

Oral Argument Not Requested
No. 25-7019

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JEFFREY SCOTT SMITH, JR.,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA
THE HONORABLE JOHN F. HEIL, III, D.C. No. 6:23-CR-139-JFH

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GLOSSARY

SPD Savanna Police Department

STATEMENT OF RELATED CASES

There are no prior or related appeals.

STATEMENT OF JURISDICTION

This appeal is from a district court's final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court entered final Judgment against defendant-appellant Jeffrey Scott Smith, Jr., on March 13, 2025. A. Vol. III at 686-692.¹ Smith filed a timely Notice of Appeal on March 26, 2025. A. Vol. III at 693. This Court has jurisdiction under 18 U.S.C. 3742(a) and 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

1. Whether the district court abused its discretion in denying Smith's Motion to Continue Jury Trial based upon his retention of private counsel less than three weeks before trial.

2. Whether the district court erred in denying Smith's Motion to Dismiss, and Motion for Judgment of Acquittal on, Counts 2 and 3 of the Superseding Indictment alleging violations of 18 U.S.C. 1519.

3. Whether Smith's 480-month sentence is substantively reasonable.

¹ "Br. ____" refers to Smith's Opening Brief and internal page numbers. "A. Vol. __ at __" refers to the Appendix volume and page number filed with Smith's Opening Brief. "Supp. A. Vol. I at ____" refers the Supplemental Appendix volume and page number filed with this Appellee Brief.

STATEMENT OF THE CASE

A. Factual Background

Defendant-appellant Jeffrey Scott Smith, Jr., was a police officer for the Savanna Police Department (SPD). A. Vol. I at 269-270. In the early morning hours of November 2, 2022, during his first solo shift as an officer, Smith pulled over for speeding a car in which the victim, K.H., was a passenger and her then-boyfriend, J.G., was the driver.² A. Vol. I at 155-159, 237, 291; A. Vol. II at 425-426. After running their driver's licenses at his patrol car and discovering that J.G.'s license had recently expired, Smith returned to J.G.'s car and ordered K.H. and J.G. to get out. A. Vol. I at 160, 193; A. Vol. II at 429-431. Smith issued J.G. a speeding ticket and asked K.H. if she could drive in J.G.'s stead. A. Vol. I at 51, 105, 194-195; A. Vol. II at 431-432. Smith then began asking the couple personal questions, including how long they had been dating. A. Vol. I at 161-162; A. Vol. II at 432.

² While K.H. was identified by name and testified at trial, we identify her and her then-boyfriend by their initials throughout this brief, consistent with the Government's references to these individuals in the district court.

While still speaking to K.H. and J.G., Smith manually deactivated his SPD body-worn camera. A. Vol. I at 163, 296-297; A. Vol. II at 344, 372-373, 385, 432-433. Smith asked K.H. what she did for work, and K.H. reluctantly admitted she danced at a gentlemen's club. A. Vol. I at 51, 163. Upon hearing K.H.'s answer, Smith asked to search J.G.'s car and found a pre-rolled promotional marijuana cigarette from K.H.'s work in her purse. A. Vol. I at 164-165, 197-198. Rather than arrest K.H. or issue her a ticket, Smith walked back to his patrol car and manually deactivated his dashboard camera. A. Vol. I at 166-167, 296-297; A. Vol. II at 340, 345, 380-382, 385, 443, 445; A. Vol. III at 567. Smith ordered J.G. to sit in the passenger seat of his (J.G.'s) car and K.H. to get into the front passenger seat of his (Smith's) patrol car and threatened to take them to jail if K.H. did not comply. A. Vol. I at 168, 200, 203, 238, 251; A. Vol. II at 442-445; A. Vol. III at 514.

