No. 25-4310

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHAD LESTER,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BRIEF FOR THE UNITED STATES AS APPELLEE

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

JESUS A. OSETE
Principal Deputy Assistant Attorney General, Civil Rights Division

DAVID N. GOLDMAN
JOSHUA R. ZUCKERMAN
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
Telephone: (202) 616-9405

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF AUTHORITIES

CASES: **PAGE**

CASES (continued): **PAGE**

CASES (continued): **PAGE**

CONSTITUTION:

STATUTES:

RULES:

INTRODUCTION

In 2022, a group of correctional officers at the West Virginia Southern Regional Jail (the Jail) brought a handcuffed pretrial detainee, Quantez Burks, to areas with no security cameras and brutally beat him to death. The officers and their shift supervisor, defendant-appellant Chad Lester, then conspired to cover up the circumstances of Burks's death by omitting material information and providing false and misleading information to state investigators. Lester also instructed other officers to provide false and misleading information to investigators, physically threatened an officer who told the truth to investigators, and personally made materially false statements to agents of the Federal Bureau of Investigation (FBI), who questioned him about Burks's death. A jury convicted Lester of conspiracy to commit witness tampering, witness tampering, and making false statements to the FBI.

On appeal, Lester argues that the district court committed three errors at trial and one at sentencing. The arguments lack merit. First, the district court did not violate the Confrontation Clause, U.S. Const. Amend. VI, when it barred defendant from cross-examining his fellow officers and co-conspirators about the sentences that they faced prior to pleading guilty. Courts may prohibit a defendant from cross-examining witnesses about the specific penalties they faced before pleading guilty, as such testimony carries a risk of jury nullification, and the district court did not

prevent Lester from cross-examining these officers about their potential biases. Second, the court did not err when it admitted testimony that Lester previously taught fellow officers to use the security cameras' blind spots as places to inflict unreasonable force against inmates and about how to falsify incident reports, because those prior acts were intrinsic to the charged crimes and illustrated the scope and history of the conspiracy. Third, contrary to Lester's claim that the district court limited his defense to three hours, the court, in fact, imposed no such time limit, and the court's administration of the trial did not violate due process because Lester's counsel had leeway to decide which witnesses to call and to fully examine them. Finally, as to sentencing, the district court did not abuse its discretion when it imposed a within-Guidelines sentence. The court considered Lester's mitigating factors (*e.g.*, his personal circumstances, strong family ties, and history of service as a corrections officer), but it reasonably declined to vary downwards in sentencing due to the seriousness of his crimes and the need for the sentence to deter similar crimes and promote respect for the law. Accordingly, this Court should affirm.

STATEMENT OF JURISDICTION

This is an appeal from a district court's final judgment in a criminal case. *See United States v. Holdren, et al.*, No. 5:23-cr-188 (S.D. W. Va.). The district court had jurisdiction under 18 U.S.C. 3231. The court entered final Judgment against

Lester on May 15, 2025 (JA1026-1033), and Lester filed a timely Notice of Appeal on May 28, 2025 (JA1034-1036). This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF ISSUES

1. Whether the district court abused its discretion by limiting Lester's cross-examination of his co-conspirators about the specific sentences they faced before entering into plea agreements.

2. Whether the district court abused its discretion by admitting testimony that Lester previously had encouraged officers to bring inmates to blind spots for the purpose of using unlawful force against them and taught them to falsify their incident reports to conceal the unjustified use of force.

3. Whether the district court violated Lester's due-process rights by supposedly limiting the time allotted for presentation of the defense's case.

4. Whether the district court abused its discretion by determining that the need to deter violations of inmates' constitutional rights warranted imposition of a sentence within the Guidelines' advisory sentencing range.

STATEMENT OF THE CASE

A. Lester Helped Create a Culture of Lies and Abuse

Defendant Lester worked as a corrections officer for the West Virginia Department of Corrections and Rehabilitation for 13 years. JA371. He held the rank of lieutenant and served as a shift supervisor at the Jail. JA238, JA371-372.

During Lester's tenure at the Jail, officers regularly used unreasonable force against inmates. Officer Ashley Toney testified at trial that when "an inmate acted up . . . they would be taken care of or beaten up." JA188-189. "Many" "senior officers" told their subordinates that inmates could be taken to an interview room, which was a "blind spot . . . and beat them up[,] and they wouldn't be on camera." JA188-189. Officer Mark Holdren testified that taking inmates to blind spots for "[p]unishment" "was a pretty common thing at the jail." JA257.

Lester was one of the senior officers who encouraged this unlawful force. Officer Jonathan Walters testified that Lester instructed other officers to take inmates to the interview room "[i]f you needed to deal with them" by using "excessive force." JA325. On one occasion, Lester "instructed" Walters to "deal with" and use "unjustified . . . force" against an inmate that "kept being a problem every day." JA342. Lester specifically taught Holdren and Walters how to use certain technical phrases to obfuscate the use of force when filling out incident reports, JA288-289, JA341. He also told Walters to "make it look like [officers] were doing cell searches" when "deal[ing] with" the problem inmate. JA342.

B. Lester's Subordinates Assaulted a Handcuffed Detainee, Causing His Death

On March 1, 2022, Burks was a pretrial detainee in the custody of the Southern Regional Jail, and Lester was the on-duty shift supervisor. JA164. Officer Jeffrey Forinash received a radio call to check on Burks, who was "freaking out" and

"panicking." JA479-480. Forinash went to Burks's pod to talk to Burks. Burks was not speaking in full sentences, but he mentioned "paramedics" and "medical" to Forinash. JA480. As they spoke in the open doorway, Burks then tried to rush past Forinash and leave his housing pod. JA480-481. Forinash attempted to restrain Burks as the tower officer called for backup. JA480-481. Other officers arrived and restrained Burks, handcuffing his arms behind his back. JA481-483. Some of these officers used unjustified force. For example, Holdren delivered 13 knee strikes into Burks's lower back "for punishment," despite being taught to never use knee strikes in that area because of the risk of internal injury. JA249-250. He also pepper-sprayed Burks's face. JA250. Officer Steven Wimmer punched Burks several times. JA179.

Several officers brought Burks to his feet and removed him from the sallyport just outside his housing pod. JA483. At that point, Burks was handcuffed, still surrounded by multiple officers, and compliant. However, multiple officers, including Lester's co-defendants Officers Holdren, Wimmer, Toney, Corey Snyder, Jacob Boothe, and Andrew Fleshman, then brought Burks to an interview room that they knew was a "blind spot"—a room not captured on the Jail's security cameras. The interview room was only 20 feet from and within sight and earshot of Lester's office. JA150 (citing Ex. 17C); JA304, JA395, JA640.

Officers regularly used this particular interview room as a place to use unlawful force against inmates because they knew their conduct would not be caught on camera. Lester himself had previously told his subordinates that "you could not see inside of the interview room, and that's where [inmates] needed to start being taken to" for the purpose of beating them and avoiding accountability. JA325; *see also* JA188-189, JA190-191, JA255-257. Officer Landon Richmond testified at trial that, on his "first day at the job," another officer told him that the "interview room did not show up on cameras and if [he] ever wanted to rough up anybody that . . . was where to take them." JA636-637; *see also* JA627.

Once in the interview room and out of view of security cameras, the officers brutally assaulted Burks. As Holdren testified, the "point of taking" Burks to the interview room was unlawful "[p]unishment," which the officers understood to mean the use of unreasonable force. JA257. Holdren "[s]truck him in the head, took his head and slammed it against the wall and then took his head again and slammed it down on the table face first . . . extremely hard." JA194. He "kicked him in his ankle a couple of times" and pepper-sprayed him again. JA262. He also stomped on Burks's ankles. JA638. Snyder stood over Burks and hammer-fisted his head into the table three times. JA262-263. He used enough force "to make his head bounce off the table." JA263. At one point, Snyder left the room to wash his hands, exclaiming "[t]he mother fucker's got blood on my hand." JA266. Fleshman

twisted Burks's fingers, possibly breaking them. JA544. During the beating, Lester "peeked his head in for a minute[,] and then he walked back to his office." JA639. So did Walters. JA264. Lester did not make any effort to stop the beating. JA639.

Walters walked over to the interview room and joined the group there while the beating was in progress. JA264. As the officers repeatedly struck him without justification, Burks remained restrained and handcuffed. JA197.

