's house, agents found .22 Magnum bullets.

The next day, on June 9, 2014, agents searched the home of Tina Crawford, Montgomery's courier who had transported heroin from Newark to Pittsburgh approximately eight times. Tina spoke with the agents conducting the search and admitted her role in the drug-trafficking operation. Montgomery, who had posted bond and been released from custody, visited Tina after the search. Tina told Montgomery that she shared no information with the agents. Later, however, she confided to their mutual friend Khrysta Brown that she told the agents she transported bags for Montgomery but did not know what they contained. She also told Brown that she had to meet with an attorney. Brown, acting as an intermediary, relayed her conversations with Tina to Montgomery.

After the search of her home, Tina moved in with her mother, Patsy Crawford. On August 22, 2014, Tina and Brown exchanged text messages. Approximately thirty-five minutes later, Tina left the house with Patsy, who had agreed to drive Tina to a meeting with federal prosecutors after her ride failed to show. Upon reaching Patsy's car, the two women were ambushed in their driveway. Two or three assailants opened fire and continued to shoot until a neighbor came out of her house and screamed. The assailants, who masked their faces with the hoods of their sweatshirts, fled the scene in a car. Tina Crawford was shot eight times and died on the floor of the garage; her body lay next to the passenger side of the car. Patsy, found on the driver's side, had been shot multiple times but remained conscious and was yelling for her daughter. A police sergeant at the scene described Patsy as being in critical condition.

Law enforcement recovered twenty-four casings from the scene, including casings from the .22 Magnum bullets used in the rare Kel-Tec handgun Perrin bought from Pashuta. Also recovered was an abandoned cellphone on the sidewalk near the Crawfords' home. Investigators tied the phone to Montgomery by comparing its contact lists, call logs, and frequently used cell towers to another one of his cell phones. Montgomery was also tied to the phone through DNA analytics, which identified him as a possible match for the DNA found on the phone.

At the time of the murder, Montgomery was free on bond awaiting state charges. Immediately after the murder he violated the terms of his bond and fled Pittsburgh. He was found living in Columbus, Ohio under a false name in February 2015. Perrin also went on the run but was later taken into custody.

c. Charges

On April 4, 2016, Montgomery and Perrin were charged by a grand jury of multiple crimes: Count 1 charged both men with conspiring to possess with the intent to distribute heroin from on or about April 2013 to June 2014; Count 2 charged both men with possession with intent to distribute heroin "on or about June 8, 2014," the day of their initial arrest; Counts 3 and 4 charged each man, respectively, with unlawful possession of a firearm as a convicted felon also "on or about June 8, 2014"; and Count 5 charged both men with possessing firearms in furtherance of a drug trafficking crime, which the indictment specified as the possession with intent to deliver heroin charge in Count 2. A178-85.

Montgomery was charged with additional counts: Count 6 charged him with conspiring to launder money; Counts 7 and 9 charged him with killing Tina Crawford and attempting to kill her mother, Patsy, to prevent them from communicating with law enforcement; Count 8 charged him with using a gun to kill Tina, a crime committed "with malice aforethought" and "by shooting her with a firearm willfully, deliberately, maliciously and with premeditation"; and Count 10 charged him with using a gun to commit the attempted murder of Patsy Crawford. Montgomery was also charged as an accomplice for each of these counts. A186-91.[2]

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[2] The specific charges associated with each count are as follows: Count 1 charged violations of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(i); Count 2 charged violations of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A)(i); Count 3 charged violations of 18 U.S.C. §§ 2, 922(g)(1), 924(e); Count 4 charged violations of 18 U.S.C. §§ 2, 922(g)(1); Count 5 charged a violation of 18 U.S.C. § 924(c)(1)(A)(i); Count 6 charged a violation of 18 U.S.C. § 1956(h); Counts 7 and 9 charged violations of 18 U.S.C. §§ 2, 1512(a)(1)(C); Count 8 charged a violation of 18 U.S.C. §§ 2, 924(c)(1)(A), (c)(1)(C)(i), (j)(1);

d. Motion to suppress.

Prior to trial, both Montgomery and Perrin sought to suppress the evidence derived from the wiretap of Montgomery's phone under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2516-18. They argued suppression was warranted under Title III because the wiretap order was issued in violation of applicable state law, namely the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S. § 5701 *et seq.* (the Wiretap Act). Montgomery and Perrin argued the Act required that the wiretap application be signed by an official AG Kane had designated in writing. Because AG Kane had not signed the written designation letter herself, they claimed the application signed by First Deputy King was unauthorized under both federal and state law and that all wiretapped evidence should therefore be suppressed.

The District Court denied the motion, ruling that Pennsylvania law allows for non-written designations in circumstances where, as here, the Attorney General is absent "in circumstances fraught with uncertainty as to her whereabouts and accessibility." A47. Specifically, the Court found that First Deputy King was authorized to sign the application under both Pennsylvania's Administrative Code, 71 P.S. § 73, and the Commonwealth Attorneys Act, 71 P.S. §§ 732-201, 762. It further ruled that, because the wiretap application was authorized under Pennsylvania law, the requirement in Title III subsection 2516(2) that a "high-ranking executive law enforcement official approve such an application" was satisfied. A52.[3]

e. Verdict and sentences

In November 2018, a jury convicted Montgomery and Perrin of all counts. Montgomery was sentenced to life

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and Count 10 charged violations of 18 U.S.C. §§ 2, 924(c)(1)(A), (c)(1)(C)(i).

[3] Also prior to trial, the District Court ordered the parties to submit an agreed-upon set of proposed jury instructions. The government complied, submitting instructions with a statement that the instructions had been approved by the parties. Neither Perrin nor Montgomery raised objections to the instructions before or during the trial.

imprisonment for the killing of Tina Crawford, with an additional consecutive term of eighty years imprisonment for the remaining counts. Perrin was sentenced to 380 months imprisonment, followed by ten years supervised release. This appeal followed. [4]

II.[5]

In an argument joined by co-defendant Montgomery on appeal, Perrin challenges the District Court's denial of their joint motion to suppress. He argues suppression of the wiretap evidence was warranted because the Pennsylvania Attorney General's wiretap application was unauthorized under both federal and state law. His challenge is two-fold. First, he argues that Title III prohibits a state's principal prosecuting attorney from delegating their authority to apply for wiretaps, rendering the application signed by First Deputy King directly violative of 18 U.S.C. § 2156(2).[6] Second, he appeals the

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[4] Specifically, the District Court sentenced Perrin to an aggregate term of imprisonment of 320 months for Counts 1, 2 and 3 to run concurrently with one another, with the sentence of 60 months for Count 5 to run consecutively. For Montgomery, the Court imposed a life sentence for Count 7 with the sentences for Counts 1, 2, 4, 6, and 9 to run concurrently. Consecutive to the life sentence, the Court imposed an aggregate term of imprisonment of 960 months for Counts 5, 8, and 10.

[5] The District Court had subject matter jurisdiction under 18 U.S.C. § 3231. We have appellate jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

[6] The relevant text of 18 U.S.C. § 2516(2) is as follows:

> (2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with

denial of his suppression motion, again raising the claim that the application was unauthorized under state law because King was not designated in writing as required by Pennsylvania's Wiretap Act. This alleged failure to abide by Pennsylvania law, the argument goes, indirectly violated Title III because it transgressed the Act's core concern of establishing accountability for the wiretap's execution. Perrin argues these alleged violations rendered the wiretap application unauthorized and the resultant evidence unlawfully intercepted. Because we conclude Title III's authorization requirements have been substantially complied with and the Act's statutory purpose has been satisfied, we agree with the District Court that suppression is not warranted.

To prove suppression of the wiretapped evidence is justified, Perrin and Montgomery must first establish the government unlawfully intercepted their wiretapped communications. 18 U.S.C. § 2518(10)(a)(i).[7] They must then

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> section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of . . . dealing in narcotic drugs, marijuana or other dangerous drugs . . . or any conspiracy to commit any of the foregoing offenses.

[7] The text of 18 U.S.C. § 2518(10)(a)(i) is as follows:

> (10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

prove the unlawful interception violated "those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." *United States v. Giordano*, 416 U.S. 505, 527 (1974). We must therefore identify which requirements "occupy a central, or even functional, role in guarding against unwarranted use" of wiretaps. *United States v. Chavez*, 416 U.S. 562, 578 (1974). Relevant to this appeal are the requirements for the authorization of state wiretap applications set forth in Title III's subsection 2516(2), intended to "establish uniform standards . . . governing the authorization of interceptions, and to ensure adherence to these standards through centralizing responsibility in top level state and county prosecutors who can be held accountable for departures from preestablished policy." *United States v. Smith*, 726 F.2d 852, 856 (1st Cir. 1984).

Because we are primarily concerned with implementing Congress's intent, not every failure to comply with state or federal authorization requirements warrants suppression. Suppression motions premised on authorization errors can be denied "on the ground of substantial compliance with Title III requirements." *Chavez*, 416 U.S. at 568 n.2. Put another way, when assessing such alleged errors, this Court will not suppress evidence over a mere technical defect in authorization procedures if the statute's underlying purpose has been met. *United States v. Acon*, 513 F.2d 513, 517 (3d Cir. 1975).

Perrin argues, for the first time on appeal, that the Pennsylvania Attorney General's application directly violated Title III because subsection 2516(2) does not allow a state's principal prosecuting attorney to delegate their authority to apply for a wiretap. His argument is premised on the plain language of Title III's section 2516, which identifies those officials who are authorized to submit wiretap applications. While the subsection addressing federal wiretaps names the delegate of the United States Attorney General as such an official, *see* 18 U.S.C. § 2516(1), the subsection addressing state wiretaps does not name the delegate of a state's principal prosecuting attorney as having such authority, *see* 18 U.S.C. §

> (i) the communication was unlawfully intercepted.

2516(2). Perrin contends this omission means that such a delegation violates Title III. He argues in the alternative that, if such a delegation of authority is permitted on the state level, the principal prosecuting attorney of a state must personally review the wiretap application to substantially comply with the purpose behind Title III's authorization requirements. Perrin contends AG Kane's alleged failure to personally review the Montgomery wiretap application signed by First Deputy King rendered it unauthorized.

Because this argument regarding the direct violation of subsection 2516(2) was not raised before the suppression court, we will review for plain error. "Under that test, before an appellate court can correct an error not raised at trial, there must be (1) 'error,' (2) that is 'plain,' and (3) that 'affect[s] substantial rights.'" *Johnson v. United States*, 520 U.S. 461, 466-67 (1997) (alteration in original) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)). To be "plain," an error must be "clear under current law." *Id.* at 467 (internal quotation marks omitted). Even if these three conditions are met, however, we may exercise our discretion to correct the error only if it (4) "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Id.* (alternation in original) (quoting *Olano*, 507 U.S. at 732) (internal quotation marks omitted).

We disagree that subsection 2516(2) prohibits a state's principal prosecuting attorney from delegating their authority to approve and submit wiretap applications. Instead, the statute recognizes that whether such a delegation is permitted is dictated by state law, not by Title III. The plain language of subsection 2516(2) defers to state statutes three times to illustrate Congress's intention to keep procedures for authorizing wiretaps under a state's purview when implementing Title III's statutory mandates. 18 U.S.C. § 2516(2); *United States v. Johnson*, 696 F.2d 115, 121 (D.C. Cir. 1982). Interpreting subsection 2516(2) to render null and void those Pennsylvania statutes allowing the state Attorney General to delegate his or her authority would be diametrically opposed to Congress's clear direction.[8]

[8] The Senate Report introducing subsection 2516(2) expressly stated that "[t]he issue of delegation by that [state's principal prosecuting attorney] would be a question of State Law." S.

In addition to consistency with Congressional intent, allowing state principal prosecutors to delegate their authority makes good sense. We agree with the Second and Ninth Circuits that "Congress simply could not have intended that local wiretap activity would be completely suspended during the absence or disability of the official specifically named in [Section 2516(2)]." *United States v. Perez-Valencia*, 727 F.3d 852, 855 (9th Cir. 2013) (quoting *United States v. Fury*, 554 F.2d 522, 527 n.4 (2nd Cir. 1977)). Where the principal prosecutor of the state is unavailable or indisposed, as was the case here, it would be unreasonable to expect all state wiretap applications to remain on hold.

Rep. No. 1097, 2187, 90th Cong. 2d Sess. (1968). The report explained that the state officer authorized to apply for a wiretap would depend on "not name but function" and who serves that function would be dictated by state law. *Id.* Those laws would, in turn, serve to create a "centralization of policy" regarding electronic surveillance. *Id.* Senator McClellan, when presenting Title III on the senate floor, recognized that state laws would permit such a delegation of authority:

> Initially, approval of all applications will have to be secured from the appropriate chief prosecuting officer. On the federal level, that will be the Attorney General or his special designee, while on the state level, that will be the State Attorney General or the District Attorney of a county *or their special designees.* This provision will centralize authority and responsibility for the formulation of policy in this area in a visible, usually political accountable, individual. This should be a strong safeguard against abuse.

114 Cong. Rec. 11,208 (1968) (emphasis added). Indeed, more than merely approving wiretap applications, Congress acknowledged that state designees could further Title III's statutory purpose of bringing uniformity and accountability to the use of electronic surveillance. *Id.*

Perrin argues in the alternative that, if the authority to apply for a wiretap can be delegated under subsection 2516(2), the principal prosecuting attorney must remain actively involved and be personally familiar with the application to satisfy Congress's objectives in enacting Title III.[9] He claims that such a requirement was not met in this case, where there was "no sign Kane personally reviewed the wiretap application" or was even aware of the circumstances justifying electronic surveillance. Perrin Br. 32. The government counters that there is no such "personal review" requirement in this Circuit or any other and, to the extent familiarity with the application was required under Title III, AG Kane in this instance was actively involved in the process of applying for the wiretap.