Once K.H. was in the front passenger seat of Smith's patrol car and he was in the driver's seat, Smith leaned over and forcibly kissed her, sticking his tongue inside her mouth, before grabbing her left wrist and pulling her closer to him. A. Vol. I at 172-173, 206-207. Smith then touched K.H.'s inner leg and forcefully grabbed her breast, causing her

pain. A. Vol. I at 172-173, 205-206, 238, 246; A. Vol. II at 497; A. Vol. III at 541. Smith subsequently put his hand down K.H.'s sweatpants and penetrated her vaginally with his finger, which felt like scratching to K.H. and hurt her. A. Vol. I at 175-176, 207; A. Vol. II at 497; A. Vol. III at 530. At the same time, Smith grabbed K.H.'s hand and placed it on his clothed but erect penis in an attempt to have her masturbate him. A. Vol. I at 176-177. Smith asked K.H. to perform oral sex on him and when she refused, he ceased his assault and told her that she could leave. A. Vol. I at 52-53, 106, 177-178, 239; A. Vol. II at 448.

K.H. walked back to J.G.'s car, got into the driver's seat, and told J.G. that Smith had sexually assaulted her. A. Vol. I at 179, 212-214; A. Vol. II at 448; A. Vol. III at 525. K.H. subsequently spoke to Oklahoma State Bureau of Investigation Special Agent Robert Walden and gave him recorded statements about the sexual assault. A. Vol. I at 187-188, 216-219; A. Vol. II at 494, 496. Approximately three months later, K.H. gave another detailed statement about the sexual assault to Federal Bureau of Investigation agents. A. Vol. I at 188, 217-218; A. Vol. II at 503-504; A. Vol. III at 557.

B. Procedural Background

1. Indictment And Relevant Pre-Trial Motions

a. In August 2023, Smith was arraigned in the United States District Court for the Eastern District of Oklahoma and assigned a federal public defender to represent him. A. Vol. I at 4. In September 2023, a federal grand jury returned a three-count Superseding Indictment against Smith. A. Vol. I at 18-20. Count 1 charged that Smith, while acting under color of law, willfully deprived K.H. of her right to bodily integrity by groping her breast and digitally penetrating her genital opening without her consent and without a legitimate law enforcement purpose, resulting in bodily injury, in violation of 18 U.S.C. 242 and 250(b)(3). A. Vol. I at 18-19. Counts 2 and 3 charged that Smith “knowingly altered, concealed, covered up, and falsified a[n SPD] record with the intent to impede, obstruct, and influence [an] investigation” “by deactivating his SPD body[-]worn camera” and “by deactivating his SPD dashboard camera,” respectively, during the traffic stop, in violation of 18 U.S.C. 1519. A. Vol. I at 19-20.

b. In January 2024, Smith moved the district court to dismiss Counts 2 and 3 for failure to state an offense on the ground that Section

1519 does not criminalize deactivating a recording. A. Vol. I at 21-25. The district court denied Smith's Motion to Dismiss in a February 2024 Order. Supp. A. Vol. I at 14-20. The court first determined that the Superseding Indictment sufficiently alleged that Smith knowingly altered, concealed, covered up, and falsified an SPD record in violation of Section 1519. Supp. A. Vol. I at 17-18. Based upon Section 1519's plain language and the decisions of other courts interpreting the statute, the court further concluded that it "[wa]s confident" that Section 1519 covers the charged conduct. Supp. A. Vol. I at 18-19.

In mid-February 2024, six months after his arraignment and the assignment of a federal public defender to his case and less than three weeks before trial was scheduled to begin in early March 2024, Smith retained private counsel. A. Vol. I at 94-95. When the federal public defender advised the district court of Smith's "intent [to] hir[e] private counsel," the district court stated that "Mr. Smith is free to retain any counsel he likes" but that retained counsel "should be advised" that the court was "not inclined to continue the case because counsel gets into it late." A. Vol. I at 89. A few days later, Smith's new counsel moved the district court to continue Smith's trial for 60 days, despite the court's

prior warning, arguing that he needed additional time to review the voluminous amount of discovery in the case and to prepare an effective defense. A. Vol. I at 94-100. The district court denied this Motion in a February 2024 Order. A. Vol. I at 101-103. The court reasoned that “rescheduling trials at short notice is a drastic measure” warranted “in only the most compelling situations” not present here given that discovery was complete, all issues had been fully briefed and litigated, and the case was not complex. A. Vol. I at 102.