Lester then ordered the officers to take Burks to the "lockdown section," a "special housing unit" for "disciplinary lockdown [and] medical observation." JA269, JA328, JA353, JA750-751. Burks had difficulty walking and weakly protested, "You're going to kill me." He soon collapsed to the ground. Four officers grabbed him by one limb each. JA641. They carried the still-handcuffed Burks to the lockdown section. JA641-642. At the entrance to the lockdown section, the officers thrust his head against the steel door. JA329. They then carried him into a cell within the lockdown section—another blind spot. JA329-332. Once inside the cell, the officers "threw [him] on the ground" face-first. JA271-272. Wimmer kicked Burks's leg "like a football punt," and Walters "stomped him in the middle of his chest. JA433. Burks then rolled over, "and he took a really, really deep breath . . . [his] last one." JA434.

The officers unsuccessfully attempted to administer first aid to Burks. Walters threw water on Burks's face, and Wimmer rubbed his sternum. JA332-334.

These efforts were futile, prompting Holdren, who was afraid of "legal trouble" and "losing [his] job," to summon medical assistance. JA273. Lester responded quickly to the scene with a GoPro camera and recorded the medical response. JA752. The officers began CPR and used a defibrillator on Burks. JA126, JA276-278. Lester continued to record the scene after the arrival of paramedics, who pronounced Burks dead at the scene. JA282. As seen on camera, the paramedics attempted to gather information about what had happened to Burks from the officers and noted Burks's obvious injuries, including swelling, lacerations, redness, and a distended stomach. JA136, JA143.

C. Lester and His Co-Conspirators Covered Up Burks's Death

As described at trial, shortly after Burks died, Lester began to conspire with other officers to cover up their use of unjustified force against Burks. As part of their conspiracy, Lester and his co-defendants falsified or omitted material facts from their incident reports, did not mention the use of unreasonable force to state investigators, instructed witnesses to make false statements to state investigators, and threatened to assault a witness if he did not make false statements to state investigators. Additionally, Lester himself falsified multiple officers' incident reports, instructed officers to give a false cover story to investigators, threatened his subordinates with violence, retaliated against them by giving them undesirable work

assignments, and gave materially false statements to FBI agents who were investigating Burks's death.

1. Lester Ordered Officers to Falsify Incident Reports and Lie to Investigators

Lester tried to conceal his subordinates' roles in Burks's death by instructing several officers to falsify incident reports. An incident report is supposed to be an officer's "accurate representation in detail of whatever incident occurred," including injuries, inmate fights, suicides, requests for officer assistance, and the use of force. JA204. "Incident reports should be written truthful[ly] and honest[ly] in their entirety." JA438. Officers knew that these reports could be used to investigate use of force incidents, and to hold officers accountable if they used force that was unreasonable. JA204-205, JA240-242.

As demonstrated at trial, Lester ordered multiple officers to falsely tell investigators that Burks was combative and that they did not use unreasonable force against him. After the officers were interviewed during the investigation, Lester followed up with the officers to determine whether they relayed the false statements as instructed.

i. *David Crouse.* Officer Crouse was a trainee and responded to the initial call for assistance. JA533-534. He did not personally use any physical force but witnessed Holdren "apply[] knee strikes to [Burks's] right side ribcage" and Wimmer "punch[] him in the left side of his shoulder." JA537-538. When Burks

was taken to the interview room, Crouse saw Snyder "step on the back of his Achille's [sic]," Fleshman "split his fingers," and "head striking as well." JA538. And when Burks later was taken to a cell, Crouse witnessed his fellow officers stomp on Burks's chest while Burks "had his hands still cuffed." JA539. During the beating, Burks's blood got on Crouse's arms, and Lester later instructed Crouse "to go to medical and clean off the blood." JA542.

On the day of Burks's death, Lester told Crouse what to say to state investigators who came to the Jail to interview officers. Lester instructed Crouse to "just tell them that you just went to the scene [and] helped assist." JA548. Lester did not mention the officers' use of force. JA548. Boothe likewise told Crouse and his fellow trainees to "keep [their] stories the same." JA546.

On March 3, 2022, Lester told Crouse that he had to write an incident report. JA553. Lester told Crouse to "step in [Lester's] office" and write the report at Lester's desk. JA554. Lester was "right beside" Crouse while Crouse wrote the report, and Lester told Crouse "what to say." JA554. Again, Lester did not mention the officers' use of force. JA554. As a result, Crouse's report was incomplete. The report mentioned that Holdren pepper-sprayed Burks while trying to restrain him but did not discuss the subsequent knee strikes, hitting, or "details of the use of force while at the interview room." JA556-557. Crouse told Lester that he wanted to include this information, but Lester told Crouse that he could not have seen the force

because of "tunnel vision," even though Crouse was not affected by tunnel vision. JA557-558. At Lester's insistence, Crouse did not include in his report the unreasonable force he witnessed. JA557-558.

Lester later admitted that he ordered the "dumb fuck" Crouse to "change his report." JA291. According to Holdren, the purpose of this change was "to make Burks look worse than [he] was." JA292.

ii. *Landon Richmond.* Officer Richmond was a trainee and also responded to the initial call for assistance. JA628, JA632. When Richmond arrived, other officers had already handcuffed Burks and "were beating him." JA632. Richmond witnessed other officers escorting him to the interview room. JA633-634. Richmond did not enter the room but watched through the window and door as other "[e]xtremely angry" officers "beat [Burks's] head off of the table." JA637-639. Richmond then saw the officers carry Burks back to a cell and continue to beat him. JA642.

After Burks died, Richmond learned that he would be interviewed by state police. Boothe told Richmond to "tell them as little as possible" and to falsely state that Burks "was being combative and that they had to use force to calm him down." JA647-648. In Lester's office, Toney and Walters then "instructed [Richmond] to do the same thing that Boothe did." JA649. Lester was sitting at his desk at the time but did not contradict Toney's and Walters's instructions. JA649-650. Instead,

Lester asked Richmond if he had written an incident report and offered to help him write the report. JA652. After Richmond's interview, Lester reiterated his offer to "help." JA657. Richmond believed that based on "what [he] was instructed to tell the state troopers," he "would be instructed to write the same thing on the incident report." JA661.

Richmond met briefly with state investigators later that day and told them that officers had beaten Burks. JA655. He indicated that he could not speak freely to them about what had happened because Lester and the other officers were watching and wanted him to give a false cover story. JA655-666. Richmond said that he would give a fuller statement to state investigators at another time, away from the Jail. JA655. Richmond left the Jail that day without writing a report because he "didn't want to write a false report." JA660-661. He never returned to work at the Jail because he felt "uncomfortable" and was "afraid" what would happen if other officers "had found out that [he] had told the truth to the troopers." JA662.

iii. *Jeffrey Forinash*. Forinash also wrote his report in Lester's office. JA486. Lester was not present at the time. JA486. Forinash got "pulled away from the report," and Lester later ordered him to return to the office and review the report, which Forinash observed was "finished" by Lester. JA486-487. Forinash opened the report and noticed that the narrative was longer than the version he had written. JA488. Forinash testified that Lester "added" "some false statements." JA486,

JA488, JA494. Specifically, Lester falsely added that Burks had "rush[ed] to the section door" and made "threats" and "abnormal statements" such as "I'm going to hit you, green monster." JA490-492.

Lester told Forinash that he added these falsehoods to make Burks "seem … more insane than he actually was." JA494. Forinash decided not to tell Lester to remove these falsehoods from the report. Forinash feared angering his "direct supervisor" and "receiv[ing] less desirable positions [and] shifts due to not complying." JA495.

Lester also ordered Forinash to "stick with the report" when speaking to state investigators. JA495. During his interview, Forinash struggled to remember some of the false details that Lester had added to his report, so he left the room to get a copy of his report from Lester so that he could read it during his interview with investigators. JA497-498. After his interview, Lester asked Forinash if he stuck with the report. JA499. Forinash said that he did. JA499.

iv. *Steven Wimmer*. Like Forinash and Crouse, Wimmer wrote his incident report in Lester's office. JA442. Lester was standing behind him at the time and was "picking and choosing what [Wimmer] was putting in and what [Wimmer] was taking out." JA442-443, JA450.

Lester wanted to make Wimmer's report "sound like it wasn't an unnecessary use of force." JA443. He told Wimmer "what all [Wimmer] saw and what all

[Wimmer] did and . . . how he wanted it typed, how to word it and what to leave out and what to add in." JA443. Lester accordingly instructed Wimmer to falsely state that Burks was brandishing a mop "[s]o he could give the appearance of Mr. Burks having a weapon." JA444. Lester told Wimmer to dishonestly state that Burks was "combative or belligerent" and made "abnormal statements." JA445-447. He ordered Wimmer to use the phrase "Brachial Plexus Tie-In" (a tactic involving a shoulder restraint) to obscure that Wimmer "was punching [Burks] in the face." JA446. Additionally, Lester had Wimmer omit that the officers dropped Burks in a cell and kicked him. JA449.