Given the absence of precedent in this Circuit clarifying the role a state's principal prosecuting attorney must play after delegating their authority to apply for a wiretap, we first hold that any error in the Attorney General's review of the application post-delegation was not plain. We will find plain error only if it is "absolutely clear legal norms compel that conclusion." *United States v. Cammarata*, 129 F.4th 193, 224 (3d Cir. 2025) (internal citations omitted). Second, we note that the plain text of subsection 2516(2) does not prescribe what role a principal prosecuting attorney should play after delegating their authority. Instead, as discussed above, we interpret the subsection to leave the issue of delegation by the principal prosecutor to state law, which means state legislatures—not federal courts—determine the scope and nature of the designees' duties. Even if Title III preempts a

[9] Perrin supports this argument by citing cases from the First and Ninth Circuits. *See e.g., United States v. Smith*, 726 F.2d 852, 859 (1st Cir. 1984) (holding "[t]he detailed review by a district attorney of every application for a proposed use of electronic surveillance on a case by case basis . . . would seem to satisfy fully the congressional objectives"); *Villa v. Maricopa County*, 865 F.3d 1224, 1234 (9th Cir. 2017) (holding that substantial compliance with Title III requires that principal prosecuting attorney be "personally familiar" with the facts underlying an application). *See also United States v. Lyons*, 740 F.3d 702, 721 (1st Cir. 2014) (noting that Massachusetts law requires principal prosecuting attorney to "personally review" the wiretap application).

state's wiretapping laws, that does not give this Court license to dictate what roles state officers play. Our role is to determine whether the officers have substantially complied with Title III's statutory requirements. If this Court were to dictate the conduct of a state's principal prosecuting attorney after they had exercised their statutory right to delegate their authority, we run the risk of intruding into an area which Congress has deemed best left for state law. Not only would we be overreaching if we were to define the role of Pennsylvania's Attorney Generals but not their federal counterparts, we would be implying that state officials require special scrutiny and oversight.[10]

We therefore decline Perrin's invitation to hold that AG Kane violated Title III by not "personally reviewing" the wiretap application after she delegated her authority to submit the application. Not only does Title III's plain language not support such a holding, but requiring such a level of personal involvement invites non-compliance. If the principal prosecuting attorney designated her authority in anticipation of an extended absence, expecting her personal review of each wiretap application would be unreasonable and possibly unattainable. We therefore conclude that the designee of the state's principal prosecuting attorney, if properly authorized under state law, may submit a wiretap application under

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[10] The Ninth Circuit recognized that, in reviewing wiretap applications out of the federal Attorney General's office, there is "no requirement in 18 U.S.C. § 2516 or anywhere else that the authorizing official explain the reasons for [giving his authorization]." *United States v. Martinez*, 588 F.2d 1227, 1233 (9th Cir. 1978). Instead, "[o]nce a proper authorizing officer is properly identified, . . . thereby fixing on him the responsibility for a particular authorization," compliance with subsection 2516(1) is met. *United States v. Turner*, 528 F.2d 143, 151 (9th Cir. 1975). The reasons or methods used in giving such authorization are not subject to review by courts; "[r]ather it is []presumed that the officer has properly exercised the judgment called for by the statute" when they sign their name to authorize a wiretap application. *Id.* (rejecting argument that the Attorney General or specially designated Assistant Attorney General must personally review facts in application). We can think of no reason why the same deference should not be awarded a state's counterpart.

subsection 2516(2). Our purview, therefore, is to determine whether the application meets the authorization requirements of Title III and whether Title III's protections against unwarranted wiretaps are upheld. *Chavez*, 416 U.S. at 578.

This brings us to the claim Perrin and Montgomery raised before the suppression court: that First Deputy King was not authorized under Pennsylvania law to submit the wiretap application because AG Kane failed to sign the letter granting him such authority. They argued that the alleged violation of Pennsylvania law meant King was not authorized to submit the application under subsection 2516(2) and suppression was warranted because the wiretap evidence was unlawfully intercepted under subsection 2518(10)(a). The District Court disagreed.

"Where a motion to suppress has been denied, we review the order for clear error as to the underlying facts, but exercise plenary review as to its legality in the light of the court's properly found facts." *United States v. Davis*, 726 F.3d 434, 439 (3d Cir. 2013) (quoting *United States v. Brownlee*, 454 F.3d 131, 137 (3d Cir. 2006)). The District Court found that AG Kane failed to designate First Deputy King in writing but ruled this failure did not justify suppressing the wiretap evidence under Title III.[11] We will affirm this ruling.

Again, violations of even Title III's "central requirements" do not warrant suppression "if the Government demonstrates to the court's satisfaction that [Title III's] statutory purpose has been achieved despite the violation." *Johnson*, 696 F.2d at 121. First Deputy King's signing of the application, assuming he was not authorized to do so under Pennsylvania law, warrants suppression only if Title III's purpose of centralizing authorization "in a publicly responsible official" so that "the lines of responsibility [will] lead to an

[11] The District Court denied the suppression motion because First Deputy King, while arguably not authorized to sign the wiretap application under the Pennsylvania Wiretap Act, was authorized to sign under other applicable Pennsylvania statutes. We agree with this reasoning but also recognize that we generally "decide evidence questions in federal criminal cases on the basis of federal, rather than state, law." *United States v. Williams*, 124 F.3d 411, 428 (3d Cir. 1997) (citing *United States v. Rickus*, 737 F.2d 360, 363 (3d Cir. 1984)).

identifiable person" was not achieved. *Giordano*, 416 U.S. at 520 (quoting S. Rep. No. 1097, 90th Cong., 2d Sess., at 96–97 (1968)).

To determine whether there was substantial compliance with the substantive requirements of the statute, we look "beyond the face of the [wiretap] order to the facts as they actually existed[.]" *United States v. Traitz*, 871 F.2d 368, 379 (3d Cir. 1989) (citing *Acon*, 513 F.2d at 518). Here, the District Court decided that King was authorized by AG Kane despite the lack of written designation. It found credible First Deputy King's suppression hearing testimony that he had a conversation with AG Kane the evening before her departure, where she "orally and actually directed" him to submit the application the following day. A51. The Court also found relevant that AG Kane, who did not testify at the hearing, knew that First Deputy King had signed the wiretap application before it was presented to a Pennsylvania judge and "did nothing to stop that presentation." A52. All told, the District Court found the weight of the evidence established that "authorization in fact occurred" under Pennsylvania law, rendering the requirements of Title III's subsection 2516(2) substantially fulfilled. A52. Because these facts were properly found, the denial of the suppression motion was proper.

III.

Perrin, again with Montgomery joining, argues the government and the District Court constructively amended Count 5 of the indictment. Count 5 charged that Montgomery and Perrin each violated 18 U.S.C. § 924(c) by possessing firearms in furtherance of the charge in Count 2, possession of heroin with the intent to deliver "on or about June 8, 2014." A179. Perrin claims the government instead argued at trial that their firearms possession furthered the drug trafficking conspiracy charged in Count 1, which alleged the conspiracy existed from April 2013 until June 2014. He contends the District Court compounded the government's error by instructing the jury that they could convict under Count 5 if the defendants possessed the guns to further either the June 8th possession offense (Count 2) or the drug trafficking conspiracy (Count 1). According to Perrin, both subsection 924(c) convictions must be vacated because these errors lowered the government's burden of proof by lengthening the period of time—from one day to over a year—during which the jury

could find their possession of firearms furthered a drug trafficking offense.

Neither defendant raised this argument before the District Court so we will again review for plain error. *Johnson*, 520 U.S. at 465–66. We conclude that this constructive amendment claim fails under the final condition: whether the error alleged "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 467 (alteration in original) (quoting *United States v. Young*, 470 U.S. 1, 15 (1985)). Accordingly, we decline to exercise our discretion to grant relief.

In the constructive amendment context, the fourth condition of plain error is difficult to overcome if there is strong evidence proving guilt of the crime as charged. Even if the government and the District Court plainly erred by constructively amending Count 5, such an error did not seriously affect the proceedings' fairness, integrity, or reputation if the record was largely uncontroverted and overwhelmingly proved the crime described in the indictment. *See United States v. Greenspan*, 923 F.3d 138, 152 (3d Cir. 2019). Neither defendant contests their conviction for possessing firearms on June 8, 2014 (Counts 3 and 4, respectively) or their conviction for possessing heroin with the intent to deliver on June 8, 2014 (Count 2). The only dispute, therefore, is whether the record established that they possessed the firearms to further their intent to deliver the heroin found in their possession on June 8, 2014. If we conclude that evidence sustaining Count 5 was overwhelming and uncontroverted, there was no reversible error. *See Id.*

To further a drug trafficking offense, the "mere presence of a gun" at the same location as the drugs is not enough. *United States v. Sparrow*, 371 F.3d 851, 853 (3d Cir. 2004) (internal quotation marks omitted). Instead, the evidence must establish a connection between the two crimes, whereby the guns "advanced or helped forward" the drug dealing offense. *Id.* To determine whether such a connection exists, this Court has applied these nonexclusive factors:

> the type of drug activity that is being conducted, accessibility of the firearm, the type of the weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether

> the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.

Id. (quoting *United States v. Ceballos-Torres*, 218 F.3d 409, 414–15 (5th Cir. 2000)).

On June 8, 2014, law enforcement watched the defendants return to Montgomery's home from a trip to New Jersey, where they had met with their heroin supplier. Hours later, the men returned to the car with a backpack. The agents conducted a traffic stop and searched the car, finding $1,600 in cash, seven cell phones, and 125 bricks of heroin in the backpack. After obtaining a warrant, the agents searched Montgomery's house and found 1,500 bricks of heroin, 16 guns stored with ammunition in the basement and master bedroom, $21,000 in cash in the master bedroom and bathroom, a money counter, and a cutting agent for the heroin.

Applied to this evidence, the *Ceballos-Torres* factors overwhelmingly support a conviction under Count 5 as it appears in the indictment. The car and house contained a significant amount of heroin and drug paraphernalia on June 8, 2014, establishing that Perrin and Montgomery intended to traffic the heroin. The guns were accessible to the occupants, including a rifle found behind the headboard in the master bedroom. The guns, consisting of shotguns, handguns, a TEC-9 and a knock-off AK-47, were lethal firearms. Seven of the recovered firearms were traced back to the transaction between Perrin and Jeremiah Pashuta, where Perrin gave cash and heroin to Pashuta for stolen guns and ammunition. Due to prior convictions, neither Perrin nor Montgomery could lawfully purchase or possess firearms. While the record did not specify whether the guns were loaded, testimony established that they were stored with ammunition. They were found in various places within the same house as $21,000 in drug proceeds and $300,000 worth of heroin. The search of the house was the culmination of a year-long investigation, during which law enforcement learned that the defendants ran an expansive and profitable drug operation that employed couriers to transport heroin across state lines.

More than merely sufficient, the evidence that the guns furthered the heroin distribution business was overwhelming and uncontroverted, which means any error at trial did not

seriously affect the proceeding's fairness. *See, e.g., United States v. Thomas*, 970 F.3d 809, 817 (7th Cir. 2020) (holding evidence that guns possessed in furtherance of drug offense was overwhelming where drugs and loaded guns were within reach of one another in same location); *United States v. Robinson*, 435 F.3d 1244, 1251 (10th Cir. 2006) (deeming evidence of subsection 924(c) violation overwhelming where rifle found in close proximity of drug manufacturing and paraphernalia). Relevant to our analysis is that neither Perrin nor Montgomery point to any portion of the record that refutes the inference that the guns were integral to their business, nor do they present a "plausible argument" that the guns did not advance their plans to distribute the heroin uncovered on June 8, 2014. *Johnson*, 520 U.S. at 470. Moreover, in analyzing the fourth prong of plain error review, this Court may view the alleged error "against the entire record" when deciding whether it "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Young*, 470 U.S. at 15–16 (quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936)). Viewed in this context, any claim of plain error is further undermined by the fact that heroin was used to acquire seven of the recovered guns, and the same type of ammunition found in the house was used to shoot Tina Crawford to prevent her cooperation with law enforcement. Because guns indisputably advanced the plans to distribute the 1,625 bricks of heroin found in the same house, any error causing Count 5 to be constructively amended did not "undermine the fundamental fairness of the trial and contribute to a miscarriage of justice." *Id.* at 16.

Finally, we note that Perrin and Montgomery, together with the government, jointly submitted the jury instruction that gave rise to this claim of court error. The proposed charge for Count 5, which the District Court adopted, instructed the jury to determine whether the firearms, if knowingly possessed, were held in furtherance of the drug trafficking crimes alleged in both Counts 1 and 2. Although we do not deem this claim waived and foreclosed from review, *see Virgin Islands v. Rosa*, 399 F.3d 283, 290–91 (3d Cir. 2005), we recognize it is difficult for Appellants to overcome the fourth prong of plain error review if their own conduct invited the error. 7 Wayne R. LaFave, et al., Criminal Procedure § 27.5(d) (4th ed. 2015) ("A court is unlikely to find the fourth prong met if conduct by the defense 'invited' the error" even if "the reviewing court

concluded those actions fell short of 'waiver.'"); *see, e.g.*, *United States v. Lespier*, 725 F.3d 437, 450–51 (4th Cir. 2013) (holding defendant's conviction of greater offense after he opposed instruction on a lesser-included offense did not threaten integrity of the justice system or represent a miscarriage of justice under plain error review). Given the overwhelming evidence proving the crime as charged and the fact that Perrin and Montgomery proposed the instruction underlying their convictions, any error here did not rise to the level of plain error. We will therefore affirm their convictions under Count 5.

IV.

Montgomery next challenges the legality of his life sentence. Count 7 of the indictment charged him with killing Tina Crawford to prevent her from communicating with law enforcement in violation of 18 U.S.C. § 1512(a)(1)(C).[12] Montgomery argues that, because the type of "killing" was not specified in the charge or the District Court's jury instruction, he was charged and convicted of manslaughter, not murder. As a result, his sentence of life imprisonment under Count 7 violates his Fifth and Sixth Amendment rights under *Apprendi* and *Alleyne*.

Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) held that any fact that increases the penalty of the crime beyond the statutory maximum must be submitted to the jury. *Alleyne v. United States*, 570 U.S. 99, 103 (2013) held that any fact that increases a sentence beyond the minimum mandatory sentence must be submitted to a jury. Montgomery alleges both

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[12] The relevant portion of 18 U.S.C. § 1512 is as follows:

> **(a)(1)** Whoever kills or attempts to kill another person, with intent to—
>
> * * *
>
> **(C)** prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (3).

holdings were violated because his life sentence exceeds both the statutory maximum and mandatory minimum sentences for manslaughter.

This *Apprendi* and *Alleyne* claim was preserved so we will apply a harmless error standard of review. *United States v. Vasquez*, 271 F.3d 93, 103 (3d Cir. 2001). Montgomery contends that he alleges a sentencing error because he was charged and convicted of manslaughter but sentenced for murder. Under a sentencing error analysis, an error is harmless if it did not contribute to the sentence imposed. *United States v. Lewis*, 802 F.3d 449, 456 (3d Cir. 2015). Montgomery argues the error of being sentenced for a crime more serious than the one for which he was convicted cannot be deemed harmless.

Montgomery's characterization of his claim—that he was charged and convicted only of manslaughter—is unavailing. Count 7 charged Montgomery with killing Tina Crawford with the intention of preventing the communication of information relating to a federal offense to a federal law enforcement officer. The intention behind the killing is therefore an element of the crime defined in subsection 1512(a)(1)(C).[13] Killing a witness to prevent her from talking to law enforcement in violation of subsection 15(a)(1)(C) encompasses an unlawful killing with malice aforethought, in other words, murder. Montgomery was not therefore sentenced for a different crime than he was charged and convicted. Accordingly, a harmless trial error analysis is appropriate. *See United States v. Johnson*, 899 F.3d 191, 198 (3d Cir. 2018) (concluding *Alleyne* error was trial error where defendant was charged with the same crime for which he was sentenced, but an element was not submitted to the jury). Thus, in assessing Montgomery's *Apprendi/Alleyne* claim, we must

[13] Murder is defined in 18 U.S.C. § 1111(a) as "the unlawful killing of a human being with malice aforethought." If the killing is "willful, deliberate, malicious, and premeditated," it is murder in the first degree and is punishable by life imprisonment or death. 18 U.S.C. § 1111(a) and (b). Any other murder is second degree murder, punishable by imprisonment for any term of years or for life. *Id.* Life imprisonment is therefore a legal sentence for either first- or second-degree murder. *See id.*

determine whether a rational jury would have still found Montgomery guilty beyond a reasonable doubt of killing Tina Crawford under Count 7 if the elements of murder had been submitted to the jury. *Id.* at 200 (quoting *Lewis*, 802 F.3d at 456).