2. Trial And Sentencing

a. The case proceeded to trial as scheduled in March 2024. A. Vol. I at 129. After the Government presented its case, Smith moved the district court under Federal Rule of Criminal Procedure 29 for a judgment of acquittal based upon insufficient evidence, which the court denied. A. Vol. III at 577-578. Smith did not mount a defense. A. Vol. III at 585. At the end of the three-day trial, the jury found Smith guilty on all counts. A. Vol. III at 647-648, 657-658.

b. The case proceeded to sentencing. A. Vol. III at 659-685. At the hearing, Smith moved for a downward variance from his recommended Sentencing Guidelines sentence of 360 to 480 months’ imprisonment on

Count 1 and 240 months' imprisonment each on Counts 2 and 3 based upon the nature and circumstances of the offense and his history and characteristics. A. Vol. III at 661-662. To this end, Smith pointed to his lack of criminal history and his military service, which resulted in Post-Traumatic Stress Disorder and disabilities. A. Vol. III at 663-664, 668. Smith further argued that the sexual-assault offense for which the jury found him guilty was not as egregious as other sexual-battery and sexual-assault cases in the district and that his case was analogous to cases involving possession of child pornography. A. Vol. III at 665, 667-668.

The district court rejected Smith's Motion for a Downward Variance. A. Vol. III at 677. After noting that it considered the Sentencing Guidelines and the sentencing factors set forth in 18 U.S.C. 3553(a), the Court determined that based upon those factors a sentence within the Sentencing Guidelines range was reasonable and sufficient but not greater than necessary to meet Section 3553(a)'s requirements and objectives. A. Vol. III at 677-678. The court observed in relevant part that Smith "used his authority as a police officer to isolate [K.H.] and sexually assault her" and "also tampered with his body[-]worn camera and dashboard camera to obstruct and impede any related investigation." A.

Vol. III at 678. The court found that these actions “create[d] fear among citizens unnecessarily so, and . . . erode[d] the public trust in law enforcement officers.” A. Vol. III at 679. Accordingly, the court concluded that the appropriate and reasonable sentence was 480 months’ imprisonment for Count 1 and 240 months’ imprisonment for Counts 2 and 3, with the sentences to run concurrently. A. Vol. III at 679.

SUMMARY OF ARGUMENT

1. The district court did not abuse its discretion in denying Smith’s Motion to Continue Jury Trial based upon his retention of private counsel less than three weeks before the scheduled start of trial. First, Smith was not diligent in seeking a continuance because he retained new counsel six months after he was arraigned and assigned a federal public defender to represent him. Second, a continuance was unlikely to accomplish its stated purpose of giving new counsel sufficient time to review discovery and prepare a defense because discovery was complete, all the issues were briefed and litigated, and the case was neither unusual nor complex. Third, granting a continuance two weeks before trial would have greatly inconvenienced the court, the Government, and the scheduled witnesses by disrupting their schedules. Fourth, and most importantly, Smith

failed to demonstrate the need for a continuance and material prejudice resulting from its denial because he failed to show what substantial favorable evidence would have been uncovered with additional time and that the denial of a continuance prevented his counsel from adequately preparing for trial.

2. The district court did not err in denying Smith's Motion to Dismiss Counts 2 and 3 of the Superseding Indictment, which alleged that he violated 18 U.S.C. 1519 by deactivating his SPD body-worn camera and dashboard camera, respectively, during the traffic stop. Section 1519's plain language covers Smith's camera deactivation, which altered, concealed, covered up, and falsified an SPD record. The federal courts of appeals that have addressed the issue are in accord.