After Wimmer finished writing his report, Lester told him that "whenever the state police arrived to do their investigation, just to stick to the story. Study this [report] and just tell them exactly what [was] written down here." JA450. Lester reiterated the need to stick to the report prior to the interview. JA451. During the interview, Wimmer "did what Mr. Lester said and followed the report." JA451. After the interview, Lester asked if Wimmer "was able to stick to the report." JA452. Likewise, before internal investigators interviewed Wimmer, Lester told Wimmer "to remember the Brachial Plexus-Tie In," and Wimmer believed that Lester wanted him to "avoid saying [he] punched him in the face." JA453. During the interview, Wimmer "tried to stick to [the] report." JA453. After the interview, Lester again

asked Wimmer if he "told them anything" and if he "was able to stick to the report." JA454.

v. *Jonathan Walters.* Walters intentionally put false information in his report "to make it sound better" and to make his use of force seem "justifiable" rather than "excessive." JA339-340. Although the officers "tossed [Burks] on the floor," Walters falsely stated that the officers "placed [Burks] in the cell in a sitting position." JA339-340. Lester then had Walters insert additional falsehoods into the report, such as ordering Walters to falsely state that "Burks was acting very irate and belligerent." JA340-341.

vi. *Mark Holdren*. Lester previously taught Holdren how to use certain phrases "in a report to justify a bad use of force." JA289. Holdren therefore knew that he should falsify his report in order to shield the officers from liability and to avoid any kind of retaliation from Lester and the other officers. JA289-290. Although Holdren knew that incident reports should contain "everything that happened" and "document truthful information," he omitted from his incident report about Burks's death "anything about the excessive force in the interview room." JA242, JA285. Instead, Holdren "made this report justify [his] actions." JA285.

2. Lester Threatened Officer Aaron Johnson with Violence and Retaliation

At some point during the state investigation, Aaron Johnson told state investigators that he had seen officers use excessive force against Burks, and Lester

accordingly took revenge. Johnson was a trainee who responded to Forinash's call for assistance. He witnessed officers "using excessive force" against Burks, including knee strikes and punches. JA591-593. When other officers brought Burks to the interview room, Johnson stood outside the room with Richmond and Crouse and watched the officers assault Burks. JA594-596. And like Richmond and Crouse, Johnson saw the officers take Burks to his cell and further assault him. JA601. Johnson tried to intervene in the interview room by telling the other officers to stop, but Holdren told him to "[s]hut the fuck up." JA603.

At first, Johnson acted in concert with the other officers. In his incident report, Johnson omitted the officers' use of unreasonable force against Burks. JA608. He knew that the "higher-ups," including Lester, "could see" the report, and he feared that he "would get beat up for telling the truth." JA608. Snyder told Johnson that he "would get beat up" if he "didn't say it was a heart attack" that killed Burks. JA608. Toney told Johnson to "put the bare minimum" in the report "to not get anybody else in trouble." JA214. She testified that she "told him not to be stupid" and give "more information than what was absolutely necessary." JA217. Lester told Johnson "to take information out" of his report. JA214. Lester also personally modified Johnson's report to falsely state that Burks was uncooperative. JA790, JA797-799.

On March 1, 2022, Johnson met with state troopers at the Jail. JA609. He gave a false account of Burks's death because Toney was "walking around" outside the interview room and was "eyeing" him through a window. JA609; *see also* JA655 (Richmond explaining that the windowed interviewed room was "[a]cross the hall from . . . Lester's office" and that he could "see the other officers in the hallway"). He "did not want [Toney] to hear the truth" because he feared he would "get beaten." JA609.

However, Johnson changed course on March 4, 2022, when he again met with state troopers—this time at the troopers' office. JA610. Johnson admitted that "excessive force was used during the Burks incident." JA610. He decided to share this information because he "was not at [his] workplace" and the meeting "was private." JA610. Following this meeting, Lester assigned Johnson to 16-hour shifts, even when other officers volunteered for the shifts. JA610-611. These shifts included "trash duty," an undesirable assignment that Johnson never before had performed. JA611.

On March 12, 2022, Lester met with Johnson in Lester's office. JA611. He told Johnson that "somebody ratted out" and made Johnson fear that the other officers collectively thought he was the "[s]nitch." JA611-612. Lester threatened Johnson that he was going to "beat [his] ass" if "he found that [Johnson was] the

rat." JA612. Johnson's "heart . . . dropped because [he] . . . didn't want to get beat up." JA612.

In June 2022, additional state investigators visited the Jail to interview officers for the internal investigation of the circumstances into Burks's death. JA612. Lester announced over the radio that the investigators needed to talk to Johnson. JA613. "[E]verybody in the whole building" could hear Lester's announcement. JA613. Lester's announcement caused Johnson to fear for his safety. JA613. The officers "already thought [Johnson] was a snitch and [that he had] ratted them out," and what "was supposed to be privately an interview" instead "was publicly heard over the radio." JA613. The officers reiterated that "they would beat [his] ass." JA613. When Johnson later met with state investigators, he reverted to relaying false information about what happened to Burks. JA619.

3. Lester Made False Statements to Federal Agents

On October 5, 2023, Lester agreed to speak to two FBI agents who were investigating Burks's death. JA366. The agents advised Lester at the beginning of the interview that the interview was voluntary and that making false statements to the FBI is a federal crime. JA370. They proceeded to interview Lester for an hour and a half. JA370. The interview was audio-recorded.

Lester made several materially false statements during his interview. First, he falsely claimed that while officers were bringing Burks from the interview room to

his cell, he heard Burks scream, "Fuck you. Carry my fat ass." SA110; *contra* JA429 (Wimmer testified that Burks was not "talking as he came out of the interview room") and JA641 (Richmond testified that Burks at some point said, "You're going to kill me.").

Second, Lester told the FBI agents that officers took Burks to the interview room where he was beaten because of COVID-19 protocols prohibiting inmates from being examined in the medical unit. JA375 (citing Ex. 17F). But the real reason the officers took Burks to the interview room was "for punishment," *i.e.*, the unreasonable use of force as "punishment" against Burks for attempting to leave his pod. JA257-258.

Third, Lester falsely denied instructing his subordinates to falsify their incident reports. He stated that his subordinates did not talk to him about Burks's death before they wrote their reports. SA091. Lester also claimed that he "didn't make any changes to anybody's reports" or "give any guidance to [officers] prior to [them] submitting the reports." SA070. He insisted that he gave only a "quick crash course" on "what needs to be [in the] report" and told officers to include "only what they did and what they saw." SA070-071. He denied giving "any guidance" about their reports to Johnson, Richmond, Forinash, Wimmer, and Walters. SA070-071; *contra* pp. 10-11, 13-15, *supra* (recounting evidence of Lester's involvement and influence in the writing of multiple officers' incident reports).

Fourth, Lester falsely denied instructing his subordinates to lie to state investigators. He said that he did not have "much interaction" with the officers "after the incident reports were written" and that he did not thereafter "talk about it at all." SA074. He denied giving "any guidance to the corrections officers about their interviews." SA079 ("I didn't tell them nothing."). He claimed he did not "ever tell anybody what to say in their interview" or tell anybody to "stick to their report during their interview." SA080-081. In actuality, however, Lester repeatedly instructed the officers to stick to their false reports when speaking to investigators. *E.g.*, JA495.

D. Lester Is Indicted, Tried, and Convicted

1. The Indictment and Guilty Pleas

A federal grand jury charged Lester with three counts related to his role in the cover-up of the circumstances surrounding Burks's death. Count 4 alleged that Lester and his co-defendants Holdren, Snyder, Walters, Boothe, and Toney conspired to tamper with witnesses by omitting information from their reports, making false statements to state investigators, instructing other witnesses to make false statements in their reports and to state investigators, and by retaliating against witnesses who provided truthful information to state investigators, all in violation of 18 U.S.C. 1512(k). JA22-24. Count 5 alleged that Lester tampered with witnesses by lying to state investigators about Burks's death and by threatening or persuading other officers to do the same, with intent to prevent the communication to federal

law enforcement of information relating to a federal crime, in violation of 18 U.S.C. 1512(b)(3). JA25. Count 14 alleged that Lester knowingly made false statements to the FBI, in violation of 18 U.S.C. 1001. JA34. The remaining counts charged the other officers with various offenses relating to their role in Burks's death and subsequent cover-up. JA16-21, JA26-33, JA35-38.