We conclude a rational jury would have found Montgomery guilty of Tina Crawford's murder because the elements of first-degree murder were submitted to the jury under a different count. Count 8 charged Montgomery with using a firearm to kill Tina in violation of subsection 1512(a)(1)(c), as charged in Count 7. Count 8 described the killing as "a murder as defined in 18 U.S.C. § 1111," where Tina Crawford was killed "with malice aforethought" and "willingly, deliberately, maliciously and with premeditation." A189. The jury instruction for Count 7 and Count 8 was as follows:

> Count 7 of the indictment charges Price Montgomery with tampering with a witness by killing a person on or about August 22, 2014.
>
> In order to find the defendant Price Montgomery guilty of this offense, you must find that the government proved each of the following four elements beyond a reasonable doubt: First, that Mr. Montgomery killed Tina Crawford. Second, that he was motivated by a desire to prevent the communication between Tina Crawford and law enforcement authorities concerning the commission or possible commission of the offense described in Count 2 [trafficking heroin]. Third, that the offense described in Count 2 was actually a federal offense. Fourth, that he believed that there was a reasonable likelihood that Tina Crawford would, in fact, make a relevant communication to law enforcement authorities.
>
> * * * *
>
> Mr. Montgomery is charged at Count 8 with using and discharging a firearm in relation to a crime of violence resulting in death on or about August the 22, 2014.

> Count 8 of the indictment charges Price Montgomery with carrying, using, and discharging a firearm during a crime of violence, specifically the crime charged at Count 7. I instruct you that the offense alleged in Count 7 is a crime of violence.
>
> In order to find Price Montgomery guilty of the offense charged at Count 8 of the indictment, you must find the prosecution proved each of the following four elements beyond a reasonable doubt: First, that Price Montgomery committed the crime of tampering with a witness by killing a person as charged at Count 7. Second, that the killing was a murder, that is, a willful, deliberate, malicious, premeditated killing. Third, that during and in relation to the commission of that crime, Price Montgomery knowingly carried or used a firearm.
>
> * * * *
>
> Fourth, that Price Montgomery carried or used the firearm during and in relation to the crime of tampering with a witness by killing a person.

A2328–31 (emphasis added). The jury found Montgomery guilty of Count 8, thereby establishing that it found the killing of Tina Crawford constituted first-degree murder. The District Court did not err in relying on these findings in imposing a life sentence for Count 7. Because the elements of first-degree murder were submitted to the jury, the sentence of life imprisonment for killing Tina Crawford did not violate *Apprendi* or *Alleyne*, nor, by extension, the Sixth Amendment.

This conclusion is supported by the prior conviction exception to the *Apprendi* and *Alleyne* rules. A defendant's prior conviction, arising from a previous judicial proceeding, can impact the minimum or maximum statutory sentence without running afoul of *Apprendi* and *Alleyne*. It would make little sense for us to conclude that the District Court can base a sentence on a jury's findings from a prior proceeding but not the jury's findings from the same trial. Because this jury found the necessary elements of first-degree murder beyond a reasonable doubt, we agree with the government that granting

Montgomery a new trial would result in another fact-finder making the same factual determinations that the jury made here.

Montgomery does not refute that the elements of first-degree murder were before and found by the jury. Nor does he claim the facts of record were insufficient to sustain either conviction tied to the killing of Tina Crawford. He instead argues that the elements of first-degree murder found under Count 8 could not be applied to his sentence for Count 7 because the text of Count 7 did not incorporate the allegations in Count 8 by reference. Citing our decision in *United States v. Stevenson*, 832 F.3d 412, 425 (3d Cir. 2016), Montgomery argues applying the elements found under Count 8 to the sentence imposed for Count 7 would violate his Fifth and Sixth Amendment rights because he did not receive notice of his potential life sentence for witness tampering by murder.

Initially, we note that this argument conflates the issue of whether the indictment provided Montgomery with notice with the issue of whether his sentence was in accordance with *Apprendi* and *Alleyne*. Montgomery's invoking our holding in *Stevenson* does not challenge our decision that the District Court imposed a life sentence based on facts the jury found beyond a reasonable doubt. When determining whether a count provides a defendant with notice of charges, *Stevenson* requires that we regard each count in isolation, independently of the other counts in the indictment. There is no equivalent requirement that courts consider each jury *finding* in isolation when constructing a sentence. The findings supporting the life sentence were made by the jury and for that reason his punishment under Count 7 did not run afoul of *Apprendi* or *Alleyne*.[14]

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[14] In any event, Count 7 provided Montgomery with notice that he faced a potential life sentence. The count conveyed that Montgomery was being charged with killing a witness to prevent her from speaking with law enforcement. He was charged with an intentional killing and therefore given notice of the "species of offence" facing him prior to trial. *Apprendi*, 530 U.S. at 478. Here, the "species" included murder in either the first- or second-degree, both of which carry potential life sentences. Under the notice argument as well, therefore, Montgomery is not entitled to relief.

We will therefore affirm Montgomery's life sentence for the killing of Tina Crawford in violation of 18 U.S.C. § 1512(a)(1)(C).

V.

Montgomery next claims his trial counsel's assistance was ineffective for not objecting to the District Court's instruction defining aiding and abetting liability for Counts 8 and 10, charging violations of 18 U.S.C. § 924(c). Specifically, he asserts the Court failed to instruct the jury that accomplice liability requires a finding that he possessed advance knowledge that a gun would be used to kill Tina Crawford and attempt to kill her mother Patsy, as mandated by *Rosemond v. United States*, 572 U.S. 65 (2014). Montgomery contends both convictions must be vacated because the jury could have convicted him without finding all the elements of either crime.

Montgomery recognizes that, because his counsel jointly submitted the proposed jury instructions, the invited error doctrine prohibits him from challenging any error on direct appeal. He instead challenges the instruction through an ineffective assistance of counsel claim, contending that his counsel's decision to agree to the instruction rendered his representation constitutionally deficient. While Montgomery acknowledges that ineffective assistance of counsel claims are generally not addressed on direct appeal, he argues that review in this instance would be appropriate because the trial record is sufficient to decide his claim. We disagree.

Our reasons for declining review of ineffectiveness claims on direct appeal are well established. To warrant relief, Montgomery must show that his counsel's actions were unreasonable and resulted in prejudice. The Supreme Court in *Massaro v. United States*, 538 U.S. 500, 505 (2003) reasoned that a trial record is "not developed precisely for the object" of addressing counsel's performance and is "thus often incomplete or inadequate" to assess an ineffectiveness claim. Additional fact-finding is required to ascertain whether a "seemingly unusual or misguided action" by counsel was strategic or otherwise justified. *Id.* Under collateral review, ineffectiveness claims are litigated before the trial court, which is the "forum best suited" for "determining the adequacy of representation during an entire trial." *Id.*

Montgomery argues no additional facts are needed to develop his ineffective assistance of counsel claim because this Court has already decided that a nearly identical instruction violated *Rosemond*. *Johnson*, 899 F.3d at 205. Reviewing for plain error, the *Johnson* Court held the violation did not justify relief because there was no reasonable probability that the instruction affected the trial's outcome. *Id.* Montgomery claims *Johnson*'s finding of error proves he was prejudiced by his counsel's failure to object to the accomplice liability instruction. But *Massaro* instructs that such a prejudice determination requires exploring whether trial counsel's performance *as a whole* was adequate and whether the contested action or inaction was reasonable. The record here is not sufficient to make such a determination. *See United States v. Olfano*, 503 F.3d 240, 246–47 (3d Cir. 2007) (concluding that, without a record addressing why counsel failed to ask for a continuance, this Court could not determine whether his representation was prejudicial). *See also United States v. McLaughlin*, 386 F.3d 547, 556 (3d Cir. 2004) (noting the "lack of a fully developed record often precludes a comprehensive inquiry" into counsel's alleged error). [15]

We abstain from reviewing Montgomery's claim at this stage to protect him from "having res judicata attach to the ineffective assistance claim" on an undeveloped record. *Virgin Islands v. Vanterpool*, 767 F.3d 157, 164 (3d Cir. 2014). We will deny the claim without prejudice to his right to raise the claim in a collateral proceeding.

VI.

Montgomery challenges his convictions arising from the shooting of Patsy Crawford, who was shot at the same time her daughter Tina was murdered. He argues the evidence is

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[15] We further note that the District Court never assessed the efficacy of counsel's performance at trial. Such an assessment could have made review of Montgomery's ineffectiveness claim on direct appeal "both feasible and efficient." *United States v. Washington*, 869 F.3d 193, 203 (3d Cir. 2017); *accord United States v. Jones*, 336 F.3d 245, 252–55 (3d Cir. 2003) (addressing ineffectiveness claim where District Court held a hearing to assess counsel's representation of defendant in entering guilty plea).

insufficient to prove that Patsy's shooting qualifies as witness tampering by attempted murder under 18 U.S.C. § 1512(a)(1)(C). Because the government introduced sufficient evidence to support the jury's finding that Montgomery attempted to kill Patsy Crawford to prevent her from communicating to law enforcement about her daughter's murder, we will affirm.[16]

The applicable standard for overturning a jury verdict for insufficient evidence presents a high hurdle for any appellant. "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Our precedent accordingly counsels us to sustain a jury verdict "as long as it does not fall below the threshold of bare rationality." *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 431 (3d Cir. 2013) (internal quotes and citing authority omitted). It is the rare jury verdict that will fail to meet that "bare rationality" standard.

Section 1512(a)(1)(C) prohibits the killing or attempted killing of "another person" with the intention of preventing a "communication" to law enforcement of "information relating to the commission . . . of a Federal offense." Our precedent has delineated four elements the government must prove to sustain a conviction.

First, the defendant killed or attempted to kill another person. Second, the defendant was motivated by a desire to prevent the communication between any person and law enforcement authorities concerning the commission or possible commission of an offense. Third, that offense must be a federal offense. And fourth, a reasonable likelihood existed that the person whom the defendant believed may

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[16] The government charged Montgomery with two counts of violating 18 U.S.C. § 1512(a)(1)(C). Count 7 charged that Montgomery killed Tina Crawford to prevent her from communicating with law enforcement about his drug dealing business. Count 9, meanwhile, charged that Montgomery attempted to kill Patsy Crawford (Tina's mother) to prevent her from communicating with law enforcement about Tina's murder. The jury convicted on both counts. Montgomery now challenges his conviction on Count 9.

communicate with law enforcement would in fact make a relevant communication to a federal law enforcement officer. *United States v. Tyler*, 956 F.3d 116, 123 (3d Cir. 2020).

As to the first element, we agree with the government that the record supports the jury's finding that Montgomery either attempted to kill Patsy Crawford or aided and abetted an attempt to kill her. The evidence established that Patsy was shot and lay in "critical condition" in the garage on the other side of the car from Tina. App. 1450, 1453. Considering the evidence establishing Montgomery's role in shooting Tina, the only reasonable inference from the record is that he or one of his accomplices shot Patsy as well. It was never established at trial where or how many times Patsy was shot, or whether she was directly targeted by the shooters. But the government introduced evidence that 24 shell casings were found at the scene of the shooting. Given the sheer number of bullets fired into the garage, a reasonable juror could have inferred the shooters intended to kill Patsy as well as Tina. *Jackson*, 443 U.S. at 324 (stating that sufficiency review of a challenged conviction requires reviewing the record in the light most favorable to the prosecution).

As to element two, the jury was required to conclude that Montgomery was motivated to attempt to kill Patsy by a desire to prevent her from communicating with law enforcement about the commission of a federal offense, i.e., Tina's murder. Resolving this question requires a brief foray into statutory interpretation. We begin, as we must, with the statutory text.

Section 1512(a)(1)(C) criminalizes "attempts to kill another person, with intent to prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense." The statute plainly encompasses a broad range of those who may make such a communication: "[A]ny person." Likewise, the communication embraces a capacious subject matter: *Information relating to* the commission of a federal offense. Information is a broad term meaning "knowledge of a particular event or situation." *Information*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2020). And "relating to" is a broad phrase, as well, that we interpret similarly to having "a connection with." *Pugin v. Garland*, 599 U.S. 600, 607 (2023).

So to violate the statute, a defendant must have an intent to prevent a communication by any person of information that relates to or has a connection with the commission of a federal offense.

The government offered sufficient circumstantial evidence for the jury to determine that Montgomery possessed the requisite intent. The government introduced evidence suggesting that Montgomery appeared at Patsy's home because he was on a venture to eliminate at least one federal witness. He knew that agents had raided Tina's home. He knew that Tina had lied to him when she denied telling agents anything that incriminated Montgomery. And he knew that Tina was heading to a meeting with her lawyer, and then with federal prosecutors, the day he killed her.[17] The government introduced evidence that Patsy was shot at least once and found in critical condition. The jury heard testimony from a witness that the gunmen quickly fled after the shooting. And the jury also had before it evidence that police officers arrived at the scene to investigate and that federal investigators became fully involved in the investigation after the murder.

Drawing all inferences in the government's favor, the jury reasonably found that Montgomery possessed the requisite intent to return a guilty verdict on Count 9. The jury was aware that Montgomery knew that Patsy was an eyewitness to his crime. She not only witnessed the shooting from beginning to end but was also one of its intended targets. Montgomery would have known that, as an eyewitness, Patsy could speak to such things as: The number of shooters; the physical features of the gunmen; and other details surrounding the ambush of her and her daughter. All such information would have related to the commission of a federal offense—Tina's murder. The

[17] Brown had a history of passing on to Montgomery information concerning Tina. Tina texted Brown that she was meeting with a lawyer, and Brown texted Montgomery 35 minutes before the shooting began. The jury could logically have inferred from Tina's text to Brown, coupled with Brown's history of passing on Tina's communications to Montgomery, that Brown informed Montgomery about Tina's upcoming meeting with a lawyer.

communication of that information falls within the statute's ambit.

And the jury could rightly infer that Montgomery would have known to a reasonable certainty that Patsy would speak to law enforcement unless he eliminated her as a witness. Any citizen should reasonably expect that police will soon arrive to investigate a shooting at which three to four assailants have opened fire at a home. And an investigation entails interviews of eyewitnesses. Moreover, the government introduced evidence that Montgomery and the other assailants quickly fled the scene, suggesting they knew police would soon arrive. Hence, the jury could infer Montgomery knew not only that Patsy had knowledge of details related to Tina's murder, but also that it was likely she would communicate those details to law enforcement.