The district court also did not err in denying Smith's Motion for Judgment of Acquittal on Counts 2 and 3 based upon sufficiency of the evidence. Smith's sufficiency argument reiterates his incorrect argument supporting his Motion to Dismiss—that Section 1519 does not criminalize deactivating a camera that is filming an ongoing police encounter. The evidence viewed in the light most favorable to the Government was more than sufficient for a jury to find that he deactivated his cameras during

the traffic stop (and thus concealed, covered up, and falsified an SPD record) to prevent them from capturing the footage of his sexual assault of K.H. in violation of Section 1519.

3. Smith's sentence of 480 months' imprisonment is substantively reasonable. Because the district court properly considered and weighed Section 3553(a)'s sentencing factors in denying Smith's Motion for a Downward Variance and arriving at a sentence within the properly calculated Sentencing Guidelines range, the sentence was presumptively reasonable. Smith has failed to rebut this presumption. The district court was not required to compare Smith's sentence to the hypothetical maximum sentence for a different crime. And Smith fails to show that his sentence was substantively unreasonable under the parsimony principle where the record clearly reflected that the district court was aware of its responsibilities under Section 3553(a) and evinced the court's intention to tailor a sentence to Smith.

ARGUMENT

I. The district court did not abuse its discretion in denying Smith's Motion to Continue Jury Trial.

A. Standard of review

This Court “review[s] the denial of a motion to continue for an abuse of discretion and will reverse only if the court’s ruling was arbitrary or unreasonable and materially prejudiced the defendant.” *United States v. Cervantes*, 4 F.4th 1089, 1093 (10th Cir. 2021) (citation and internal quotation marks omitted).

B. Smith's retention of private counsel less than three weeks before the start of trial did not warrant a continuance.

In determining whether a district court abused its discretion in denying a motion for a continuance, this Court examines the following factors: “(1) the diligence of the party seeking the continuance; (2) the likelihood the continuance, if granted, would have accomplished the stated purpose; (3) the inconvenience to the opposing party, witnesses, and the court; and (4) the need for the continuance and any harm resulting from its denial.” *United States v. Glaub*, 910 F.3d 1334, 1345 (10th Cir. 2018). “The final factor is the most important.” *United States v. Pursley*, 577 F.3d 1204, 1228 (10th Cir. 2009). Applying these factors

makes clear that the district court did not abuse its discretion in denying Smith's Motion to Continue Jury Trial based upon his retention of private counsel less than three weeks before the start of trial.

First, Smith was not diligent in seeking a continuance. Smith had a federal public defender representing him for six months from the date of arraignment until he retained private counsel less than three weeks before the scheduled start of trial. This Court has found a similar delay in retaining new representation to constitute lack of diligence. *See Cervantes*, 4 F.4th at 1094 (finding diligence with respect to the request for a continuance lacking where the defendant waited more than four months after arraignment and two weeks before trial to seek and retain private representation). The fact that the defendant in *Cervantes* was "blameless" for the inaction of his counsels in changing his representation did not excuse his own inaction, *ibid.*, belying Smith's contention (Br. 17 & n.3) that this factor solely addresses his *counsel's* diligence, not his own. Moreover, Smith provides no legal support for his argument (Br. 17 n.3) that the lengthy amount of time he searched for private counsel should absolve his lack of diligence. Nor does he state, much less show

with any evidence (*see* Br. 17 n.3), that this delay was necessary for him to raise the necessary funds to pay counsel.

Second, Smith failed to show that a continuance was likely to accomplish its stated purpose of providing new counsel with “sufficient time to obtain and review discovery and complete any necessary investigation of facts critical to preparing a defense and trial strategy.” A. Vol. I at 97. To be sure, the additional 60 days Smith requested would have allowed his private counsel to review discovery in greater detail and prepare more extensively for trial. *See* Br. 17-18. But that is the case for *any* continuance. The Government provided Smith with 2544 pages of discovery 13 days before the start of trial of a case that by Smith’s admission was “not unusual or complex.” A. Vol. I at 97, 102. Moreover, the parties agreed at the pre-trial conference before Smith retained new counsel that discovery was complete, and all issues were fully briefed and litigated. A. Vol. I at 102. Under these circumstances, the district court correctly concluded that Smith’s counsel possessed the “reasonable time necessary for effective preparation for trial in this matter in the exercise of due diligence.” A. Vol. I at 102.