Lester's five co-defendants pleaded guilty. Boothe and Toney failed to intervene to protect Burks from the other officers and accordingly pleaded guilty to depriving Burks of his constitutional rights while acting under color of law, resulting in physical injury, in violation of 18 U.S.C. 242. Written Plea of Guilty (Docket entry No. 8), *United States v. Boothe*, 5:24-cr-123 (S.D. W. Va. Aug. 8, 2024); Written Plea of Guilty (Docket entry No. 7), *United States v. Toney*, No. 5:24-cr-124 (S.D. W. Va. Aug. 8, 2024). Holdren, Snyder, and Walters admitted to using unreasonable force against Burks, resulting in his death, and pleaded guilty to conspiring to deprive Burks of his constitutional rights while acting under color of law, in violation of 18 U.S.C. 241. Docs. 189, 207, 212.[1] Fleshman and Wimmer also used unreasonable force against Burks and pleaded guilty to a separate bill of information charging them with one count of conspiring to deprive Burks of his constitutional rights while acting under color of law, in violation of 18 U.S.C. 241.

[1] Unless otherwise specified, all citations are to *United States v. Holdren, et al.*, No. 5:23-cr-188 (S.D. W. Va).

Written Plea of Guilty (Docket entry No. 14), *United States v. Wimmer*, No. 5:23-cr-134 (S.D. W. Va. Nov. 3, 2023); Written Plea of Guilty (Docket entry No. 16), *United States v. Fleshman*, No. 5:23-cr-133 (S.D. W. Va. Nov. 3, 2023), appeal pending, No. 25-4407 (4th Cir. docketed July 28, 2025). As relevant here, Fleshman and Wimmer faced potential life sentences before pleading guilty. *See* 18 U.S.C. 241, 242.[2]

Holdren, Walters, Toney, and Snyder respectively received prison sentences of 240, 252, 78, and 235 months' imprisonment. Doc. 296, at 2, Doc. 309, at 2, Doc. 313, at 2, Doc. 317, at 2. Wimmer and Fleshman received sentences of 108 months and 100 months' imprisonment. Judgment (Docket entry No. 44, at 2), *Wimmer*, *supra* (No. 5:23-cr-134 May 15, 2025); Judgment (Docket entry No. 49, at 2), *Fleshman*, *supra* (No. 5:23-cr-133 July 16, 2025).

2. Lester's Trial

Lester opted to proceed to trial. The United States began presenting its case-in-chief at 11:05 a.m. on January 22, 2025. Toney, Holdren, Walters, and Wimmer all testified against Lester pursuant to their plea agreements with the United States, in which they agreed to cooperate. The witnesses testified that they had pleaded guilty to depriving or conspiring to deprive Burks of his constitutional rights while

[2] Each of these crimes is a capital offense. However, the United States did not seek the death penalty in these cases.

acting under color of law. They explained that they were testifying as part of their plea agreements, hoped that the United States would recommend a reduced sentence in exchange for their cooperation, and that the United States did not make any promises to them regarding any particular sentence they would receive. JA158-159 (Toney), JA236-237 (Holdren), JA318-319 (Walters), JA414-415 (Wimmer).

Toney described the officers' assault of Burks. She conceded that their use of physical force was unjustified after Burks had been handcuffed. JA183-184. The prosecution asked Toney whether she had "used force that wasn't justified" against other inmates prior to Burks's assault. JA191. The defense did not object to that question, and Toney admitted that she had previously taken inmates to blind spots and "used force that wasn't justified" there. JA191. The defense did not cross-examine Toney. JA233.

Holdren provided similar testimony about blind spots. He said that the officers took Burks to the interview room "[s]trictly because there were no cameras." JA257. The officers intended to impose "punishment" on Burks by using unreasonable force against him, but they did not need to "have a conversation . . . about . . . punishment" in advance because "[t]aking inmates to blind spots for punishment" and "additional force" "was a pretty common thing at the jail." JA257-258. The prosecution asked how Holdren had "become aware of blind spots," and Holdren said that his "trainer had told [him] about the two interview rooms" early in

his career. JA258. Holdren also testified that Lester had taught him to use specific phrases in reports "to justify a bad use of force." JA289; *see also* JA290 ("All my previous actions led up to learning how to cover yourself throughout my career.").

On cross-examination, defense counsel attempted to ask Holdren about the "maximum penalty" he faced. The prosecution objected, and the judge instructed counsel to limit the inquiry to whether Holdren "was exposed to significant penalties," not "the specifics of the total amount available under the statute." JA311-312.

Walters echoed this testimony. He said that he knew the interview room was a blind spot based on earlier conversations with Lester. JA324. The prosecution asked Walters whether he recalled any specific conversations. JA324. This time, the defense objected. JA324. The judge overruled the objection, and Walters explained that he "remember[ed] Lester saying that you could not see inside of the interview room and that's where [inmates] needed to start being taken to." JA324-325.

The defense cross-examined Walters about his plea agreement. JA348. Counsel asked whether Walters "pled guilty to a very serious crime," whether he was "facing some pretty serious time," and whether he agreed to "cooperate with [the United States] and testify" against Lester. JA360-361. Walters answered each question in the affirmative. JA360-361.

Unlike the other three officers who pleaded guilty, Wimmer did not testify about blind spots, although he did testify that Lester repeatedly told him to omit descriptions of force from his incident reports. JA439-441. The defense cross-examined him about his plea agreement. As with Walters, Wimmer admitted that he "pleaded guilty to a conspiracy count" and was "exposed to a considerable period of years." JA456-457. The defense also asked Wimmer whether he was one of the first officers to plead guilty. JA456. The prosecution objected, but the judge overruled the objection. JA456. The defense then asked Wimmer whether his plea agreement was "was considerably better than the deals that were struck by those that came after you." JA456. Again, the prosecution objected, and the judge overruled the objection, explaining that he would give the defense "plenty of latitude." JA456-457. Wimmer said that he did not know what deals the other officers received. JA456-457.

Forinash also testified for the prosecution and told the jury how Lester added false statements to his report. JA487-494. During cross-examination, the defense asked whether Forinash was "testifying here pursuant to an agreement . . . with the federal government." JA505. Forinash said that he was. JA505. The defense did not ask any additional questions about this agreement.

The prosecution rested at 2:02 p.m. on Friday, January 24, 2025, after approximately two full days of testimony. JA669. Outside the presence of the jury,

defense counsel then explained that the defense was "going to run short of witnesses today." JA669-670. All but one of the defense's planned witnesses were jail employees. Two of those witnesses were present on Friday, but defense counsel indicated that he "decided not to call one of them." JA670. The judge then asked defense counsel, "If I started Monday morning at 9:00 with your case, how long would it take?" JA672. Counsel responded that it would take only a "couple of hours." JA673. The court reluctantly decided to allow the defense "to have a whole weekend to get [its] case together." JA673. Consistent with defense counsel's representations, the court said that the trial would resume at 9 a.m. on Monday and said that it "want[ed] all of this done by noon on Monday." JA673. Defense counsel agreed. JA673.

Trial resumed on Monday, January 27, at approximately 9 a.m. JA687. Six witnesses, including Lester himself, testified for the defense. At 12:41 p.m., the court went into recess for lunch, and the trial resumed at 2:30 p.m. JA816. The defense rested shortly thereafter. JA817. The jury convicted Lester later that day. JA885-887.

Lester moved for a new trial. JA893-896. In relevant part, he argued that the district court erred by "grossly limiting the defendant's right to cross-examine co-defendants who became government witnesses about their respective plea

agreements" and by ordering a "fast pace of trial [that] negatively affected the defense." JA895-896. The district court denied the motion. JA935-942.

3. Sentencing

During the sentencing hearing, the district court asked Lester whether he was "completely satisfied" with his counsel. JA966-967. Lester said, "Not really . . . We only got one day to do trial on Monday . . . We didn't get to bring key witnesses up there that could battle everything that [the prosecution] just said . . . I had six witnesses sitting in the lobby out there on Monday that they didn't bring up my last day of trial." JA966. Lester's counsel explained that he decided not to call some of those witnesses because he feared that they would not give "strong" testimony. JA968-969. Counsel added that he "felt a certain pressure to finish" but was not "suggesting" "that the Court didn't let him [call] witnesses." JA968.

The judge determined that the Sentencing Guidelines called for a sentence of 188-235 months' imprisonment. JA974. The defense requested a below-Guidelines sentence of "less than nine years . . . more like five." JA981.