Lastly, the jury would have known that Montgomery was on a mission to eliminate witnesses who were then likely to communicate information about his crimes. The jury could rely on common sense to draw the inference that Montgomery, in eliminating a witness to one federal crime—drug trafficking—would not at the same time choose to leave behind a new witness to an entirely new crime: The murder of a federal witness. A jury is always entitled to use common sense in drawing reasonable inferences. *United States v. Holmes*, 406 F.3d 337, 351 (5th Cir. 2005). Furthermore, our circuit's model jury instructions—which the District Court used in relevant part—task jurors with "decid[ing] what reasonable inferences, if any, [they]'ll draw based on all the evidence and [their] reason, experience, *and common sense*." Third Circuit Model Criminal Jury Instructions, Ch. 3 Final Instructions: General, Pt. 3.03 Direct and Circumstantial Evidence (emphasis added).

Taken together, these inferences support the jury's finding that Montgomery possessed the requisite intent to prevent Patsy from communicating with law enforcement.

The third element is whether the offense Montgomery sought to prevent Patsy from communicating about—here murdering a federal witness—"was actually a federal offense." *Tyler*, 956 F.3d at 123. No one has disputed that Tina's murder in violation of 18 U.S.C. § 1512(a)(1)(C) constituted a federal offense.

Finally, the government offered sufficient evidence to make out the fourth element: A "reasonable likelihood that the person whom the defendant believes will communicate with law enforcement," here Patsy, "would in fact make a relevant communication with a federal law enforcement officer." *Tyler*, 956 F.3d at 123. The government introduced evidence showing that Patsy's daughter Tina Crawford was a target of the investigation into Montgomery.[18] The government also introduced evidence showing that Tina was scheduled to meet with federal prosecutors to discuss a cooperation agreement the day of her murder. And the government offered evidence from which the jury could have inferred that Patsy witnessed Tina being shot. Together, this evidence sufficed to establish element four; federal law enforcement officers would of course speak to an eyewitness to the murder of a target of a federal investigation who was scheduled to meet with federal prosecutors.

Indeed, a government witness testified that, after Tina's murder, the Bureau of Alcohol, Tobacco, Firearms and Explosives "and all of its resources became involved in [the] investigation." Appx 1605–06. As final proof, an investigation into Tina's murder and Patsy's attempted murder did take place. "[T]he fact that a federal investigation ultimately occurred . . . is probative evidence of the likelihood that [witnesses] would have eventually communicated." *Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 186 (3d Cir. 2017) (vacated on other grounds).

Because the government offered sufficient evidence for the jury to find all four elements of *Taylor*, we will affirm Montgomery's conviction under 18 U.S.C. § 1512(a)(1)(C) for the attempted murder of Patsy Crawford to prevent her from communicating to law enforcement about the murder of her daughter.

VII.

Finally, we agree with Montgomery that the District Court committed plain error by imposing a mandatory consecutive 25-year sentence for Count 8, charging the use of a firearm to kill Tina Crawford in violation of 18 U.S.C. §

[18] Investigators intercepted several calls between Tina and Montgomery. They tracked the movement of Tina's car, and they searched her apartment.

924(j). The imposition of the consecutive sentence for a subsection 924(j) conviction was consistent with our then-controlling precedent in *United States v. Berrios*, 676 F.3d 118, 143 (3d Cir. 2012), but this decision was later overruled by the Supreme Court in *Lora v. United States*, 599 U.S. 453, 458 (2023) (holding that "[s]ubsection [924](j) contains no consecutive-sentence mandate").

Montgomery did not object to this sentence at the time that it was imposed, which means this claim is subject to plain error review. "Error is plain when it is clear or obvious and affects a defendant's substantial rights." *United States v. Diaz*, 90 F.4th 335, 348 (5th Cir. 2024) (citing *Olano*, 507 U.S. at 732–33 (1993)). The parties agree that imposing a mandatory consecutive term constituted a clear error, but the government contends Montgomery cannot establish the sentence impacted his substantial rights. We disagree.

Here, the 25-year term of imprisonment for his subsection 924(j) conviction was imposed to run consecutively to Montgomery's life sentence for the murder of Tina Crawford. An error affects a defendant's substantial rights if it affects "the outcome of the district court proceedings." *Olano*, 507 U.S. at 734. "Because we cannot say with complete confidence that the court would have imposed the same sentence" had the consecutive term not been deemed mandatory, "we must conclude that the error affected [Montgomery's] substantial rights." *United States v. Payano*, 930 F.3d 186, 198 (3d Cir. 2019) (internal quotations and citations omitted). That Montgomery was sentenced to a longer term of imprisonment than he would have been absent the error is enough to establish prejudice, despite his life sentence remaining intact. *Olano*, 507 U.S. at 734; *Diaz*, 90 F.4th at 348 (vacating sentence where district court did not exercise discretion under *Lora* and imposed three consecutive life sentences for subsection 924(j) convictions); *see also United States v. Ortiz-Orellana*, 90 F.4th 689, 705 (4th Cir. 2024) (vacating sentence where term of imprisonment for subsection 924(j) conviction was imposed consecutive to life sentence).

Before exercising our discretion to correct the error to Montgomery's sentence, we determine whether the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U.S. at 736. Even though

the corrected sentence would not decrease the time Montgomery spends in prison, he is sentenced to a term of imprisonment longer than permitted by law. We recognize that "the public legitimacy of our justice system relies on procedures that are neutral, accurate, consistent, trustworthy, and fair, and that provide opportunities for error correction." *United States v. Henderson*, 64 F.4th 111, 121 (3d Cir. 2023) (quoting *Rosales-Mireles v. United States*, 585 U.S. 129, 141 (2018)) (internal quotation marks omitted). We will therefore provide the opportunity for error correction by vacating the sentence so that a sentence in accordance with the *Lora* decision may be imposed.

VIII.

For the above reasons, we will affirm the convictions and judgments of sentence for James Perrin. For Price Montgomery, we will affirm the convictions and judgments of sentence except for the term of imprisonment imposed for violating 18 U.S.C. § 924(j) (Count 8), which we will vacate and remand for resentencing consistent with this opinion.

APPENDIX B

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

UNITED STATES OF AMERICA,	)	
	)	
v.	)	2:14-cr-205
	)	
PRICE MONTGOMERY, *et al.*,	)	Judge Mark R. Hornak
	)	
Defendant.	)	

AMENDED* OPINION

Mark R. Hornak, United States District Judge

Defendants Price Montgomery, James Perrin, and Charles Cook seek to suppress evidence derived from a state court–authorized wiretap obtained as part of a joint state and federal investigation of heroin distribution. (ECF Nos. 138 and 197 ("Motions").) The Motions assert that the application for the wiretap on Defendant Montgomery's phone, which was executed on April 14, 2014 ("April 14 wiretap"), was not lawfully authorized. Defendant Montgomery's Motion, ECF No. 197, also challenges the wiretap evidence on several other grounds, most of which turn largely on whether the April 14 wiretap application was properly authorized. These Motions come amid a flurry of state criminal prosecutions spurred by the revelations of misconduct on the part of the former Attorney General ("AG") of Pennsylvania, Kathleen Kane ("AG Kane"), during her time in office. The Court held evidentiary hearings on the Motions on June 14, 19, and 20, 2017. The issues were fully briefed, oral argument was held on October 13, 2017, and the matter is ripe for disposition. For the reasons that follow, the Motions are denied.

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* This Opinion was amended to delete a reference at page 7 to the date of sentencing of AG Kane. In all other respects, it is unchanged from the Opinion filed at ECF No. 385.

I. Background

The material facts in this case are generally undisputed.[1] On June 8, 2014, following a drug trafficking investigation stretching back to 2011, Defendants Montgomery and Perrin were arrested after traveling to New Jersey, a trip which law enforcement believed was for the purpose of transporting a shipment of heroin back to Pittsburgh. (Def. Montgomery's Proposed Findings of Fact & Conclusions of Law, ECF No. 359 ("ECF No. 359"), ¶¶ 8–9, 33.) Agents recovered 1,650 bricks of heroin and about sixteen (16) firearms, nearly all of which were loaded, in connection with those arrests. (*Id.* ¶ 33.) The arrests were precipitated in no small part by information gleaned from the April 14 wiretap of Defendant Montgomery's cell phone sought by the Pennsylvania AG's Office and approved by Pennsylvania Superior Court Judge Mary Jane Bowes. (*Id.* ¶¶ 19–20.) Defendants seek to suppress the fruits of this wiretap, and all evidence

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[1] The Court directed the parties to file proposed findings of fact. The Court has not adopted proposed findings which are inaccurate, inadmissible, argumentative, speculative, or which are really legal conclusions. To avoid duplicitous citations to the record, in this section the Court will draw primarily from Defendant Montgomery's Proposed Findings of Fact and Conclusions of Law, ECF No. 359, unless citations to other materials in the record are particularly relevant. In the Court's estimation, the witnesses testified credibly in relevant regards. Based on the Court's assessment of the testimony and the demeanor and credulity of the witnesses, and based on its determinations as to admissibility, the Court adopts the following proposed findings of fact as findings of the Court: ECF No. 359, ¶¶ 1–17, 18 (except for "knew"), 19–33, 35–41, 42–59, 61–71, 73–74 (except as to "defective"), 75–109, 111–12, 113 (except for "improperly"), 114, 115–16 (except for "improper"), 117–120; ECF No. 361 (Government's Proposed Findings of Facts), ¶¶ 1–19, 20–38, 39–41, 42–48, 49–53, 54–73, 74–97, 98 (except for the word "extended"; the Court finds that the period of time was about one (1) hour or so), 99–118, 119–26, 127–31, 132–44, 145–52, 153–61, 162–64.

Except where specifically cited in this Opinion, the Court does not adopt the findings of fact submitted by Defendant Perrin, ECF No. 360. In many instances, Defendant Perrin's proposed findings are materially identical to Defendant Montgomery and the Government's proposed findings, making their adoption unnecessary. Where the proposed findings differ, the Court concludes that the discrepancies in Defendant Perrin's proposed facts are often inaccurate representations of the testimony in the record, are really legal conclusions, are essentially argumentative, or are immaterial or irrelevant to the legal issues before the Court. For instance, ¶¶ 277–86 and ¶¶ 303–06 of ECF No. 360 concern when Deputy King learned that AG Kane did not want the designation letter signed, when he learned that she was upset/angry about this, and when he learned that she was specifically upset with Kathy Smith. This extended discussion is not present in the other parties' findings of fact, and is at times at odds with Deputy King's actual testimony, which the Court finds credible. The Court need not resolve the exact timeline as to that issue, since there is no dispute that Deputy King learned of AG Kane's displeasure with Smith's actions after he executed the April 14 wiretap application. AG Kane's "feelings" about the signed designation letter (and what Deputy King subsequently heard from others in the AG's Office in this regard) are immaterial, since AG Kane took absolutely no action to undue that designation letter, or to stop the wiretap application from proceeding despite ample opportunity for her to do so.

derived from it, on the grounds that the April 14 wiretap application was not properly authorized under Pennsylvania's Wiretap and Electronic Surveillance Control Act, 18 Pa. C.S. §§ 5701 *et seq.* ("Wiretap Act"). (*See* Def. Perrin's Mot. to Suppress, ECF No. 138; Def. Montgomery's Mot. to Suppress Wire Intercepts, ECF No. 197.) Specifically, the Wiretap Act requires the application for a wiretap to be signed by the AG, or in the AG's absence, signed by someone the AG has specifically designated in writing. That did not happen in this case. Instead, First Deputy AG Adrian King ("Deputy King") signed the April 14 wiretap application, and he did so without a written designation physically signed by AG Kane.

Here's what happened. In March 2014, the Montgomery investigation was poised to proceed to a wiretap. (ECF No. 359, ¶ 53.) AG Kane, Deputy King, and other state law enforcement officials held weekly senior management meetings, during which the progress of the investigation and the potential need for a wiretap was a central topic of discussion. (*Id.*) In early April 2014, the lead agents on the case, Agent Robert Iuzzolino and Detective Matthew Truesdell, began drafting the affidavit in support of a wiretap application for Montgomery's cell phone. (*Id.* ¶¶ 13, 16.) A meeting was scheduled for April 14, 2014, to execute the wiretap application. (*Id.* ¶ 58.)

As it turned out, April 14, 2014, was also the day AG Kane traveled to Haiti on a personal trip. (*Id.* ¶¶ 86–87.) Before AG Kane left the Commonwealth, her executive assistant, Kathy Smith ("Smith"), prepared a "designation letter" for AG Kane to sign, which would have designated Deputy King as the Acting AG during Kane's absence. (*Id.* ¶ 87.) AG Kane did not sign that letter, but told Smith to keep the unsigned designation letter in her (Smith's) desk. (*Id.* ¶ 90.) If something came up that required the letter to be signed, Smith was instructed to call AG Kane, and Smith

could sign Kane's name if necessary. (*Id.*) This admittedly "one off" approach by AG Kane forms the impetus for Defendants' suppression motion.[2]

The record before the Court reflects that on the evening of April 13, 2014, AG Kane spoke to Deputy King on the phone for about thirteen (13) minutes, during which King took notes of the call. (Def. Perrin's Findings of Fact and Conclusions of Law, ECF No. 360, ¶¶ 265–66.) Among other work matters relating to AG Kane's absence, the Government contends AG Kane and Deputy King discussed the Montgomery wiretap application that would be executed the next day, and Kane confirmed on this call that Deputy King was authorized to sign the application. (Gov't's Proposed Findings of Fact and Conclusions of Law, ECF No. 361 ("ECF No. 361"), ¶¶ 83–90.)

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[2] It is unclear from the record why AG Kane did not sign the designation letter before she left the country. Deputy King testified that he believed that Kane did not want a written record of her trip out of the country. (Def. Perrin's Findings of Fact and Conclusions of Law, ECF No. 360, ¶ 285.) Other testimony mentions personal animosity brewing between AG Kane and Deputy King. (ECF No. 359, ¶¶ 72, 119.) AG Kane asserted her Fifth Amendment privilege against self-incrimination to avoid testifying in this case, so we don't have her testimony on this point. (*See* Bench Mem. Regarding Witness' Assertion of the Privilege as to Her Work as Attorney General, ECF No. 332.)

During the Suppression Hearing, the Court received evidence and testimony regarding statements AG Kane made during a telephone call to the United States Attorney's Office on June 13, 2017, to the effect that she did not know about the designation letter or the impending wiretap prior to her trip to Haiti (among other claims). (Tr. of Suppression Hearing of June 20, 2017, ECF No. 339, at 58–108.) Defendants sought to admit this evidence of AG Kane's statements in lieu of her testimony after she asserted her Fifth Amendment privilege at the Hearing. (*Id.* at 58.) The Government timely objected. (*Id.* at 62–63, 105.)