Third, granting a continuance would have greatly inconvenienced the court, the Government, and the scheduled witnesses. This Court has recognized that “any continuance granted practically on the eve of trial inevitably will disrupt the schedules of the court, the opposing party, and the witnesses who have been subpoenaed or who have voluntarily arranged their schedules to attend the trial.” *United States v. Rivera*, 900 F.2d 1462, 1475 (10th Cir. 1990) (en banc). Given the “unprecedented caseloads and jurisdictional complexities” (A. Vol. I at 102) the district court has recently experienced in the wake of *McGirt v. Oklahoma*, 591 U.S. 894 (2020), delaying the start of Smith’s trial by two months would have greatly disrupted the court’s schedule. *See United States v. Pizarro-Zubias*, No. 23-1412, 2025 WL 1202103, at *4 (10th Cir. Apr. 25, 2025) (unpublished) (applying *Rivera* in finding that a continuance identical in length and timing would inconvenience the court). Such delay also would have disrupted the schedules of the Government’s witnesses under subpoena and its prosecution team, who arranged their personal and professional lives to be in court for trial in March 2024, and potentially inconvenienced jurors as well. *See Rivera*, 900 F.2d at 1475. Smith speculates (Br. 18) that a continuance would have posed a de minimis

inconvenience to the court because the trial only lasted three days and to the witnesses because they previously evinced an ability to adjust their schedules. But that speculation is insufficient to overcome the district court's contrary view given that court's superior vantage point to make this assessment. *See Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (discussing district courts' "inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases"); *Pizarro-Zubias*, 2025 WL 1202103, at *2 ("The burden of proof lies with the defendant.").

Fourth, and most importantly, Smith failed to demonstrate the need for a continuance and harm resulting from its denial. *Rivera*, 900 F.2d at 1476. This factor required Smith to show that the district court's failure to grant a continuance "materially prejudiced" him. *Ibid.* (citation omitted). Where, as here, a defendant seeks a continuance to allow his counsel to review documents and prepare a defense, to prove material prejudice he must identify what "substantial favorable evidence" counsel would have uncovered with additional time. *Ibid.* Smith fails to satisfy this burden. He has not "made any specific allegation on appeal as to precisely what would have been discovered from the documents if he had

been granted a continuance,” *ibid.*, instead generically contending that his counsel needed “the opportunity to review discovery, research the relevant statutes, and prepare a defense for trial” (Br. 18). Indeed, it is difficult to imagine how additional review “could have yielded fruitful evidence to dent the government’s overwhelming proof of [Smith’s] guilt,” *Pursley*, 577 F.3d at 1229; Smith does not challenge the sufficiency of the evidence on his Section 242 conviction and attacks his Section 1519 conviction based on his interpretation of that statutory provision (*see pp. 26-27, infra*). Finally, Smith states in conclusory fashion (Br. 18) that the denial of a continuance led to “an attorney that was not adequately prepared for trial.” But he provides no explanation as to how counsel was unprepared and even admitted below (A. Vol. I at 97, 102) that the case was “not unusual or complex,” *see Rivera*, 900 F.2d at 1476.

II. The district court did not err in denying Smith’s Motion to Dismiss, and Motion for Judgment of Acquittal on, Counts 2 and 3 of the Superseding Indictment alleging violations of 18 U.S.C. 1519.