The court imposed a within-Guidelines sentence of 210 months' imprisonment. JA1004. The judge explained that this sentence was "reasonable and appropriate for quite a number of reasons." JA1005. He began by considering Lester's "personal characteristics," which "were generally very good." JA1006. Lester was a first-time offender, graduated from high school, "rose through the

ranks" at the Jail, and "completed additional courses and certifications." JA1005-1006. While working at the Jail, he was "subject to multiple attacks," required "multiple surgeries," and suffered from post-traumatic stress disorder and depression. JA1007. The court found that "[a]ll of those things stand in [Lester's] favor." JA1008. However, the court also found that Lester "betrayed the trust of the public" and "abused his authority." JA1006. Lester was supposed to "maintain safety of all those who entered the jail, [including] the inmates." JA1008. Lester shirked his "profound responsibility to ensure humane treatment." JA1008. Under Lester's "leadership," "the practice of taking inmates to blind spots in the jail to beat them and abuse them was a commonplace event." JA1009-1010. A "long sentence" therefore was "necessary to reflect the nature and circumstance of [Lester's] crime." JA1010.

The judge expanded on his reasoning in a memorandum opinion. JA1016-1025. He explained that the Constitution "guarantees certain freedoms to everyone, including the incarcerated," and it does not "empower correctional officers to administer their own justice through physical violence." JA1017, JA1019. Lester's sentence therefore would "serve as notice to those who might abuse the trust placed in them: prison walls will not shield wrongdoing, and official authority will not excuse lawlessness." JA1024.

SUMMARY OF ARGUMENT

1. The district court did not violate Lester's rights under the Confrontation Clause by excluding testimony about the life sentences his co-conspirators faced before pleading guilty. The Confrontation Clause guarantees the right to cross-examine witnesses about their credibility or bias, but it does not deprive district courts of the authority to impose reasonable limits on cross-examination. Defense counsel had ample opportunity to cross-examine Lester's co-conspirators about their potential biases, and he elicited testimony that each co-conspirator faced a lengthy sentence, was testifying pursuant to a plea agreement, and hoped that the government would recommend a reduced sentence in exchange for his or her cooperation. That is enough to satisfy the demands of the Confrontation Clause, and the district court did not abuse its discretion because testimony about the specific sentences faced by his co-conspirators could have invited jury nullification due to misguided concern about Lester's potential sentencing exposure.

2. The district court properly admitted evidence of Lester's prior bad acts: (a) promoting the use of unjustified force in blind spots and (b) teaching other officers how to falsify incident reports. Evidence of prior bad acts is admissible to prove a defendant's "motive, opportunity, intent, preparation, plan, [or] knowledge." Fed. R. Evid. 404(b)(2). Testimony about Lester's prior bad acts is intrinsic to his crimes—and therefore admissible—because it was part of the officers' conspiracy

to tamper with witnesses. The testimony was also relevant to show the relationship between Lester and his co-conspirators.

3. The district court did not violate Lester's due-process rights by placing any unreasonable restriction on the time available for Lester to present his defense case. Lester's counsel told the district court that he needed only a "couple of hours" to present his defense. JA673. Based on that representation, the district court noted its expectation that the defense case would be completed in approximately three hours. Contrary to Lester's claim on appeal, this offhand remark by the district court did not amount to a rigid three-hour time limit on the presentation of his defense. In actuality, Lester took nearly four hours to present his case, and the district court never told him to hurry up or forbade him from calling witnesses. Regardless, a time limit at trial is permissible when, as here, the defendant is afforded the opportunity to present a complete defense. In this case, defense counsel called six defense witnesses and indicated that he chose not to call other witnesses for strategic reasons, not because of time constraints.

4. The district court's imposition of a within-Guidelines sentence of 210 months' imprisonment was not an abuse of discretion. Pursuant to 18 U.S.C. 3553, the district court gave due consideration to Lester's mitigation factors (*e.g.*, his service as a corrections officer, strong family ties, etc.), which the court described as "very good," but properly weighed those against Lester's "extraordinarily

disturbing" crimes and the need to deter other officers from engaging in similar misconduct. Lester argues that the district court gave insufficient weight to his personal characteristics and overemphasized the need for deterrence, but it is not the role of this Court to reweigh the statutory sentencing factors or substitute its judgment for that of the district court.

ARGUMENT

I. The District Court Did Not Abuse Its Discretion When Limiting Cross-Examination Regarding The Co-Conspirators' Plea Agreements

Three of Lester's co-conspirators who faced life sentences (Holdren, Walters, and Toney), and one who could have been charged with a crime with a potential life sentence (Wimmer) testified against Lester. The district court gave the defense "plenty of latitude" to cross-examine the testifying co-conspirators about the plea agreements (JA457), and the defense was able to elicit testimony about how each witness faced lengthy sentences and pleaded guilty and agreed to cooperate with the government in the hope of receiving a reduced sentence. *See* JA158-159, JA236-237, JA318-319, JA414-415.

Although the district court did not allow the defense to cross-examine them about the statutory maximum sentence each co-conspirator had faced before pleading guilty, that limitation did not deprive Lester of his rights under the Confrontation Clause. The law is clear. "A district court does not abuse its discretion by prohibiting a defendant from asking a cooperating witness about the

specific sentence the witness faced absent cooperation." *United States v. Johnson*, 363 F. App'x 247, 249 (4th Cir. 2010); *see United States v. Cropp*, 127 F.3d 354, 358 (4th Cir. 1997) (affirming the district court's decision to disallow questions "about the specific penalties that the cooperators would have received absent cooperation").

A. Standard of Review

This Court "review[s] for abuse of discretion a trial court's limitations on a defendant's cross-examination of a prosecution witness." *United States v. Smith*, 451 F.3d 209, 220 (4th Cir. 2006). That remains true when the limited testimony concerns a witness's plea agreement. "This Court reviews a district court's exclusion of bias evidence for abuse of discretion, even if there is a potential Confrontation Clause violation, and will uphold a district court's decision unless it is arbitrary or irrational." *United States v. Perez-Amaya*, 453 F. App'x 302, 304 (4th Cir. 2011) (citation and internal quotation marks omitted); *see also United States v. Turner*, 198 F.3d 425, 429 (4th Cir. 1999).

B. The District Court Did Not Violate Lester's Confrontation Clause Rights Because Lester Had Ample Opportunity to Elicit Testimony about Cooperating Witnesses' Potential Biases

The Sixth Amendment's Confrontation Clause states that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. Amend. VI. A criminal defendant therefore "states a

violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness." *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986).

However, the Confrontation Clause does not "prevent[] a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. . . . Trial judges retain wide latitude. . . [to] impose reasonable limits on such cross-examination based on concerns about, among other things . . . prejudice, confusion of the issues, . . . or interrogation that is repetitive or only marginally relevant." *Van Arsdall*, 475 U.S. at 679. Directly relevant here, a district court may prohibit the defendant from asking questions about the specific penalties the witness faced before pleading guilty. *Cropp*, 127 F.3d at 358 (affirming ruling "that the defense could not ask about the specific penalties that the cooperators would have received absent cooperation").

This Court repeatedly has "affirmed a trial court's decision not to allow further cross-examination about bias when," as here, "the witness had already answered enough questions" to establish that he potentially was biased. *See Cropp*, 127 F.3d at 359 (collecting cases). The Court's decision in *United States v. Dorta*, 783 F.2d 1179 (4th Cir. 1986), is on point. In that case, a member of a drug-trafficking conspiracy cooperated with the prosecution and testified against defendants. The

district court "refused to allow [the defense] to cross-examine [the witness] concerning his belief as to what his maximum sentence could have been had he not cooperated with the government." *Ibid.* This Court rejected the defendants' Confrontation Clause claim. The defense "cross-examined [the witness] thoroughly, if not exhaustively, concerning his possible bias arising out of his agreement with the government" and "his motivation for testifying." *Ibid.* It "obtained from the witness a clear and complete statement of the witness' understanding of the plea bargain and of what benefits the witness would receive as a result." *Ibid.* (alterations and citation omitted). Therefore, the district court "did not impose substantial limitations on the attempts of a defendant to undermine as biased a witness' testimony," and there was no Confrontation Clause violation. *Ibid*. (citation and internal quotation marks omitted).

Cropp is also instructive. There, this Court rejected the argument that "questions about exact sentences feared . . . were necessary when the jury was already well aware that the witnesses were cooperators facing severe penalties if they did not provide the government with incriminating information." *Cropp*, 127 F.3d at 359 (emphasis omitted). This Court held that the district court properly exercised its discretion in excluding this testimony in light of concerns of jury nullification "if the jury could infer the very long sentences faced by [defendants] from knowing the sentences faced by the co-conspirators." *Id.* at 358.