Although there is "no automatic rule against the reception of hearsay evidence" in suppression proceedings, *United States v. Matlock*, 415 U.S. 164, 175 (1974), the Federal Rules of Evidence are nonetheless highly informative in this matter. Defendants acknowledge that Kane's out-of-court statements are offered to prove the truth of the matter asserted. (Tr. of Suppression Hearing of June 20, 2017, ECF No. 339, at 63, 107–08.) Although AG Kane was an unavailable declarant for the purposes of Federal Rule of Evidence 804(a) (*see id.* at 107–08), AG Kane's statements are hearsay not within any exception under Rule 803 or 804(b). The statements are not former testimony or against AG Kane's own interest; to the contrary, they appear intended to exculpate Kane from accusations of wrongdoing.

In this case, although AG Kane's statements to the United States Attorney's Office are not strictly barred by the Federal Rules of Evidence, the Court concludes the statements are inadmissible because they are not accompanied by an appropriate indicia of reliability. They are internally inconsistent, self-serving, and contradicted by other, more credible evidence in the record—in particular, the credible testimony given by Deputy King, Smith, and pretty much every other witness in this case, especially as to AG Kane's involvement in discussions about a wiretap on Defendant Montgomery's phone and the designation letter. Because the Court finds and concludes there is serious reason to doubt the truthfulness of AG Kane's essentially self-serving statements in such regards, and because AG Kane was not under oath or subject to cross examination when she made them to the United States Attorney's Office, the Court has given those statements no probative weight.

The following morning, during AG Kane's flight to Haiti, Deputy King learned that the designation letter had not been signed. (*Id.* ¶ 93.) Assuming this to be an administrative oversight, and believing he needed the signed letter to execute the wiretap application, Deputy King directed Smith to sign the designation letter. (*Id.* ¶ 100; ECF No. 359, ¶ 98.) Smith called AG Kane three (3) or five (5) times over a period of thirty (30) to sixty (60) minutes and left voicemail messages asking Kane to call back, but Smith was unable to reach her. (ECF No. 359, ¶ 99.) David Tyler, the Chief Operating Officer of the AG's Office ("COO Tyler"), also attempted to contact AG Kane, unsuccessfully. (ECF No. 361, ¶ 98.) It is unclear from the record how long Smith waited for AG Kane to return her calls. At any rate, Smith believed AG Kane had given her the authority to sign the designation letter if necessary, and at Deputy King's direction, she signed AG Kane's name on the letter in the early afternoon on April 14, 2014. (ECF No. 359, ¶ 100.)

After the letter had been signed, Deputy King executed the wiretap application that same afternoon.[3] (ECF No. 361, ¶ 104.) About an hour later on Monday, April 14, AG Kane returned Smith's calls. (ECF No. 359, ¶ 107.) Smith informed Kane that she (Smith) had signed the designation letter. (*Id.*) AG Kane stated that she wished Smith had spoken to her first, and said that Smith had "made a bad situation worse." (*Id.* ¶ 108.) Smith offered her resignation, which Kane did not accept. (*Id.* ¶ 109.) AG Kane did not instruct Smith or anyone else to destroy or otherwise void the designation letter or the signed wiretap application, to otherwise "undo" what had been done, or to stop the process of the application to Judge Bowes. (*Id.* ¶¶ 110, 117.) Later on April 14 or 15, COO Tyler spoke with AG Kane, who expressed her displeasure that the designation letter had been signed. (ECF No. 361, ¶ 109; Tr. of Suppression Hearing of June 19, 2017, ECF No. 338,

[3] It is unclear from the record what time in the afternoon the wiretap application was signed. The Court notes that the evidentiary hearings in this matter occurred more than three years after the events in question took place, presumably adding to the less-than-precise timelines in the record.

at 121.) AG Kane also told COO Tyler that she believed that Deputy King could have signed the wiretap application without a written designation letter.[4] (ECF No. 361, ¶ 109.)

On April 16, 2014, Superior Court Judge Mary Jane Bowes reviewed and approved the wiretap application.[5] (ECF No. 359, ¶ 19.) AG Kane returned to the AG's Office on April 22, 2014. She held a senior management meeting that day, during which the Montgomery investigation was specifically discussed. (ECF No. 361, ¶¶ 119, 122.) Thereafter, investigators sought (1) a continuation of the April 14 wiretap, (2) a new wiretap for Defendant Perrin's phone, and (3) a new wiretap for Defendant Montgomery's second phone, the applications for all of which AG Kane executed and a Superior Court Judge approved. (ECF No. 359, ¶¶ 20–32.)

Following their arrests on June 8, 2014, Defendants Montgomery and Perrin were charged in state court with various narcotics and weapons offenses. (ECF No. 361, ¶ 159.) On August 22, 2014, Tina Crawford, a cooperating witness against Defendant Montgomery, was murdered. (*Id.* ¶ 160.) A federal criminal complaint against Defendants Montgomery and Perrin was filed in this Court on the same date, which included new charges for tampering with a witness by killing a person. (*Id.* ¶¶ 160–61; *see also* ECF No. 4.)

The events within the AG's Office giving rise to these Motions first came to light in August 2015, when AG Kane was charged in a state criminal case with various offenses, including perjury, obstruction of justice, and leaking of grand jury information. (ECF No. 361, ¶ 162.) The lead agent

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[4] Smith testified that AG Kane discussed the designation letter, but not the wiretap application, when Kane returned Smith's calls on April 14. (ECF No. 359, ¶ 110.) Nonetheless, the record reflects that AG Kane knew on that day that the wiretap application had been signed. AG Kane had spoken to Deputy King the previous night about executing the wiretap application on April 14; Smith told AG Kane during their April 14 phone call that Smith had signed the designation letter because Deputy King needed to sign documents in an investigation; and AG Kane told COO Tyler on April 14 or 15 that she believed the wiretap application could have been signed without the designation letter. (ECF No. 361, ¶¶ 83–90, 107, 109.) The Court concludes that before the wiretap application was presented to Judge Bowes on April 16, AG Kane was aware the wiretap application had been executed.

[5] The designation letter was not, and was not required to be, part of the packet of materials submitted to Judge Bowes. (ECF No. 361, ¶ 114.)

on the Montgomery investigation, Agent Iuzzolino, learned that there might be an issue regarding the designation letter for the April 2014 wiretap application from reading the affidavit of probable cause in AG Kane's criminal case. (*Id.*) In 2016, Kane was convicted of perjury and leaking grand jury information. (*Id.* ¶ 164.)

II. Analysis

Although the legal issues before the Court appear complex, at bottom, this case requires the Court to decide the extent to which federal wiretap laws intersect with similar state laws, and, if a violation of an applicable legal standard occurred, whether suppression is required in this case.

In general, federal law controls the admission of evidence in federal criminal cases. *See United States v. Williams*, 124 F.3d 411, 428 (3d Cir. 1997) (citing *United States v. Rickus*, 737 F.2d 360, 363 (3d Cir. 1984)). Federal telephone wiretapping is governed by Title III of the federal Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2520 ("Title III"). Title III does not specifically require a written designation of authority for a state wiretap; however, certain provisions of a federal statute may call for the application of state standards. Title III requires a wiretap authorization order signed by a state judge to be "in conformity with [18 U.S.C. §] 2518 . . . and with the applicable State statute." 18 U.S.C. § 2516(2). The question the Court must determine is, first, whether the April 14 wiretap application violated state wiretap law, and if so, whether the provision of state law that was violated was absorbed into Title III, creating a violation of federal law.

Defendants argue that Title III requires federal courts to defer to state wiretap laws to the extent that state requirements are more rigorous than federal requirements. In this case, the argument goes, because the Pennsylvania Wiretap Act's written designation requirement is more rigorous than federal law, state law should determine whether this wiretap was valid. Without a

written designation, Defendants assert, Deputy King was not authorized to execute the April 14 wiretap application, which then would have violated both state and federal law. Further, they say that the doctrines of ratification and good faith cannot operate to save the evidence from suppression in this case, where there is a specific state statute on point and Title III provides for suppression as a remedy for the violation of those statutes.

In contrast, the Government contends that, first, the April 14 wiretap application did not violate Pennsylvania law because Deputy King was authorized to execute the wiretap application in AG Kane's absence without a written designation. Second, it says that even if Deputy King was not authorized to sign the wiretap application under state law, the state law requirement of a written designation does not address a "core concern" of Title III requiring suppression in this federal court proceeding. Third, the Government asserts that AG Kane ratified Deputy King's act in executing the April 14 wiretap application by taking no action to stop the application after actually knowing that it was signed or in any way articulating her disapproval that it was executed and by executing subsequent wiretap applications based on the April 14 wiretap. Finally, even if the April 14 wiretap application violated both state and federal law, the Government contends that suppression is not warranted in this case because law enforcement acted in good faith in carrying out the wiretap order. The Court will address each of these arguments in turn.

A. Did the April 14 wiretap violate Pennsylvania law?

Before analyzing federal wiretap law, this Court must first address whether Deputy King was authorized under Pennsylvania law to execute the wiretap application. If he was, the April 14 wiretap violated neither state nor federal law, and there is no basis to suppress the evidence gained from it or the subsequent wiretaps and derivative evidence. There are three Pennsylvania laws

relevant to this issue: the Wiretap Act, the Administrative Code of 1929 ("Administrative Code"),[6] and the Commonwealth Attorneys Act.

Defendants assert that the Wiretap Act is the sole controlling state law in this case. Under the Wiretap Act, Defendants argue, Deputy King was not authorized to sign the wiretap application without a written designation to do so by the AG. Specifically, the Wiretap Act provides in relevant part:

> The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, . . . may make written application to any Superior Court judge for an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of [certain offenses], or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of [certain offenses.]

18 Pa. C.S. § 5708. All parties agree that AG Kane did not personally sign the designation letter.

This is not the end of our analysis, however, for at least two other Pennsylvania laws address the operation of the AG's Office when the AG is absent, incapacitated, or the office is vacant. The Administrative Code directs the Governor to appoint deputy heads of various departments who are authorized to exercise the powers and fulfill the obligations of the office if the department head is absent or vacant. *See* 71 P.S. § 73. In 1929, when the Administrative Code was adopted, the AG was one of those department heads for which the Governor could appoint a deputy. *Id.* § 61. Section 213 of the Administrative Code states:

> The Governor shall appoint and fix the compensation of such number of deputy heads of administrative departments, except those of the Department of Auditor General and Treasury Department, as the Executive Board shall approve, **who shall, in the absence of the head of such department, have the right to exercise all the powers and perform all the duties by law vested in and imposed upon the head of such department**, except the power to appoint bureau or division chiefs, or other assistants or employees,

[6] Despite its name, the Administrative Code is a statute passed by the Pennsylvania legislature, not a compilation of regulations issued by executive agencies.

> and who may, at any time, exercise such of the powers and perform such of the duties of the head of his department as may be prescribed by the head of his department: Provided, however, That any such deputy shall not have the right to exercise any power or perform any duty which the Constitution of the Commonwealth of Pennsylvania requires the head of his department personally to exercise or perform.
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> Whenever there shall be a vacancy in the office of the head of any department, such deputy as the Governor shall designate in writing shall exercise the powers and perform the duties of the head of the department until the vacancy is filled.

Id. § 73 (emphasis added). Similarly, 71 P.S. § 762, enacted in 1917 and aptly titled "Duty of person next in authority to act during vacancy or absence of incumbent" (a provision predating but closely related to the Administrative Code), states:

> Whenever, by reason of the absence, incapacity, or inability of the head or chief of any of the departments of the State Government to perform the duties of his office, or whenever a vacancy in the office of the head or chief of any of the departments of the State Government occurs, the duties of the head or chief of such department shall be performed by the deputy, chief clerk, or other person next in authority, until such disability is removed or the vacancy filled.

Id. § 762. In 1980, the Commonwealth Attorneys Act made the AG's Office an independent agency and bestowed the power to appoint a First Deputy AG upon the AG, rather than the Governor. *See* 71 P.S. § 732-201. The Commonwealth Attorneys Act states:

> (a) General provisions.--The Office of Attorney General shall be an independent department and shall be headed by the Attorney General. The Attorney General shall exercise such powers and perform such duties as are hereinafter set forth. As an independent administrative department the Office of Attorney General shall be subject to the same limitations contained in [the Administrative Code,] and all other acts as are applicable to the independent Department of Auditor General or State Treasury.
>
> . . .
>
> (c) Bureaus, divisions and personnel.--The Attorney General shall appoint and fix the compensation of a first deputy attorney general, a director of the Bureau of Consumer Protection and such other deputies, officers and employees who may, at any time, exercise such powers and perform such duties as may be prescribed by the Attorney General.

Id. In other words, the Commonwealth Attorneys Act removed the AG's Office from the Governor's control, but otherwise reaffirmed the application of the Administrative Code to the AG's Office, including as to the powers and duties of the First Deputy AG.

Defendants advance a number of arguments to explain why only the Wiretap Act's requirement of a written designation, and not any of the other state law provisions for dealing with the absence of the AG, should apply here. First, Defendants argue AG Kane was not absent when Deputy King signed the April 14 wiretap application. Although she was plainly physically out of the Commonwealth and on the way to or in another country (Haiti), they assert she was available by phone and was only briefly "out of pocket"—for the span of a few hours at the most. (Def. Montgomery's Suppl. Mem., ECF No. 363, at 2–3.) Although the statutes do not define "absent," Defendants argue, it could not be intended to mean so brief a time as to allow the First Deputy to take charge when the AG was temporarily away from her desk. (*Id.* at 3.)

As a preliminary matter, the Court concludes that AG Kane was absent for the purposes of the relevant state laws. The distinction between "absent" and "vacant" in Section 213 of the Administrative Code and 71 P.S. § 762 indicates that the Pennsylvania legislature intended an absence to be temporary. The length of time AG Kane was actually "out of pocket" is irrelevant; she was far away from the Commonwealth, traveling to a foreign country that was still recovering from a natural disaster and had spotty cell phone service, and both Smith and COO Tyler were unable to immediately reach her despite numerous calls and voicemail messages. At the time the designation letter and the wiretap application were signed, no one in the AG's Office had any idea how long AG Kane would be unreachable, the wiretap application process was fast moving, and

the overall work of the AG's Office needed to proceed.[7] This is precisely the sort of situation these state laws seek to address by permitting (or in the case of Section 762, requiring) official business to continue, even when the AG is unavailable.

