

In the
United States Court of Appeals
For the Seventh Circuit

No. 21-3156

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LEVAUGHN COLLINS,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 15-cr-379-1 — **Gary Feinerman**, *Judge.*

ARGUED SEPTEMBER 15, 2022 — DECIDED FEBRUARY 1, 2023

Before SYKES, *Chief Judge*, and RIPPLE and KIRSCH, *Circuit Judges.*

KIRSCH, *Circuit Judge.* Levaughn Collins supplied wholesale quantities of heroin to a drug trafficking organization on the west side of Chicago. He pleaded guilty to multiple crimes but reserved his right to appeal the denial of two motions to suppress wiretap evidence. Both motions concerned the government's failure to properly seal certain recordings. The district court denied the first motion because the government

agreed not to use any improperly sealed recordings at trial, no subsequent evidence relied on such recordings, and the government provided a satisfactory explanation for its error. The court denied the second motion—which involved the failure to properly seal recordings from another phone—because the government agreed to suppress all recordings from that phone, only one subsequent wiretap application relied on the unsealed recordings and that application was submitted and approved by the court before the government’s sealing obligation had kicked in, and the government adequately explained its sealing mistake. Finding no error in either ruling, we affirm.

I

A

In August 2014, the Drug Enforcement Agency and the Chicago Police Department began investigating a drug trafficking organization on the west side of Chicago. The investigation uncovered a significant heroin distribution network directed by James Triplett. Levaughn Collins was a key player in the operation: he supplied Triplett with bulk quantities of heroin to sell on the street. At multiple stash houses in Chicago, Collins and several associates (including his brother) cut, mixed, and repackaged the drugs into small plastic baggies for Triplett to sell to individual users.

Between October 2014 and June 2015, investigators obtained court-authorized wiretaps on twelve different phones connected to the trafficking operation. See 18 U.S.C. § 2510 *et seq.* Most relevant for our purposes are Target Phone 5 (used by Collins’s brother), Target Phone 6 (used by Triplett), and Target Phones 8, 9, and 12 (used by Collins).

In December 2014, the government received authorization to begin monitoring communications from Phones 5 and 6 until midnight on January 13, 2015. The day after the intercept period ended, personnel from the Chicago Police Department—which had provided the physical facilities for the wiretaps on Phones 5 and 6—copied files from its hard drive onto an optical disc. The government sealed two discs later that day, believing that one disc had sealed Phone 5 recordings and the other had sealed recordings from Phone 6. But the government had made a mistake: instead of copying the intercepts from each phone onto separate discs, the government copied the Phone 6 recordings onto both discs and failed to seal the recordings from Phone 5.

On January 16, about three days after the intercept order for Phones 5 and 6 lapsed, the government received authorization for a wiretap on Phone 8. The probable cause affidavit supporting the wiretap application for Phone 8 relied on the unsealed recordings from Phone 5.

Soon thereafter, the government received authorization for a wiretap on Phone 9. The affidavit supporting the government's application for Phone 9 did not rely on any of the unsealed communications from Phone 5, nor did it rely on communications from Phone 8. The initial interception period for Phone 9 ended on February 26. On February 27, the court issued an order authorizing a second interception period for Phone 9 from March 2 through March 29. The government terminated interceptions under the February 27 Order early, however, because it received a new authorization order to continue monitoring Phones 8 and 9 from March 20 to April 20. This led to another sealing error: the technician creating the disc for sealing on April 20 believed that the Phone 9

recordings had already been sealed through March 29 (the end of the period authorized by the February 27 Order). In fact, the recordings had been sealed only through March 20, so the Phone 9 recordings from March 21 to March 29 were not properly sealed. The government continued to intercept Phone 9 communications into May 2015.

The court also authorized a wiretap on a third phone used by Collins, Phone 12. The wiretap application for that phone did not rely on intercepts of any other target phone.

In June 2015, based on evidence from the wiretap investigation, the government charged Collins with several drug trafficking crimes. Agents searched Collins's stash house and recovered heroin, cutting agents, packaging materials, and ten firearms. A grand jury indicted Collins for conspiracy to distribute and possess with intent to distribute a kilogram or more of heroin; distributing 100 grams or more of heroin; possessing with intent to distribute more than 100 grams of heroin and cocaine; possession of a firearm in furtherance of a drug trafficking crime; and money laundering. See 21 U.S.C. §§ 841(a)(1), 846; 18 U.S.C. §§ 2, 924(c)(1)(A), 1956(a)(1)(A)(i).