As these cases demonstrate, "[t]he critical question" in determining whether restrictions on cross-examination violate the Confrontation Clause "is whether the defendant is allowed an opportunity to examine a witness['] subjective understanding of his bargain with the government, for it is this understanding which is probative on the issue of bias." *United States v. Ambers*, 85 F.3d 173, 176 (4th Cir. 1996) (citation and internal quotation marks omitted). If a defendant "had ample freedom to explore the government witness' subjective motive for testifying," then there is no Confrontation Clause violation. *Ibid.*

Lester had "ample freedom" to cross-examine Holdren, Walters, and Wimmer about their plea agreements and the effect these agreements had on their motives to testify. The district court gave the defense "plenty of latitude" to cross-examine these cooperating witnesses. JA457. Notably, although the court allowed wide latitude to cross-examine the witnesses on this matter, the defense chose not to cross-examine Toney on this issue or at all. JA232, JA441, JA457. Lester's counsel questioned the other three witnesses "about their plea agreements" and "the penalties they faced." *Ambers*, 85 F.3d at 176. That was all that the Confrontation Clause required. *See Cropp*, 127 F.3d at 358 (deeming it sufficient that witnesses were asked whether they "faced a 'severe penalty' prior to cooperating" and "expected to receive a lesser sentence as a result of the cooperation").

Specifically, the district court allowed the defense to "inquire if [the witnesses were] exposed to significant penalties and how many charges there were." JA311-312. Holdren testified that he pleaded guilty to "a police brutality type of case" and was facing "[n]o more than 30 years" in prison under his plea agreement. JA311, JA313. Walters agreed that he "pled guilty to a very serious crime," was "facing some pretty serious time," and would "cooperate with [the United States] and testify" against Lester. JA360-361. He said that he hoped the United States would "provide whatever help they could to get [his] sentence reduced" in exchange for his cooperation. JA361. And Wimmer, over the prosecution's objections, agreed that he was "exposed to a considerable period of years" and was testifying "in aid of not spending as much time in prison as possible." JA457. He admitted that he was "beholden to the Government attorneys" and wanted them to "make a recommendation to this Court" for "reducing [his] sentence." JA460. The jury therefore was well aware that the United States may recommend a lower sentence for each witness if he or she testified against Lester. It was also aware that at least one witness faced 30 years in prison, which was still a significant reduction from the maximum penalty faced absent a plea agreement. It credited the witnesses' testimony anyway.

The district court placed just one modest limitation on the scope of Lester's cross-examination: it precluded inquiry into the "maximum penalty" that the

witnesses faced prior to entering into their plea agreements. JA311-312. Lester argues that this restriction violated his Confrontation Clause rights because the district court should have allowed him to elicit testimony "that the witnesses against him had bargained away the possibility of life sentences." Br. 28.

As explained above, however, the district court did not abuse its discretion in violation of the Confrontation Clause by instructing defense counsel to not ask about "the specifics of the total amount available under the statute." JA312. When denying Lester's motion for a new trial, the district court explained that it excluded the testimony because "the risk of jury nullification outweighs the probative value of information about specific sentences." JA939 (citation omitted). If the jury heard testimony that Lester's co-conspirators faced life sentences, it may have inferred that Lester himself faced the same sentence. This Court has recognized that a jury "might 'nullify' its verdict if it knew the extreme penalties faced by" a defendant. *Cropp*, 127 F.3d at 358; *see also United States v. Walston*, 733 F. App'x 719, 720 (4th Cir. 2018) ("[A]llowing the jury to learn of the sentence a defendant faces could potentially nullify the verdict.").

Additionally, allowing testimony about the witnesses' maximum sentences "would improperly raise questions about punishment in the jury's mind." *United States v. Dunn*, 398 F. App'x 869, 871 (4th Cir. 2010). "[P]roviding jurors sentencing information invites them to ponder matters that are not within their

province, distracts them from their fact-finding responsibilities, and creates a strong possibility of confusion." *Shannon v. United States*, 512 U.S. 573, 579 (1994). Such distraction and confusion risks upsetting the "basic division of labor in our legal system between judge and jury." *Ibid.* Judges impose sentences. Juries have "no sentencing function and should reach [their] verdict without regard to what sentence might be imposed." *Rogers v. United States*, 422 U.S. 35, 40 (1975); *United States v. Meredith*, 824 F.2d 1418, 1429 (4th Cir. 1987) ("The jury must reach its verdict without considering possible sentences.").

The right of confrontation "is not so broad as to deprive the district court of all discretion in limiting needless or confusing inquiry into collateral matters." *United States v. Bodden*, 736 F.2d 142, 145 (4th Cir. 1984) (citation and internal quotation marks omitted). "[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam). By successfully eliciting testimony that each cooperating witness faced a lengthy prison sentence prior to pleading guilty and agreeing to testify against him, Lester was able to exercise his "right to cross-examine cooperating witnesses about sources of potential bias." *Cropp*, 127 F.3d at 358. Thus, his Confrontation Clause claim is invalid.

II. The District Court Did Not Abuse Its Discretion When Admitting Evidence of Lester's Prior Support for and Concealment of Unjustified Force

Before Burks's death, Lester had conspired with other officers to promote and conceal the use of unjustified force against other inmates in so-called "blind spots." The district court did not abuse its discretion in admitting testimony about these prior bad acts, which are intrinsic to the crimes charged. Even if the Court were to find that this evidence was extrinsic to the charged crimes, it would still be admissible to show that Lester intended, planned, and had the opportunity to cover up Burks's death. *See* Fed. R. Evid. 404(b)(2).

A. Standard of Review

This Court "review[s] for abuse of discretion a district court's ruling concerning the admissibility of evidence." *United States v. Cornell*, 780 F.3d 616, 629 (4th Cir. 2015) (citation omitted). That includes the admission of prior bad acts. *United States v. Cowden*, 882 F.3d 464, 471 (4th Cir. 2018).

B. Evidence of Lester's Prior Bad Acts Was Admissible Because It Provides Context on the Scope and Tactics of the Conspiracy

The Federal Rules of Evidence limit admission of evidence regarding a person's prior bad acts. Pursuant to Rule 404(b), "[e]vidence of any other crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with [his] character." Fed. R. Evid. 404(b)(1).

Acts that are part of, or intrinsic to the alleged crime do not fall under Rule 404(b)'s limitations on admissible evidence." *United States v. Brizuela*, 962 F.3d 784, 793 (4th Cir. 2020) (citation modified). Admissible, "intrinsic" acts "involve[] the same series of transactions as the charged offense" or are "necessary to complete the story of the crime on trial." *United States v. Webb*, 965 F.3d 262, 266 (4th Cir. 2020) (citation omitted). "[I]n conspiracy cases … this means that "the government is permitted to present evidence of acts committed in furtherance of the conspiracy even though they are not all specifically described in the indictment." *United States v. Underwood*, 95 F.4th 877, 892 (4th Cir. 2024) (citation and internal quotation marks omitted). In contrast, prior bad acts that are extrinsic to the alleged crime generally are inadmissible. Even then, however, "such evidence is not always barred." *Cowden*, 882 F.3d at 472. It "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, [or] knowledge." Fed. R. Evid. 404(b)(2).

In this case, the district court die not err by admitting the testimony regarding the prior bad acts. *First*, Lester insists that the district court should not have admitted testimony that he "was either directly involved in, or had knowledge of, alleged prior incidents of excessive force against prisoners." Br. 30. He presumably is referring to testimony that, prior to Burks's death, Lester instructed officers to bring inmates to blind spots "to deal with them" (JA325), and that officers, consistent with Lester's

instructions, routinely took inmates "to blind spots for punishment" and wrote false reports to cover up those incidents (JA258).[3] *See* pp. 5-6, *supra*.