Next, Defendants argue that even if AG Kane was absent and unreachable when the wiretap application was signed, she became "reachable" before the wiretap application was presented to Judge Bowes, and AG Kane should have acted to prevent its approval. (*Id.* at 2.) If the Administrative Code applies to the facts in this case, this argument has no merit. A First Deputy's actions, taken during the AG's absence, do not become void upon the AG's return—this, quite plainly, would defeat the purpose of Section 213 of the Administrative Code and the other provisions of state law allowing state departments to operate in the absence of the department head. If Deputy King was authorized to execute the wiretap application in AG Kane's absence under the Administrative Code, the Commonwealth Attorneys Act, and/or 71 P.S. § 762, the application was valid when signed, and AG Kane was under no obligation to prevent it from being presented to Judge Bowes. In fact, as this Court will discuss later, the fact that she made no efforts to "undo" Deputy King's execution of the application gives additional credence to the Government's assertions that (1) AG Kane fully supported and approved of the wiretap application and believed Deputy King was authorized to sign it in her absence, even without a written designation letter,

[7] This is particularly so in this circumstance, where AG Kane had decided to be far less than transparent as to her international travel plans and whereabouts. Although AG Kane traveled with some members of the AG's Office—specifically, her sister (a supervisory attorney in the AG's Office) and some law enforcement agents with the AG's Office—the purpose of the trip was personal and none of the attendants traveled in their official capacities. (ECF No. 361, ¶ 60.) Indeed, it appears that AG Kane wanted to keep her trip to Haiti confidential, and at least one agent who went on the trip was told to keep it quiet and not discuss the trip publicly. (*Id.* ¶ 61.) A private security team was hired for the group, rather than AG Kane's official security detail. (*Id.*) Other than Kane's travel companions, the record reflects that few, if any, members of the AG's Office knew the nature or location of AG Kane's travels until shortly before she departed. (*Id.* ¶ 62.) This includes Smith, AG Kane's executive assistant. Smith wasn't involved in making scheduling or travel arrangements for the trip, and AG Kane's calendar did not reflect that Kane was traveling to Haiti until shortly before her departure from the Commonwealth. (*Id.* ¶¶ 55–57.) Each of these machinations necessarily fueled the uncertainty as to pretty much everything about AG Kane's absence.

and (2) in any event, by not issuing any directive to undo Deputy King's or Smith's actions, knowing full well what they had done, AG Kane ratified or adopted those actions.

This brings us to the crux of Defendants' argument, which is that the Wiretap Act, a specific state statute enacted to address state wiretap applications, controls over more general statutes addressing the workings of state departments (including the AG's Office) when the top official is absent. (Defs.' Joint Suppl. Mem., ECF No. 370, at 8–9.) Defendants assert that the relevant provisions of state law cited above are irreconcilable, since only the Wiretap Act requires a written designation while the others seem to apply automatically when the AG is absent. Pointing to the Pennsylvania rules of statutory interpretation, Defendants say that in the case of conflicting statutes, the specific statute governs the general and that courts are to construe statutes in a way that avoids rendering any provision void or superfluous. *See* 1 Pa. C.S. §§ 1921, 1922, 1933. Defendants maintain that to allow the Administrative Code, or any other provision of Pennsylvania law dealing with the absence of the AG in a more general sense, to sidestep an explicit requirement of the Wiretap Act—namely, a designation in writing—would controvert legislative intent. (*Id.* at 2–4, 9; Def. Perrin's Reply to Gov't's Findings of Fact and Conclusions of Law, ECF No. 362, at 1.)

The Government, in contrast, contends that the relevant statutory provisions complement one another and are not in conflict, and therefore the Pennsylvania rules of statutory interpretation on which Defendants rely are not applicable to this case. (Gov't's Suppl. Mem., ECF No. 371, at 4–5.) Under the Government's interpretation, because AG Kane was absent, the Administrative Code and the Commonwealth Attorneys Act empowered Deputy King, as First Deputy AG, to perform the duties of the AG, including executing wiretap applications. (Gov't's Suppl. Legal Authority, ECF No. 321, at 2; ECF No. 361, at 35.)

The Court agrees that in light of AG Kane's absence, Deputy King was authorized to execute the wiretap application under the Administrative Code, as supplemented by the Commonwealth Attorneys Act, and 71 P.S. § 762. The relevant provisions of state law are not inconsistent, and this interpretation does not render the Wiretap Act's written designation provision superfluous. The Wiretap Act permits an AG to make written designations during his or her time in office, but it does not require it. *See* 18 Pa. C.S. § 5708. Further, if the AG decides to make designations, the AG may designate *any* deputy AG—not necessarily just the First Deputy. *Id.* This is distinct from the chain of command that would otherwise kick in upon the AG's absence under the Administrative Code. Additionally, under the Wiretap Act, it appears a designation may be ongoing and not incident-specific. *Id.* Presumably, AG Kane could have signed a designation letter on her first day in office, designating a particular deputy to handle wiretaps in case of her absence at any point in her term; however, the Wiretap Act did not require her to do that.

Any other interpretation of the Wiretap Act would require all wiretap applications to grind to a halt during an AG's absence, precisely when time is of the essence,[8] even if her absence was unexpected and no Wiretap Act designation had been made. Absences (and their duration) cannot always be planned in advance, especially when the boss has departed on a personal trip kept under wraps to visit a foreign locale still on the road to recovery from a natural disaster. More generally, knowing that a written designation might be needed is not always feasible or foreseeable. When AG business must nevertheless be done, the Administrative Code steps in to allow the office to operate, as it did in this case.

[8] *See, e.g.*, ECF No. 359, ¶ 46. ("Once the wiretap application and supporting documents were in final form, time was of the essence at that point to get the application and affidavit signed and sworn within 24 to 48 hours because the probable cause in the affidavit could go stale, drugs could be moved, and, because a cell phone was involved, the target phone could be dumped and a new phone obtained before a wiretap is activated.")

A review of the dates that the relevant statutory provisions were enacted further supports this Court's conclusion that the involved statutes are not irreconcilable. First came 71 P.S. § 762, which was enacted on March 22, 1917. On April 9, 1929, the Pennsylvania legislature enacted the Administrative Code. 71 P.S. § 51. The Wiretap Act, which was enacted in October 1978, came next. 18 Pa. C.S. § 5701. Section 5708 of the Wiretap Act has been amended on various occasions since 1978, but none of these amendments alter or modify the written designation provision. (*See* Defs.' Joint Suppl. Mem., ECF No. 370, at 8 & n.1.) Finally, the relevant provisions of the Commonwealth Attorneys Act were enacted last, in October 1980. 71 P.S. § 732-101(a). The Commonwealth Attorneys Act applied the Administrative Code—including the absence provision—to the AG's Office. *Id.* § 732-201(a). Because this occurred only two years after the Wiretap Act was enacted, we should logically presume that the legislature knew about the Wiretap Act and its written designation provision. *See, e.g.*, *Cannon v. Univ. of Chi.*, 441 U.S. 677, 686–97 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens, know the law . . . .") We should also presume that the state legislature knew it could carve out exceptions (including one as to wiretap applications) to the First Deputy's power to serve as Acting AG—indeed, the Administrative Code, and by extension the Commonwealth Attorneys Act, includes two explicit exceptions preventing a First Deputy from appointing personnel or exercising certain powers reserved for the AG in the state constitution. *See* 71 P.S. § 73; *id.* § 732-201. Despite this, the legislature chose *not* to create a similar exception as to executing wiretap applications. Thus, the Court concludes that Pennsylvania law has intended for the absence provision of the Administrative Code to allow the First Deputy AG to execute the non-excluded duties of the AG, including executing a wiretap application, during an AG's absence. Indeed, this provision is particularly important in just this sort of case, where the AG is unexpectedly (or

perhaps more precisely in this case, somewhat mysteriously) absent in circumstances fraught with uncertainty as to her whereabouts and accessibility, there is no written designation, and the business of the AG's Office—in this case, the process of executing a time-sensitive wiretap application—cannot grind to a halt for an indeterminate period of time.

B. Did the April 14 wiretap violate federal wiretap law?

Defendants do not claim that the April 14 wiretap violated federal law independent of the alleged state law violation, which the Court has dispensed with above. Recognizing the complex choice of law and statutory interpretation issues before us, however, the Court will continue with its analysis of federal law to determine whether, had the April 14 wiretap violated state law, the evidence should be suppressed in federal court.

Defendants argue that a federal court must apply both state and federal law in analyzing the validity of wiretaps procured under state law. (ECF No. 359, at 28.) They say that where state law is more rigorous than federal law, courts analyzing the validity of wiretaps under Title III must defer to state law. (*Id.* at 28, 32.) Defendants rely on 18 U.S.C. § 2516(2), which provides:

> The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter **and with the applicable State statute** an order authorizing, or approving the interception of wire, oral, or electronic communications . . . .

18 U.S.C. § 2516(2) (emphasis added). In this case, Defendants argue, because the state law requirement of a written designation of authority is more stringent than federal law, the state law requirement controls. (ECF No. 359, at 28, 32.)

The Government, in contrast, asserts that even where wiretaps were obtained under state law, Title III provides the framework for deciding whether the electronic evidence is admissible

in federal criminal proceedings. (ECF No. 361, at 29 n.6.) Although certain provisions of Title III do incorporate state law requirements, and courts may initially apply both state and federal law to evaluate the validity of a wiretap authorization, whether evidence derived from a state wiretap is admissible in federal court is a question of federal, rather than state, law. (*Id.* at 30.) Further, suppression is not mandated for every violation of Title III. (*Id.*) Rather, the Government asserts that evidence derived from a wiretap authorized in violation of state law is subject to suppression under Title III only when that violation implicates a core concern of Title III. (*Id.* at 32.) In this case, the Government maintains, even if AG Kane's failure to sign the designation letter violated state law, this failure does not involve a core concern of Title III and is not a basis to suppress the challenged evidence in federal court. (*Id.* at 36.)

This Court concludes that applicable Third Circuit precedent supports the Government's interpretation of Title III. As an initial matter, an overview of the standard for suppressing wiretap evidence under Title III is relevant here. Evidence may be suppressed in federal court under Title III only if one of the three grounds set out in § 2518(10)(a) is satisfied. *Williams*, 124 F.3d at 426 (citing *United States v. Giordano*, 416 U.S. 505, 524 (1974)). This provision provides, in relevant part:

> Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—
>
> (i) the communication was unlawfully intercepted;
>
> (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
>
> (iii) the interception was not made in conformity with the order of authorization or approval.

18 U.S.C. § 2518(10)(a). Of these three grounds, only the first—that the communication was unlawfully intercepted—is potentially relevant here. Importantly, the fact that a wiretap violated a

state or federal law may not be enough to consider it "unlawfully intercepted" for the purposes of § 2518(10)(a). The Supreme Court, as well as our Court of Appeals, has held that "not every failure to comply fully with any requirement provided in Title III would render the interception of wire or oral communications 'unlawful' under § 2518(10)(a)(i)." *Williams*, 124 F.3d at 426 (quoting *United States v. Donovan*, 429 U.S. 413, 433 (1997)). Indeed, "it is apparent from the scheme of the section that paragraph (i) was not intended to reach every failure to follow statutory procedures, else paragraphs (ii) and (iii) would be drained of meaning." *United States v. Chavez*, 416 U.S. 562, 575 (1974) (citing *Giordano*, 416 U.S. at 526). Rather, suppression is mandated only when a violation amounts to a "failure to satisfy any of those statutory requirements that *directly and substantially* implement" Congress's purposes in passing Title III. *Id.* (quoting *Donovan*, 429 U.S. at 433–34) (emphasis added); *see also United States v. Glover*, 736 F.3d 509, 513 (D.C. Cir. 2013) (stating that § 2158(10(a)(i) requires "a broad inquiry into the government's intercept procedures to determine whether the government's actions transgressed the 'core concerns' of the statute").

Congress enacted Title III with the stated purposes of "(1) protecting the privacy of wire and oral communications, and (2) delineating on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized." 18 US.C. § 2510 (congressional findings); *see also Gelbard v. United States*, 408 U.S. 41, 48 (1972). Other courts construing federal wiretaps under Title III have concluded that only those substantive requirements that concern privacy and preventing the government's unauthorized use of surveillance techniques, rather than more technical requirements, implicate the core concerns of Title III.[9]

[9] *See, e.g.*, *Chavez*, 416 U.S. at 575 (misidentification of the officer authorizing the wiretap application did not implicate a core concern of Title III where the Attorney General actually gave the required authorization, because the reviewing and approval functions required by Congress were nevertheless fulfilled); *Losinno v. Henderson*, 420 F. Supp. 380, 384–85 (S.D.N.Y. 1976) (noting that failure to minimize the interception of communications not otherwise

This requirement that the violated statutory provision must "directly and substantially" implement Congress's intent in passing Title III to justify suppression of the evidence, which the Third Circuit outlined in *Williams*, guides this Court's conclusion that the same standard holds for violations of state statutory provisions. Thus, state law affects the admissibility of wiretap evidence in federal court to the extent that the violated state law provision directly and substantially implements the core concerns of Title III. *See Williams*, 124 F.3d at 426; *see also United States v. Vario*, 943 F.2d 236, 244 (2d Cir. 1991) ("[I]n in determining whether to admit a [state] wiretap . . . , [courts need] apply only those more stringent state statutory requirements or standards that are designed to protect an individual's right of privacy, as distinguished from procedural rules that are essentially evidentiary in character.") (citing *United States v. Sotomayor*, 592 F.2d 1219, 1225 (2d Cir. 1979)); *United States v. Nelson*, 837 F.2d 1519, 1526 (11th Cir. 1988) (communications intercepted in violation of the state law not suppressed because they did not implicate a core concern of Title III). As the Northern District of Georgia has explained:

> Whether the wiretap order is valid under state law and if not the nature of the violation are important concerns; however, compliance with state law is just the first inquiry. If the wiretap order does violate state law, the second inquiry is admissibility, which takes into consideration the nature of the state-law violation but in the context of determining whether that violation implicates the core concerns of Title III, i.e., "the federal concerns."

United States v. Govea-Vazquez, 962 F. Supp. 2d 1325, 1330 (N.D. Ga. 2013), *aff'd sub nom. United States v. Lara*, 588 F. App'x 935 (11th Cir. 2014).

Contrary to Defendants' arguments, a violation of a state wiretap statute does not automatically lead to suppression of the evidence in federal court, even if the violation might have led to suppression in state court. *Williams*, 124 F.3d at 427–28. The question before us, then, is

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subject to interception, as required by the statute, would constitute a fundamental defect implicating the core concerns of Title III).

whether Pennsylvania's requirement of a designation in writing is a statutory requirement that directly and substantially implements Congress's purposes in enacting Title III.

The Court concludes that requiring a *written* designation does not directly and substantially address the core concerns of Title III, which are to protect the privacy of individuals and create a uniform basis for authorizing wiretaps. What was required—and what did directly and substantially implement Congress's intent in enacting Title III—was that the high-ranking state officer executing the wiretap application be authorized to do so. Indeed, chief among Congress's concerns when passing Title III was that an individual and identifiable high-level Justice Department official be held accountable for executing wiretap applications.[10] That requirement was fulfilled in this case. The record before the Court demonstrates that AG Kane was well aware that the Montgomery investigation was proceeding towards a wiretap, and that AG Kane and Deputy King spoke on the phone on the evening of April 13 about this very topic. (ECF No. 359, ¶¶ 53–54; ECF No. 361, ¶ 85.) The Court further finds credible Deputy King's testimony that on this phone call, he and AG Kane discussed the meeting to execute the wiretap application the following day, and that AG Kane orally and actually directed Deputy King to act in her stead. (ECF No. 361, ¶¶ 88–89.) The record also reflects that AG Kane told COO Tyler that she believed Deputy King was authorized to sign the wiretap application without a written designation letter,

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[10] As the Court of Appeals for the District of Columbia noted in *United States v. Scurry*, Congress intended the requirement of a high-level Justice Department official to sign off on each wiretap application to play a central role in the Title III process. This application authorization requirement

> centralizes . . . the formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will avoid the possibility that divergent practices might develop. Should abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guaranteeing that no abuses will happen.