B

In May 2016, the government disclosed its failure to seal Phone 9 from March 21 to March 29, 2015. It also disclosed a separate 18-day period when the government failed to seal recordings for another phone, Phone 11 (used by an unindicted individual). To protect the reliability and integrity of recordings, the wiretap statute requires that “[i]mmediately upon the expiration of the period of the [interception] order ... such recordings shall be made available to the judge issuing such order and sealed under his directions.” 18 U.S.C. § 2518(8)(a);

United States v. Ojeda Rios, 495 U.S. 257, 263 (1990). Such a seal, “or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom.” 18 U.S.C. § 2518(8)(a).

Collins thus moved to suppress recordings from both periods, as well as “all subsequent recordings which relied on the improperly sealed disks in order to obtain additional authorizations.” In response, the government committed not to use at trial any Phone 9 recordings from the nine-day unsealed period nor any Phone 11 recordings, but it opposed the suppression of other recordings.

The district court denied the motion in full. With respect to Phones 9 and 11, the court denied the motion as moot because the government had agreed not to use the recordings. The judge also found that no later wiretap applications relied on unsealed recordings from either Phone 9 or Phone 11, so there was no basis to exclude any subsequent recordings. The court further found that suppression was not warranted because the government had provided a satisfactory explanation for the sealing errors. Finally, the court concluded that an evidentiary hearing was unnecessary because there were no disputes of material fact to resolve.

C

The government discovered and disclosed the Phone 5 sealing error in October 2018. Collins then filed his second motion to suppress, seeking to exclude recordings from the unsealed Phone 5 as well as recordings from Phones 8, 9, and 12, on the theory that the wiretap authorizations for the latter three phones were all derived from the unsealed Phone 5

recordings. The government agreed not to use any recordings from Phone 5 at trial, but it opposed the suppression of recordings from Phones 8, 9, and 12.

The district court denied this motion too. As to Phone 5, the court denied the motion as moot based on the government's commitment not to use the recordings. The court also denied the motion as to Phone 8 on two independent grounds. First, the court concluded that the government had not yet failed to immediately seal Phone 5 when it applied for the Phone 8 wiretap only three days after the intercept period for Phone 5 had expired. Second, the district court found that the government's explanation—that its failure to seal resulted from a mechanical error—was satisfactory and not something that raised a reasonable suspicion of tampering. Finally, the court denied the motion with respect to Phones 9 and 12 because the wiretap applications for those phones did not rely on any recordings from Phones 5 or 8.

Following the denial of the second motion, Collins pleaded guilty to the conspiracy, firearm, and money laundering offenses. In his plea agreement, Collins reserved the right to appeal the district court's rulings on his motions to suppress.

II

When reviewing the denial of a motion to suppress wiretap evidence, we review the district court's factual findings for clear error and its conclusions of law de novo. *United States v. Elizondo*, 21 F.4th 453, 463 (7th Cir. 2021). We review the district court's finding that the government provided a satisfactory explanation for failing to immediately seal wiretap recordings for clear error. *United States v. Martin*, 618 F.3d 705,

716–17 (7th Cir. 2010). We review the denial of an evidentiary hearing on a motion to suppress for abuse of discretion. *United States v. Edgeworth*, 889 F.3d 350, 353 (7th Cir. 2018).

A

The district court correctly denied Collins’s first motion to suppress. The government agreed not to use any unsealed recordings from Phones 9 and 11, and the court found that no subsequent evidence was derived from unsealed recordings on either phone. That finding was grounded in the record—specifically, the affidavits supporting later authorizations—and not erroneous. And because Collins did not dispute these or any other material facts, the court did not abuse its discretion in denying an evidentiary hearing. See *United States v. Norville*, 43 F.4th 680, 682 (7th Cir. 2022) (“District courts have discretion to forgo an evidentiary hearing on a motion to suppress if there are no disputed issues of material fact that will affect the outcome of the motion.”). We need not address the judge’s alternative finding that the government provided a satisfactory explanation for the Phone 9 and Phone 11 sealing errors. It is sufficient to hold that the judge did not clearly err in finding that those errors did not produce any potential trial evidence.