The district court did not abuse its discretion in admitting testimony about Lester's knowledge of the unjustified use of force at the Jail and about Lester instructing others to falsify reports after they used unjustified force. Count 4 of the indictment alleged that Lester and his subordinates conspired to "cover up the use of unreasonable force." JA22. Testimony that Lester had previously discussed with other guards, and even encouraged, the use of unjustified force against inmates in blind spots is intrinsic to this conspiracy charge. The testimony "constituted predicate evidence necessary to provide context" as to why Lester and his co-conspirators tried to cover up the unreasonable use of force against Burks and why they did not need to have explicit or in-depth conversations with each other regarding what information should be included in incident reports and what steps they needed to take in order to cover up the unreasonable use of force. *United States v. Kennedy*, 32 F.3d 876, 885-886 (4th Cir. 1994). "By providing the jury with background information" regarding the routine abuse of inmates in blind spots and subsequent cover-ups, this testimony "complete[d] the story of the crime on trial" and

[3] Lester does not identify the exact testimony that supposedly should have been excluded. Br. 29-31. Because Lester "does not point to specific testimony that he alleges constitutes error," his "argument [is] waived for failure to develop it." *United States v. Caldwell*, 7 F.4th 191, 211 (4th Cir. 2021). In any event, for the reasons discussed above the line, Lester's claim is meritless.

"present[ed] to the jury the true scope and magnitude of the unlawful activities" at the Jail and why Lester conspired to cover them up. *Id.* at 886 (citation omitted).

Second, Lester contests the district court's admission of evidence that Lester "had previously coached correctional officers on how to falsify incident reports." Br. 30. Specifically, Holdren explained that Lester trained him "how to cover [him]self throughout [his] career." JA290. And Walters testified that Lester previously instructed him to use unjustified force against an inmate and subsequently gave him "advice on how to justify a use of force when it was an unjustified use of force." JA341.

This too is admissible intrinsic evidence. Holdren's and Walters's testimony "show the context, and the entire breadth and scope of the conspiracy." *United States v. Cole*, 857 F.2d 971, 974 (4th Cir. 1988). Contrary to Lester's insistence (Br. 30), this is "relevant to show the nature of his relationship with [his] co-conspirator[s]" and how he repeatedly induced them to use unjustified force against inmates and conceal evidence of their misdeeds. *United States v. Boyd*, 53 F.3d 631, 637 (4th Cir. 1995). With regard to Crouse, Forinash, Wimmer, and Walters, Lester either instructed them to falsify their reports or personally edited their reports to cover up the circumstances of Burks's death, pp. 10-11, 13-15, *supra*. But Holdren's testimony reveals the existence of a tacit conspiracy between him and Lester. Lester

did not need to instruct Holdren to falsify his report because Holdren already knew from his prior conversations with Lester that he should do so.

Even if this evidence were extrinsic, as Lester suggests (Br. 30), the district court nevertheless properly admitted it under Rule 404(b)(2), which allows the admission of prior bad acts for the purpose of "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2). Specifically, testimony about Lester's prior advocacy of "punishing" inmates with unjustified force in blind spots and falsifying reports to conceal unreasonable force explains Lester's "opportunity, intent, preparation, [and] plan" to cover up the use of unreasonable force against Burks by falsifying and assisting other officers in falsifying incident reports and in retaliating against Johnson. This testimony also shows Lester's absence of mistake and knowledge that the use of force was indeed unreasonable. *See United States v. Queen*, 132 F.3d 991, 995 (4th Cir. 1997) (evidence of the defendant's prior acts of witness tampering was properly admitted under Fed. R. Evid. 404(b) to prove the element of intent in a later prosecution for a separate act of witness tampering in violation of 18 U.S.C. 1512(b)(1)). The district court therefore did not abuse its discretion by admitting evidence of Lester's prior bad acts.

III. The District Court Did Not Impose an Improper Time Limit on the Defendant's Case

Lester contends that the district court violated his "right to due process by requiring him to present his defense in three hours." Br. 32. That is factually and legally incorrect. It is simply untrue that the district court limited Lester's defense to three hours. Lester's counsel took nearly four hours to present their case, without judicial instructions to hurry up. Even if there had been a time limit, that limit did not violate Lester's right to due process because, by defense counsel's own admission, the district court did not forbid him from calling any witnesses or otherwise impede his ability to present Lester's case. JA968-969.

A. Standard of Review

"Questions of trial management are quintessentially the province of the district courts," *United States v. Smith*, 452 F.3d 323, 332 (4th Cir. 2006), which enjoy "broad discretion" in "core matters of trial management," *United States v. Lefsih*, 867 F.3d 459, 467 (4th Cir. 2017). Because district courts "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence," Fed. R. Evid. 611(a), this Court reviews a trial judge's imposition of time limitations for abuse of discretion. *Raynor v. G4S Secure Sols. (USA), Inc.*, 805 F. App'x 170, 177 (4th Cir. 2020) ("Appellate courts have uniformly reviewed such impositions [of time limits] for abuse of discretion."); *accord United States v. Greenlaw*, 84 F.4th 325, 360 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 2518 (2024);

see United States v. Witherspoon, 16 F.3d 414, at *6 (4th Cir. 1994) (table) ("The appellants cite no authority supporting its proposition that control of a trial's pace is not within the sound discretion of the court.").

B. The District Court Did Not Violate Lester's Right to Due Process By Improperly Limiting His Defense Case

A criminal defendant has a "due process right to meet the case against him." *Townes v. Murray*, 68 F.3d 840, 850 (4th Cir. 1995). This includes the "right to call witnesses," *United States v. Beyle*, 782 F.3d 159, 170 (4th Cir. 2015) (citation and internal quotation marks omitted), and otherwise "present evidence in his own behalf," *United States v. Grande*, 620 F.2d 1026, 1035 (4th Cir. 1980).

However, this due-process guarantee is not unlimited. "In the exercise of this right, the accused . . . must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). These rules recognize that a defendant's right to present his case is subject to and must be balanced against "two fundamental trial management obligations" of district courts. *Smith*, 452 F.3d at 332. First, courts must promote the "ascertainment of the truth" by ensuring "that matters are clearly presented to the jury." *Ibid*. (citation omitted). Because the "search for truth" can be "impaired by presentation of extraneous . . . or confusing material," district courts can "limit needless or confusing inquiry." *United States v. Gravely*, 840 F.2d 1156, 1163 (4th Cir. 1988). Second, district courts "have

an affirmative duty to prevent trials from becoming protracted and costly affairs." *Smith*, 452 F.3d at 332. District courts must "exercise reasonable control over the mode and order of examining and presenting evidence so as to . . . avoid wasting time." Fed. R. Evid. 611(a)(2); *see also* Fed. R. Evid. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . undue delay, wasting time, or needlessly presenting cumulative evidence.").

The district court did not impose any time limits on the defense. It allowed the defense to present all of its witnesses, did not interfere with the defense's case, and gave the defense more time than counsel represented they needed for their evidence. After the prosecution rested on Friday afternoon, the defense was not prepared to present its case. JA941. The court asked the defense "how long" its case would take after counsel requested a postponement until Monday, and counsel replied that he only needed a "couple of hours." JA672-673. Consistent with counsel's representation, the court said that it "want[ed] all of this done by noon on Monday." JA673. Counsel agreed. JA673. The district court gave Lester additional time to "fully prepare over the weekend" so that he would "be fully prepared to present his case" on Monday. JA941. And even though Lester's defense continued past the supposed noon deadline on Monday afternoon, the court neither restricted Lester's case nor even alluded to any "time limit" or deadline during their case presentation. JA737, JA816. Simply put, there was no "time limit."

Even if the district court's remark were construed as a time limit, it did not violate Lester's right to due process. An "implemented time limit" satisfies due process if it "allows a defendant the 'meaningful opportunity to present a complete defense,'" and "does not deprive the jury of the opportunity to 'receive a significantly different impression of a witness's credibility.'" *Greenlaw*, 84 F.4th at 360 (alterations omitted) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)).

Lester does not argue that the jury was deprived of the opportunity to hear from the witnesses he called or that the so-called "time limit" affected the jury's impression of these witnesses' credibility. He insists only that "the time limit … imposed on his defense resulted in his counsel not calling several witnesses to testify." Br. 32. However, that is belied by the record.

Lester had every "opportunity to present a complete defense." *Holmes*, 547 U.S. at 323 (citation omitted). His counsel indicated at sentencing that although he felt a "certain pressure to finish," he did not believe that the court "didn't let [him] call witnesses." JA968. Rather, counsel strategically decided not to call certain witnesses because "some of them would have had somewhat cumulative evidence" while others had testimony that "was not as strong as what [counsel] believed from prior [discussions with] them." JA968. The number of witnesses therefore resulted from the strategic choices of Lester's counsel, not from any "time limit" imposed by

the district court. Thus, even if a time limit were improperly imposed, it was harmless because it did not affect the defense's presentation of the case. Lester has offered no explanation whatsoever—either on appeal or in the district court—as to what he would have done differently absent the perceived "time limit." *See United States v. Landersman*, 886 F.3d 393, 413 (4th Cir. 2018) (citation omitted) (error is harmless and non-reversible if "the judgment was not substantially swayed by the error").