821 F.3d 1, 10 (D.C. Cir. 2016) (quoting S. Rep. No. 90–1097, at 97). Similarly, as the Supreme Court noted in *Chavez*, "There is little question that § 2518(1)(a) and (4)(d) were intended to make clear who bore the responsibility for approval of the submission of a particular wiretap application." 416 U.S. at 571–72; *see also United States v. Lomeli*, 676 F.3d 734, 741 (8th Cir. 2012) (wiretap application violated core concern of Title III by failing to identify actual Department of Justice official who authorized wiretap application).

which strongly suggests that AG Kane had authorized Deputy King to execute the wiretap application. (*Id.* ¶ 109.) Finally, AG Kane knew that Deputy King had signed the wiretap application before it was submitted to Judge Bowes and did nothing to stop that presentation. Even if the fact that this authorization was not reduced to a written designation violated a state law requirement, given the weight of evidence in the record demonstrating that the authorization in fact occurred, any state statutory requirement that AG Kane personally and physically sign the designation letter was substantially fulfilled. Thus, the core concern of Title III that a high-ranking executive law enforcement official approve any such application was met.

C. Did AG Kane ratify Deputy King's execution of the April 14 wiretap?

The Government further asserts that even if AG Kane had not authorized Deputy King to execute the April 14 wiretap application prior to her leaving for Haiti (a hypothetical not borne out by the record), she later adopted and ratified both Smith's signature on the designation letter and Deputy King's execution of the wiretap application. (ECF No. 361, at 43.) Defendants counter that the agency principle of ratification is not applicable in criminal cases where there is a statutory scheme that must be followed. (ECF No. 359, at 42.)

The Court concludes that, although it may well be the rare case where the principles of adoption and ratification are appropriately applied in the context of a criminal prosecution, this is just such a case. Given the overwhelming evidence in the record that AG Kane (1) was aware that the investigation was proceeding towards a wiretap; (2) learned that the designation letter and wiretap application had in fact been signed in time to prevent the application from proceeding to Judge Bowes and did nothing (zero) to stop that process in its tracks; and (3) then objectively supported and extended that wiretap rather than doing anything to stop it, AG Kane ratified Deputy King's conduct, making it her own.

Ratification is "the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority." Restatement (Third) of Agency § 4.01(1) (Am. Law Inst. 2006). It requires an "externally observable manifestation of assent to be bound by the prior act of another person." *Id.* § 4.01 cmt. b. A person may ratify an act if the actor acted or purported to act as an agent on the person's behalf. *Id.* § 4.03. Most significantly for our purposes, courts have held that "[r]atification occurs when an agent acts for a principal's benefit and the principal does not repudiate the agent's actions." *In re Monitronics Int'l, Inc.*, 223 F. Supp. 3d 514, 520 (N.D.W.V. 2016) (quoting *Sphere Drake Ins. Ltd. v. Am. Gen. Life Ins. Co.*, 376 F.3d 664, 677 (7th Cir. 2004)). The Court concludes that AG Kane ratified both Smith's signature on the designation letter and Deputy King's signature on the April 14 wiretap application.

Regarding the designation letter, the record reflects that Smith believed she was acting on AG Kane's behalf when she signed Kane's name on the designation letter. (ECF No. 359, ¶ 102.) AG Kane had directed that Smith could sign the letter if necessary (albeit after speaking with Kane on the phone, which was not possible due to Kane's absence), and Smith had so acted when signing AG Kane's name on other documents in the past. (*Id.* ¶ 100; ECF No. 361, ¶ 69.) When AG Kane learned that Smith had signed the letter, she told Smith she had "made a bad situation worse," but she took no action whatsoever to repudiate or undo what Smith had done.[11] (ECF No. 359, ¶¶ 108, 111.) AG Kane did not direct Smith to rip up the letter or otherwise retract the signature, or tell Deputy King (or anyone else) that she had not designated him to serve as Acting AG. (*Id.* ¶¶ 112, 117.) The letter remained intact and in effect until AG Kane's return to the office on April 22. On

[11] Many of Defendant Perrin's proposed findings of fact relate to testimony as to the degree to which AG Kane was "upset" or "very upset" or "angry" about Smith's actions. Those matters are beside the point. AG Kane's descriptive reaction to the phone call with Smith is irrelevant; what matters are Kane's actions and inactions. She rejected Smith's resignation and did not lift a finger to stop the wiretap application from proceeding to Judge Bowes, which she knew had been executed and was moving forward. She was the AG, empowered to stop that application in its tracks, and she did no such thing.

April 14, Smith offered her resignation for signing the letter, which AG Kane refused. (*Id.* ¶ 109.) Thus, although her words demonstrated she may not have been pleased that the letter had been signed (for reasons not apparent in the record), AG Kane's conduct objectively manifested her intent to be bound by and to adopt Smith's and Deputy King's actions. This is evidenced by her not repudiating Smith's action and by accepting Deputy King's conduct while he was serving as Acting AG—namely, that the business of the AG's Office continued, and the April 14 wiretap application was executed.

The case for AG Kane's ratification of the April 14 wiretap application itself is even clearer. Believing AG Kane had designated him to sign the wiretap application based on their phone call on April 13, Deputy King acted accordingly when he executed the April 14 wiretap application. (*See* ECF No. 361, ¶ 100.) The record does not reflect that AG Kane had any sort of negative or even surprised reaction when she learned the wiretap application had been signed, which is fully consistent with her belief that Deputy King was authorized to sign the application (with or without the designation letter). Her only asserted reaction was as to *Smith's* actions. AG Kane knew that the wiretap application had been executed before it was presented to Judge Bowes on April 16. She took no action to stop the application from being presented, although she had both the power and plenty of opportunity to do so. (ECF No. 359, ¶¶ 107, 117.) Then, during the senior management meeting held when AG Kane returned to the office on April 22, she asserted no reservations or objections concerning the wiretap investigation proceeding. (ECF No. 361, ¶¶ 119, 122–23.) AG Kane subsequently executed a continuation application for the April 14 wiretap, then a new wiretap application for Defendant Perrin's phone, and then a new wiretap application for Defendant Montgomery's second phone, all based on information gained from and incorporating the April 14 wiretap. (ECF No. 359, ¶¶ 20–32.) These subsequent applications and

continuations, combined with the fact that AG Kane never repudiated or even expressed disapproval of Deputy King's execution of the April 14 wiretap application, never recalled or revoked the designation letter signed via Smith, and issued no directive to halt that process, convinces this Court that AG Kane fully approved, adopted, and ratified Deputy King's conduct relative to the application.

Defendants argue that AG Kane's conduct after the April 14 wiretap application was executed was neither adoption nor ratification—rather, it was an AG acting to protect her team, knowing the execution of the application was invalid. (*Id.* at 41–42.) In essence, Defendants assert that it was easier for AG Kane to stick her head in the sand than to come clean about a "mistake." The fact that AG Kane knew about the wiretap application before it was presented to Judge Bowes undermines Defendants' argument. For that time period, there was no third party to have to confess error to, or to shield from disclosure. As Defendants pointed out during oral argument, the AG's Office is a team. From April 14 to April 16, the wiretap application had not yet left the confines of the team—AG Kane's own team. It would have been a very easy solution if she wanted to repudiate her First Deputy's conduct by directing her team to not submit the wiretap application to Judge Bowes. She did not, and she adopted the signed wiretap application and Deputy King's actions in signing and submitting it. Thus, by the time Judge Bowes actually issued the order approving the wiretap on April 16, AG Kane had fully adopted Deputy King's conduct. Further, even after the wiretap order was issued, if AG Kane believed the wiretap application or resulting wiretap was improper, she had an independent obligation as an officer of the court (and especially as AG) to report this situation to the judge if she believed it was unlawful. She did not do that. She also could have issued a directive that the wiretap order not be carried out. She did not. Instead, the evidence in the record compels the conclusion that AG Kane actively and actually approved

of, supported, extended, and ratified the April 14 wiretap application and Deputy King's and Smith's actions regarding it.

D. Does the agents' good faith reliance on the wiretap order preclude suppression?

Finally, the Government argues that even if the April 14 wiretap application was invalid, the resulting intercepted evidence should not be suppressed because law enforcement agents relied in good faith on the wiretap order. (ECF No. 361, at 51–53.) Defendants assert that the good faith exception to the exclusionary rule, established by the Supreme Court in *United States v. Leon*, 468 U.S. 897 (1984), does not apply in wiretap cases because it is a judicially created remedy not provided for in Title III. (ECF No. 359, at 42–45.)

Whether the good faith exception applies in wiretap cases under Title III is an unsettled issue in the Third Circuit, and the other Courts of Appeals addressing this issue are split. Although the Sixth Circuit and the D.C. Circuit have declined to extend the good faith exception to suppression to Title III wiretap cases, at least four other Circuits have applied that doctrine in Title III cases. *Compare United States v. Rice*, 478 F.3d 704, 712–13 (6th Cir. 2007), *and Glover*, 736 F.3d at 515–15, *with United States v. Brewer*, 204 F. App'x 205, 208 (4th Cir. 2006), *United States v. Moore*, 41 F.3d 370, 376–77 (8th Cir. 1994), *United States v. Butz*, 982 F.2d 1378, 1382–83 (9th Cir. 1993), *United States v. Reed*, 575 F.3d 900, 917 (9th Cir. 2009), *Lara*, 588 F. App'x at 938, *and United States v. Malekzadeh*, 855 F.2d 1492, 1497 (11th Cir. 1988). As the Eighth Circuit stated in *Moore*:

> *Leon* of course dealt with the judicially developed exclusionary rule for Fourth Amendment violations, whereas we deal here with a statutory exclusionary rule imposed for a "violation of this chapter." However, § 2518(10)(a) is worded to make the suppression decision discretionary ("If the motion is granted"), and its legislative history expresses a clear intent to adopt suppression principles developed in Fourth Amendment cases. . . . Therefore, we conclude that the subsequently-developed *Leon* principle applies to § 2518(10)(a) suppression issues.

41 F.3d at 376 (internal citation omitted).

This Court concludes that the reasoning of the Fourth, Eighth, Ninth, and Eleventh Circuits is persuasive and that at least in the circumstances present here, the good faith exception extends to the statutory suppression remedy for wiretaps under Title III. The policy considerations the Supreme Court discussed in *United States v. Leon* and its progeny apply in equal measure to wiretaps under Title III. As the Supreme Court has stated, those policy considerations are:

> Where suppression fails to yield "appreciable deterrence," exclusion is "clearly . . . unwarranted."
>
> Real deterrent value is a "necessary condition for exclusion," but it is not "a sufficient" one. The analysis must also account for the "substantial social costs" generated by the rule. Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a "last resort." For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.

Davis v. United States, 564 U.S. 229, 237 (2011) (internal citations omitted).

Application of the good faith doctrine to the odd (and, hopefully, never reoccurring) facts of this case renders suppression unwarranted. As the record reveals, excluding the evidence from the April 14 wiretap would be highly unlikely to deter any future official misconduct because the state and federal employees who were involved in the wiretap application had all thought that they were complying with the law. (*See, e.g.*, ECF No. 359, ¶¶ 36, 72, 112; ECF No. 361, ¶ 162.) As described above, the Court finds credible the testimony that Deputy King and AG Kane spoke on the phone on the evening of April 13 and that AG Kane gave Deputy King specific authority to execute the wiretap application. (ECF No. 361, ¶ 100.) Smith also believed she had authority to sign the designation letter, based on AG Kane's directions to her before Kane left for Haiti. (*Id.* ¶ 101.) Smith signed the letter, and Deputy King signed the wiretap application, believing they were

doing their jobs consistent with the law, and as noted above the Court has concluded that under state law, Deputy King had the legal authority to so act. Both were acting in good faith based on their communications with AG Kane. Further, no one else in the AG's Office had any reason to doubt the validity of the wiretap order, and they executed it faithfully. (ECF No. 359, ¶¶ 36, 72, 112; ECF No. 361, ¶ 162.) Indeed, the lead agent on the case did not learn about any designation letter issue until reading the affidavit of probable cause in the criminal case filed against AG Kane in August 2015, over a year after the wiretap was implemented. (ECF No. 359, ¶ 36; ECF No. 361, ¶ 162.)

The only possible source of deterrence served by exclusion in this case would be as to the behavior of AG Kane herself. It is apparent that AG Kane created deep-seated problems in the AG's Office while this investigation was proceeding, amplified by the odd, opaque, and mysterious circumstances she created as to her Haiti adventure. The people of Pennsylvania plainly deserved better from the AG, and she has now been forced from office. Once the wiretap order was signed, it was faithfully executed by subordinate state officials and law enforcement officers. This is a textbook example of good faith by those subordinate officers. For these reasons, the evidence derived from the April 14 wiretap will not be suppressed.

E. Defendant Montgomery's remaining challenges to the April 14 wiretap

Defendant Montgomery asserts the following additional challenges to the validity of the April 14 wiretap application: (1) the April 14 wiretap application, as well as the applications for subsequent wiretaps, failed to include all necessary and relevant facts as required by 18 U.S.C. § 2518(1)(b); (2) the April 14 wiretap, along with the subsequent wiretap order issued in May, were not based upon sufficient probable cause to satisfy § 2518(3); (3) the affidavits in support of the wiretap application contained material misrepresentations that should be excised from the

affidavits of probable cause pursuant to the Supreme Court's decision in *Franks v. Delaware*, 438 U.S. 154 (1978); (4) law enforcement failed to minimize the collection of intercepted information as required by § 2518(5); and (5) law enforcement failed to place intercepted audio under seal pursuant to § 2518(8)(a). (*See* Def. Montgomery's Mem. of Law in Supp. of Mot. to Suppress Wire Intercepts, ECF No. 198 ("ECF No. 198"), at 29–39.) The first three of these challenges depend, in whole or in part, upon whether Deputy King was authorized to execute the April 14 wiretap application. Given the Court's determination that Deputy King was authorized to execute the application, the Court will deal with these challenges first. The Court will then address Defendant Montgomery's minimization and sealing challenges.

1. Statement of necessary and relevant facts

Defendant Montgomery first argues that the fact that AG Kane did not properly authorize Deputy King to execute the April 14 wiretap application was a necessary and relevant fact that was required to be included in the affidavit in support of the wiretap application. (*Id.* at 28–29.) Because the Court has concluded that Deputy King was properly authorized, this challenge is moot.

Defendant Montgomery further argues that certain purportedly necessary and relevant facts were included in the April 14 wiretap application that were not included in the subsequent applications in May or June, or vice versa (that is, certain facts that occurred prior to April 14, 2014, were included in the May or June wiretap applications but were not included in the April 14 application). Of the latter instance, Defendant Montgomery provides three purportedly necessary facts omitted from the April 14 wiretap application: (1) "video surveillance of Montgomery's residence showed an unidentified male going in and out before the wiretap was activated"; (2) "prior criminal records of Montgomery showed he had not cooperated with law enforcement in

the past"; and (3) "there were limitations of the camera surveillance due to the angle of the camera and lack of clarity at night." (*Id.* at 28.)