B

On the second motion to suppress, we can quickly dispense with Collins’s arguments regarding Phones 5, 9, and 12. The district court’s denial of the motion with respect to these phones was proper; the government agreed not to use any evidence derived from Phone 5 at trial, and the wiretap applications for Phones 9 and 12 did not rely on Phone 5 or Phone 8. As the district court acknowledged, however, Phone 8 was

derivative evidence because the affidavits supporting its wiretap application relied on unsealed Phone 5 recordings. Collins challenges the district court's determination that the government had not breached the immediate sealing requirement for Phone 5 when it applied for the Phone 8 wiretap. He also contends that the court clearly erred in alternatively finding that the government provided a satisfactory explanation for its Phone 5 sealing error. We need not address the immediacy requirement under the statute because we conclude that the district court did not clearly err in finding the government's explanation satisfactory. See *Martin*, 618 F.3d at 715 n.14 (resolution of immediacy issue unnecessary when government has provided a satisfactory explanation for its sealing error).

We review the district court's finding regarding the government's explanation for clear error because the "application of a broad standard such as ... satisfactoriness, to the specific facts of a case is usually and we think rightly treated for purposes of appellate review as a factual rather than a legal determination." *United States v. Coney*, 407 F.3d 871, 874 (7th Cir. 2005). We will find clear error only when we are "left with the definite and firm conviction that a mistake has been made." See *United States v. Harmelech*, 927 F.3d 990, 996 (7th Cir. 2019). But even under this deferential standard of review, mere proof of non-tampering will not suffice; instead, the government must "explain not only why a [sealing error] occurred but also why it is excusable." *Ojeda Rios*, 495 U.S. at 265. We assess the government's explanation through the lens of the statutory objective: "A satisfactory explanation must dispel any reasonable suspicion of tampering, and also must be both accurate and believable." *Martin*, 618 F.3d at 716; see also *Coney*, 407 F.3d at 875.

In *United States v. Martin*, we held that the government provided a satisfactory explanation when “[t]he record establishe[d] that operator error most likely caused” the failure to properly seal certain wiretap recordings. 618 F.3d at 717. There, after a months-long wiretap investigation into a drug trafficking network, the government discovered that it inadvertently failed to include portions of some recordings it had attempted to seal months earlier. *Id.* at 709–10. The government used the improperly sealed recordings to secure subsequent wiretaps, and the defendant moved to suppress such recordings as improper derivative evidence. *Id.* at 717. We found that the sealing error “had more to do with the mechanics of the recording process than with the Government’s established sealing procedures[,]” and that the government “acted consistent with its sealing obligations and attempted in good faith to rectify its sealing error once it was discovered.” *Id.* Accordingly, the sealing error “did not interfere with the statutory objectives of ensuring judicial oversight and non-tampering with wiretap recordings.” *Id.* The government’s explanation, we said, was further supported by the unexceptional nature of the charges, the lack of notoriety of the defendants, and the lack of any evidence of bad faith or tactical advantage gained by the government. *Id.* at 718. The government’s voluntary suppression of the unsealed recordings also indicated that they were not central to the case, which further supported the government’s explanation. *Id.*

We reach the same conclusion here. The district judge thoughtfully applied our reasoning in *Martin* and concluded that the mistake of sealing Phone 6 on two discs (instead of sealing one Phone 6 disc and one Phone 5 disc) was more of a mechanical error than a problem with the government’s established sealing procedures. The judge also found no

evidence that the government's error resulted in a tactical advantage or that the government had acted in bad faith. The short delay—three days—between the sealing error and the use of Phone 5 recordings in the Phone 8 wiretap application also weighed against suppression. And as in *Martin*, the government's voluntary suppression of the unsealed recordings further supports its explanation. We see no clear error in the judge's finding that the government provided a satisfactory explanation for its sealing error.

Collins contends that the district court erred when it accepted the government's explanation without requiring submission of sworn affidavits or holding an evidentiary hearing. While the safest course would have been to require sworn affidavits or testimony to support the government's explanation, Collins did not raise this argument before the district court. He did not request an evidentiary hearing in his second motion to suppress. Nor did he raise any disputes of material fact regarding the government's explanation. Collins did not dispute, for example, that the government's sealing error stemmed from its inadvertent double sealing of Phone 6. Nothing in the record suggests that the district court's factual findings regarding the government's explanation were mistaken.

III

We affirm the district court's rulings on both motions to suppress wiretap evidence.

AFFIRMED