Lester's citation to *United States v. Scott*, 789 F.2d 795, 799 (9th Cir. 1986), is unavailing. "The judge was anxious to complete the trial, and did set a time limit on [defendant's] testimony." But, as here, "defense counsel made no objection at the time." *Ibid.*; *see* JA673 (The Court: "I want all of this done by noon on Monday." Counsel: "Yes, sir."). And as here, defense counsel "made no offer of proof as to additional testimony that he would have presented." *Scott*, 789 F.2d at 799; *see* JA968 (The Court: "Do you think that the Court didn't let you call witnesses?" Counsel: "No."). Therefore, "there was no violation of [defendant's] due process rights," *Scott*, 789 F.2d at 799, and the same is true here.

IV. The District Court Did Not Abuse Its Discretion When Imposing a Within-Guidelines Sentence

The district court did not abuse its discretion when imposing a "presumptively reasonable" within-Guidelines sentence. *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014). During sentencing, a district court must consider both the

individualized "nature and circumstance of the offense and the history and characteristics of the defendant," as well as the generalized need "to afford adequate deterrence to criminal conduct" and "provide just punishment for the offense." 18 U.S.C. 3553(a). That is precisely what the district court did. The court balanced Lester's "very good" "personal characteristics" against the "seriousness of [his] crime" and the need to "deter anyone in the same position" from committing similar acts of "prison abuse." JA1006, JA1012.

The presumed reasonableness of Lester's within-Guidelines sentence "can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *Louthian*, 756 F.3d at 306. Lester—who merely argues as to how much weight the district court gave each factor (Br. 33-34)—has not made this showing.

A. Standard of Review

District courts have "extremely broad discretion when determining the weight to be given each of the § 3553(a) factors." *United States v. Jeffery*, 631 F.3d 669, 679 (4th Cir. 2011). Although Lester frames his argument as one of substantive reasonableness (Br. 33-34), this Court has described a "disagreement with the district court's weighing of the sentencing factors" as a matter of "procedural" reasonableness. *United States v. Friend*, 2 F.4th 369, 381 (4th Cir. 2021). Whether

considered as an issue of procedural or substantive reasonableness, this Court's review proceeds under a "deferential abuse-of-discretion" standard. *Id.* at 381-382.

B. The District Court Properly Considered Lester's Individualized Circumstances at Sentencing

The district court did not abuse its discretion in applying the relevant Section 3553 factors. The court calculated a Guidelines range of 188-235 months—a calculation that Lester does not contest on appeal—and imposed a within-Guidelines sentence of 210 months. JA974, JA1003. In doing so, the court paid careful attention to Lester's individual circumstances, namely, his family ties and his career as a correctional officer, as well as the seriousness of his crimes.

Lester wrongly asserts that the district court "did not sentence him based on the specific circumstances of his offense and his personal history." Br. 34. The district court carefully considered Lester's individual characteristics. It determined that Lester's "personal characteristics were generally very good." JA1006. Lester had "a childhood that's happy," a "good relationship with [his] parents," and lived near his "ex-wife and [his] two sons." JA1006. He "maintained stable family relationships and steady employment" and received "sincere" letters of support. JA1008. At the time of his crimes, he was "surrounded by family, friends, and colleagues that appreciate[d] [his] place in their lives." JA1008. The court concluded that "[a]ll of those things stand in [Lester's] favor" and "are all indicators of a law-abiding life." JA1006-1007.

The district court also examined Lester's service as a correctional officer. The court agreed with Lester that "jails can be very dangerous and scary places." JA1008. The court noted that Lester began his career as a correctional officer at a "very young" age after graduating from high school and that he "rose through the ranks and completed additional courses and certifications as part of the job." JA1006. Along the way, Lester faced dangers and "physical suffering." JA1007. Lester was "subject[ed] to multiple attacks while working in the jails" and once was "attacked so badly that [he] suffered a traumatic brain injury [and] injuries to [his] vertebrae [and] knees and legs." JA1007. Lester required "multiple surgeries," overcame alcohol abuse, and continued to suffer from "post-traumatic stress disorder, night terrors[,] and depression." JA1007. Again, the court took all of this into account at sentencing.

In addition to examining Lester's personal background, the district court considered the "nature and circumstances of the offense." 18 U.S.C. 3553(a). Lester downplayed the seriousness of his crimes and sought a below-Guidelines sentence of "less than nine years" because in his view "the obstruction in this case was pretty pathetic" and the Guidelines range was "way too much for a man who didn't engage in personal, physical cruelty." JA979, JA981. The district court rejected Lester's efforts to sanitize his crimes, concluding that Lester took "flagrant and intentional actions to avoid accountability in the death of Mr. Burks." JA1009. The court told

Lester, "[U]nder your leadership," "the officers knew that they could take inmates to the blind spots to teach them a lesson, all without consequence from you or anyone else." JA1009-1010. Lester "betrayed" his "responsibility to the public, the inmates, and officers" when he "participated in, condoned, or obstructed, covered up, the practice of inmate abuse and retaliation." JA1010. As a result, a "life was lost," but Lester's "only goal was to shroud these crimes in darkness and abuse [his] leadership." JA1010. The court therefore determined that "a long sentence was necessary to reflect" the "extraordinarily disturbing nature and circumstances of the offense," especially because Lester "refuse[d] to accept responsibility for [his] crime." JA1009-1010, JA1013; *see also* JA1001-1002 ("I will fight this case in appellate court until I am found innocent . . . If I can take back anything that day, the only thing that I can do different is call in sick and not come to work that day.").

The district court's supposedly "overwhelming focus" on "the broader issue of prisoners' rights" (Br. 34), does not negate its consideration of the individualized Section 3553 factors. On the contrary, the court's discussion of inmates' rights reflects multiple authorized sentencing factors, including the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment, protect the public, and afford adequate deterrence. *See* 18 U.S.C. 3553(a)(2). The court surveyed Supreme Court precedent recognizing that inmates "obviously maintain their rights under the U.S. Constitution" and explained that

"unconstitutional abuses in prison often go unchecked." JA1020-1022. Thus, a "long sentence" was needed to "deter anyone in the same position" as Lester from violating inmates' rights and to "erase[]" the "attitude that inmates are underserving of constitutional protections." JA1012; *see also* JA1024 ("This sentence will serve as notice to those who might abuse the trust placed in them: prison walls will not shield wrongdoing").

Lester believes that a "fair" sentence "would have given equal if not greater consideration to his personal history and characteristics." Br. 34. But that is not how Section 3553 works. District courts have considerable discretion to balance the relevant factors as they see fit, and Lester's "demand [that] a district court assign equal weight to each § 3553 factor . . . would disregard a sentencing's individualized inquiry and toss [the] deferential abuse-of-discretion review to the winds." *Friend*, 2 F.4th at 381. Because the district court "hear[d] [Lester's] arguments" in favor of a below-Guidelines sentence "and engage[d] with them at a hearing," this Court "may infer from that discussion that specific attention has been given to those arguments." *United States v. Nance*, 957 F.3d 204, 213 (4th Cir. 2020). Lester's "disagreement with the district court's weighing of the sentencing factors is not enough to find the sentence procedurally unreasonable." *Friend*, 2 F.4th at 381.

Nor is his sentence substantively unreasonable because the district court "plac[ed] significant weight on the seriousness of the defendant's offense" and the

need to promote deterrence. *Friend*, 2 F.4th at 382; 18 U.S.C. 3553(a)(2). The district court considered Lester's "personal characteristics," which "were generally very good" (JA1006) but ultimately concluded that the other relevant factors outweighed those positive characteristics. *See Friend*, 2 F.4th at 382. Lester provides no basis for this Court to second-guess the district court's "weigh[ing]" of "the conflicting evidence and competing arguments" in this case. *Id.* at 383.

CONCLUSION

This Court should affirm Lester's conviction and sentence.

Respectfully submitted,

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

JESUS A. OSETE
Principal Deputy Assistant Attorney General, Civil Rights Division

s/ David N. Goldman
DAVID N. GOLDMAN
JOSHUA R. ZUCKERMAN
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
Telephone: (202) 616-9405

Date: December 11, 2025

STATEMENT REGARDING ORAL ARGUMENT

In accordance with Local Rule 34(a), the United States does not oppose Lester's request for oral argument.

CERTFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 12,640 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Times New Roman 14-point font using Microsoft Word for Microsoft 365.

s/ David N. Goldman
DAVID N. GOLDMAN
Attorney

Date: December 11, 2025