18 U.S.C. § 2518(1)(b) requires an affidavit for a wiretap application to provide "a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued." It does not require the affiant to list every possible fact related to the investigation. *See, e.g.*, *United States v. Mamalis*, 498 F. App'x 240, 246–47 (4th Cir. 2012). The Court does not see, and Defendant Montgomery does not explain, why the three omitted facts listed above or the facts purportedly omitted from the May and June wiretap applications would have been material in the Superior Court Judge's decision to issue the wiretap orders, particularly in light of this Court's conclusion that Deputy King acted lawfully. *See United States v. Rajaratnam*, 719 F.3d 139, 151–52 & n.16 (2d Cir. 2013) (requiring a showing of materiality to challenge factual omissions in an affidavit of probable cause supporting a wiretap application under § 2518(1)(b)). Accordingly, the Court denies Defendant Montgomery's Motion on this ground.

2. Probable cause and necessity

Next, Defendant Montgomery argues that the affidavit in support of the April 14 wiretap application, as well as the subsequent wiretap application in May, lacked sufficient probable cause and that the assertions of the necessity of the wiretap were conclusory and boilerplate. (ECF No. 198, at 29–31.) He asserts that the affidavit's "primary averment[]" to create probable cause for the wiretap was a confidential informant's controlled drug buy from Defendant Montgomery in January 2014. (*Id.* at 29.) Defendant Montgomery argues that this controlled buy does not establish probable cause that a wiretap on his phone would intercept future communications concerning similar criminal activity. (*Id.* at 29.) A review of the basis of probable cause set out in the affidavit

accompanying the April 14 wiretap application (spanning 29 pages) reveals that the affidavit contains more than the sole controlled drug purchase Defendant Montgomery challenges, although this purchase goes a long way to establishing probable cause. (*See* App. to Pre-Trial Mots., ECF No. 197-4, at 94a–122a.) Information obtained from confidential informants about Defendant Montgomery and his associates, a pen register and trap and trace on Defendant Montgomery's device, and other sources of information all directly support the conclusion that Defendant Montgomery was involved in a cocaine and heroin distribution operation. Accordingly, the Superior Court Judge had a substantial basis for concluding that there was probable cause to issue the April 14 wiretap order. (App. to Pre-Trial Mots., ECF No. 197-4, at 94a–122a.)

Defendant Montgomery also challenges the affidavit accompanying the May wiretap application, arguing that the information gleaned from the April 14 wiretap cannot be used to establish probable cause for subsequent wiretaps since the April 14 wiretap application was not properly authorized. (ECF No. 198, at 30–31.) Once this "tainted" information is excluded, Defendant Montgomery urges, the May wiretap application is similarly lacking in probable cause. (*Id.*) Given the Court's finding that the Superior Court Judge had a substantial basis for concluding there was probable cause to issue the April 14 wiretap, in addition to its conclusion that the April 14 wiretap application was properly authorized, there was certainly probable cause to issue the May wiretap order.

Defendant Montgomery also challenges the assertions of necessity in the April 14 and May wiretap applications as conclusory and boilerplate statements, arguing that there is no probable cause to believe that continued use of normal investigative techniques would not be successful. (*Id.* at 29–31.) The Court disagrees. A review of the necessity of the wiretap, explained in the affidavit of probable cause supporting the April 14 wiretap application, leads this Court to

conclude that the Superior Court Judge had a sufficient basis for issuing the wiretap order. (App. to Pre-Trial Mots., ECF No. 197-4, at 123a–30a.) At this juncture, the Court does not review the affidavits accompanying the challenged wiretap applications in a hypertechnical manner, but rather with an eye toward making a common-sense determination and giving deference to the issuing judge's determination. *See Illinois v. Gates*, 462 U.S. 213, 236 (1983); *United States v. Macklin*, 902 F.2d 1320, 1325 (8th Cir. 1990). To this end, the Court notes that the fact that the investigatory problems law enforcement officers faced in Defendant Montgomery's case commonly arise in other drug trafficking investigations does not make them any less problematic. Indeed, any similarities between this affidavit and those in other large-scale drug trafficking investigations are unsurprising, since this is the crime for which Defendant Montgomery was being investigated. Nonetheless, the affidavit contains sufficient explanation of particular instances in which normal procedures—such as confidential informants, physical surveillance, and other techniques—were attempted in Defendant Montgomery's case but were unlikely to succeed in the future. (*See, e.g.*, App. to Pre-Trial Mots., ECF No. 197-4, at 123a–24a.) The Court denies Defendant Montgomery's Motion on this basis.

3. *Franks* hearing

Defendant Montgomery requests a *Franks* hearing in this case, asserting that the affidavits in support of the wiretap applications contained material omissions of fact—specifically, according to Defendant Montgomery, the fact that Deputy King was not authorized to execute the April 14 wiretap application. ECF No. 198, at 36–39; *see also Franks v. Delaware*, 438 U.S. 154 (1978). Given the Court's conclusion that AG Kane had properly authorized Deputy King to execute the April 14 wiretap application, there is no material omission from the affidavits that would have impacted the Superior Court Judge's decision to authorize the wiretaps, let alone a

reckless or intentional omission required under *Franks*. *See* 438 U.S. at 171. Accordingly, Defendant Montgomery's Motion on this basis is denied.

4. Minimization

Defendant Montgomery also alleges that law enforcement failed to properly minimize the number of non-pertinent communications that were collected and asks the Court to suppress the wiretap evidence on this basis. Recognizing the practical difficulties in minimizing non-pertinent intercepted conversations, the Supreme Court has directed that the proper test is whether law enforcement's minimization efforts were reasonable under the totality of the circumstances. *Scott v. United States*, 436 U.S. 128, 136–37 (1978).

The Court concludes that, based on the record before it, law enforcement's minimization efforts were reasonable under the circumstances in this case. This was a drug trafficking investigation involving a widespread conspiracy, for which Defendant Montgomery was suspected to be a central participant. In these cases, more extensive surveillance and, thus, narrower minimization is often necessary. *Id.* at 140. Defendant Montgomery's primary challenge to the minimization efforts in this case is his assertion that law enforcement "intend[ed] to intercept the content of all communications to prove an irrelevant negative (that Defendant never mentioned any lawful employment in any of his communications)." (ECF No. 198, at 35.) Defendant is correct that proof of a lack of lawful employment is not necessary to a drug-trafficking prosecution; however, Title III's minimization requirement does not mean agents may only discover the minimum amount of evidence necessary to make their case. *See* 18 U.S.C. § 2518(5). Further, law enforcement's interest in monitoring Defendant Montgomery's communications for proof of lawful employment was reasonable, given that he held significant assets without an apparent way

to obtain them beyond his suspected profits from drug trafficking. The Court denies Defendant Montgomery's Motion to Suppress on this basis.

5. Sealing

Finally, as a fifth basis to suppress the wiretap evidence, Defendant Montgomery challenges whether law enforcement properly placed intercepted audio under seal in accordance with 18 U.S.C. § 2518(3)(b) and/or (c). (ECF No. 197, ¶ 30.) In response to his Motion, the Government provided Defendant Montgomery with copies of the sealing orders for each of the wiretaps. (*See* Gov't's Omnibus Resp. to Mots. to Suppress Wire Intercepts, ECF No. 235 ("ECF No. 235"), at 35; Tr. of Suppression Hearing of June 14, 2017, ECF No. 337, at 23–25.) Each order contained the stamp of the Prothonotary of the Superior Court of Pennsylvania, indicating receipt of the wiretap recordings under seal at each docket. (*See* ECF No. 235, at 35.) Counsel for Defendant Montgomery has produced no basis to call into question the veracity or validity of those sealing orders, and this Court is satisfied that proper sealing occurred in accordance with Title III. Defendant Montgomery's Motion is denied on this basis.

III. Conclusion

For the reasons stated in this Opinion, Defendants Price Montgomery, James Perrin, and Charles Cook's Motions to Suppress at ECF Nos. 138 and 197 are denied.

An appropriate Order will follow.

Mark R. Hornak
United States District Judge

Dated: January 31, 2018

cc: All counsel of record

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2196

UNITED STATES OF AMERICA

v.

JAMES PERRIN,

Appellant

(D.C. No.: 2:14-cr-00205-002)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, BOVE III and [1]SMITH, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

[1] Judge Smith's vote is limited to panel rehearing only.

Dated: December 2, 2025
Tmm/cc: All Counsel of Record

APPENDIX D

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Western District of Pennsylvania

UNITED STATES OF AMERICA

v.

JAMES PERRIN

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:14-cr-205-2

USM Number: 35370068

MICHAEL J. DERISO
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☒ was found guilty on count(s) 1ss; 2ss; 3ss; and, 5ss
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846	CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE ONE KILOGRAM OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN	6/1/2014	1ss

PLEASE SEE PAGE 2 FOR ADDITIONAL COUNTS

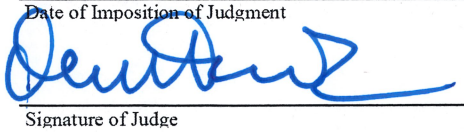
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ 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.

6/27/2022
Date of Imposition of Judgment



Signature of Judge

MARK R. HORNAK, CHIEF UNITED STATES DISTRICT JUDGE
Name and Title of Judge

6/28/2022
Date

DEFENDANT: JAMES PERRIN
CASE NUMBER: 14-205-2

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1) and 841(b)(1)(A)(i)	POSSESSION WITH INTENT TO DISTRIBUTE 1 KILOGRAM OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN, A SCHEDULE I CONTROLLED SUBSTANCE	6/8/2014	2ss
18:922(g)(1), 924(e) and 2	POSSESSION OF A FIREARM BY A CONVICTED FELON	6/8/2014	3ss
18:924(c)(1)(A)(i)	POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG TRAFFICKING CRIME	6/8/2014	5ss

DEFENDANT: JAMES PERRIN
CASE NUMBER: 14-205-2

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
THREE-HUNDRED AND TWENTY (320) MONTHS AT COUNT 1ss; THREE-HUNDRED AND TWENTY (320) MONTHS AT COUNT 2ss; THREE HUNDRED AND TWENTY (320) MONTHS AT COUNT 3ss; AND, SIXTY (60) MONTHS AT COUNT 5ss. THE TERM OF IMPRISONMENT AT COUNTS 1ss, 2ss, AND 3ss SHALL RUN CONCURRENT WITH ONE ANOTHER. THE TERM OF IMPRISONMENT AT COUNT 5ss SHALL RUN CONSECUTIVE TO THE TERMS OF IMPRISONMENT AT COUNTS 1ss; 2ss; AND, 3ss.

☒ The court makes the following recommendations to the Bureau of Prisons:
THAT THE DEFENDANT BE INCARCERATED AS CLOSE AS POSSIBLE TO PITTSBURGH, PA. THAT THE DEFENDANT BE ENROLLED IN AND PARTICIPATE IN ANY AND ALL MEDICAL, MENTAL HEALTH, AND SUBSTANCE ABUSE ISSUES THAT ARE AVAILABLE AND FOR WHICH HE QUALIFIES. THE TREATMENT RECOMMENDATION SHALL TAKE PRECEDENCE.

☒ 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: JAMES PERRIN
CASE NUMBER: 14-205-2

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

TEN (10) YEARS AT COUNT 1ss; TEN (10) YEARS AT COUNT 2ss; FIVE (5) YEARS AT COUNT 3ss; AND, FIVE (5) YEARS AT COUNT 5ss. THE TERMS OF SUPERVISION AT COUNT 1ss; 2ss; 3ss; AND, 5ss SHALL RUN CONCURRENT WITH ONE ANOTHER.

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: JAMES PERRIN
CASE NUMBER: 14-205-2

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.

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 _____

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SPECIAL CONDITIONS OF SUPERVISION

14) THE DEFENDANT SHALL NOT ILLEGALLY POSSESS A CONTROLLED SUBSTANCE.

15) THE DEFENDANT SHALL NOT POSSESS A FIREARM, AMMUNITION, DESTRUCTIVE DEVICE, OR ANY OTHER DANGEROUS WEAPON.

16) THE DEFENDANT SHALL SUBMIT HIS PERSON, PROPERTY, HOUSE, RESIDENCE, VEHICLE, PAPERS, BUSINESS OR PLACE OF EMPLOYMENT, TO A SEARCH, CONDUCTED BY A UNITED STATES PROBATION OR PRETRIAL SERVICES OFFICER AT A REASONABLE TIME AND IN A REASONABLE MANNER, BASED UPON REASONABLE SUSPICION OF CONTRABAND OR EVIDENCE OF A VIOLATION OF A CONDITION OF SUPERVISION. FAILURE TO SUBMIT TO A SEARCH MAY BE GROUNDS FOR REVOCATION. THE DEFENDANT SHALL INFORM ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO SEARCHES PURSUANT TO THIS CONDITION.

17) THE DEFENDANT SHALL PARTICIPATE IN A PROGRAM OF TESTING AND, IF NECESSARY, TREATMENT FOR SUBSTANCE ABUSE, SAID PROGRAM TO APPROVED BY THE PROBATION OFFICER, UNTIL SUCH TIME AS THE DEFENDANT IS RELEASED FROM THE PROGRAM BY THE COURT. FURTHER, THE DEFENDANT SHALL BE REQUIRED TO CONTRIBUTE TO THE COSTS OF SERVICES FOR ANY SUCH TREATMENT IN AN AMOUNT DETERMINED BY THE PROBATION OFFICER BUT NOT TO EXCEED THE ACTUAL COST. THE DEFENDANT SHALL SUBMIT TO ONE DRUG URINALYSIS WITHIN 15 DAYS AFTER BEING PLACED ON SUPERVISION AND AT LEAST TWO PERIODIC TESTS THEREAFTER.

18) IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL NOT INTENTIONALLY PURCHASE, POSSESS AND/OR USE ANY SUBSTANCE(S) DESIGNED TO SIMULATE OR ALTER IN ANY WAY THE DEFENDANT'S OWN URINE.

19) SPECIMEN. IN ADDITION, THE DEFENDANT SHALL NOT PURCHASE, POSSESS AND/OR USE ANY DEVICE(S) DESIGNED TO BE USED FOR THE SUBMISSION OF A THIRD PARTY URINE SPECIMEN.

20) THE DEFENDANT SHALL NOT USE OR POSSESS ALCOHOL

21) THE DEFENDANT SHALL COOPERATE IN THE COLLECTION OF DNA AS DIRECTED BY THE PROBATION OFFICER, PURSUANT TO 28 C.F.R. § 28.12, THE DNA FINGERPRINT ACT OF 2005, AND THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 400.00	$ 0.00	$ 0.00	$ 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$ _____

☐ 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 ☐ fin ☐ restitution.

☐ the interest requirement for ☐ 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.