A. Standard of review

This Court “generally review[s] a district court’s denial of a motion to dismiss a criminal indictment for abuse of discretion, but review[s] any statutory interpretation issues involved in the ruling *de novo*.” *United*

States v. Berres, 777 F.3d 1083, 1089 (10th Cir. 2015). This Court reviews the district court’s denial of a motion for judgment of acquittal de novo, “view[ing] the evidence, both direct and circumstantial, in the light most favorable to the government.” *United States v. Murphy*, 100 F.4th 1184, 1195-1196 (10th Cir. 2024) (citation omitted). Under this deferential standard, this Court “will not overturn a jury’s verdict unless no reasonable juror could have concluded, on the basis of the evidence presented, that the defendant was guilty of the crime charged.” *Id.* at 1196 (citation omitted).

B. Section 1519’s plain language criminalizes Smith’s knowing deactivation of his SPD body-worn camera and dashboard camera during the traffic stop.

Counts 2 and 3 of the Superseding Indictment charged Smith with knowingly altering, concealing, covering up, and falsifying an SPD record in violation of 18 U.S.C. 1519 by deactivating his SPD body-worn camera and dashboard camera, respectively, during the traffic stop. A. Vol. I at 19-20. To convict Smith under Section 1519, the Government had to prove beyond a reasonable doubt that he “(1) knowingly altered, destroyed, mutilated, concealed, covered up, or falsified [the record at issue], and (2) did so ‘with the intent to impede, obstruct, or influence the

investigation or proper administration of any matter within the jurisdiction’ of the [government agency].” *United States v. Richter*, 796 F.3d 1173, 1199 (10th Cir. 2015) (quoting 18 U.S.C. 1519). On appeal, Smith claims that Counts 2 and 3 should be dismissed for failure to state an offense because Section 1519 does not cover deactivating a camera or failing to continue a recording. Br. 20.

1. Interpreting Section 1519’s coverage “begins and ends with the text,” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014), with “the assumption that the ordinary meaning of that language accurately expresses the legislative purpose,” *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009) (citation omitted). If the text “is clear and unambiguous, [this Court’s] inquiry ends and [it] give[s] effect to the statute’s plain language.” *United States v. Figueroa-Labrada*, 780 F.3d 1294, 1298 (10th Cir. 2015). Statutory terms, moreover, “must be read in their context and with a view to their place in the overall statutory scheme.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). “As in all cases of statutory construction, [a court’s] task is to interpret the words of th[e]

statut[e] in light of the purposes Congress sought to serve.” *Chapman v. Houston Welfare Rts. Org.*, 441 U.S. 600, 608 (1979).

At issue here are the definitions of the following terms used in the Section 1519 counts of the Superseding Indictment: “alter[],” “conceal[],” “cover[] up,” and falsif[y].” 18 U.S.C. 1519. When, as here, “term[s] go[] undefined in a statute,” courts give “the term[s] [their] ordinary meaning,” and may consult dictionary definitions in this endeavor. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566-568 (2012). The relevant and ordinary meaning of “alter” is “to make different without changing into something else.” *Alter*, Merriam-Webster’s Collegiate Dictionary (10th ed. 2000) (Merriam-Webster’s). The relevant and ordinary meaning of “conceal” is “to prevent disclosure or recognition of,” *Conceal*, Merriam-Webster’s, and of “cover up” is “a usu[ally] concerted effort to keep an illegal or unethical act or situation from being made public,” *Cover-up*, Merriam-Webster’s. And finally, the relevant and ordinary meaning of “falsify” is “to make false by mutilation or addition” or “to represent falsely: misrepresent.” *Falsify*, Merriam-Webster’s.

When an officer creates a record and knowingly omits information from that record with the requisite intent to obstruct a federal

investigation, the officer violates 18 U.S.C. 1519. *E.g.*, *United States v. Moyer*, 674 F.3d 192, 207 (3d Cir. 2012). It is “difficult” in this context “to differentiate between acts of concealment and omission.” *United States v. Singh*, 979 F.3d 697, 717 (9th Cir. 2020). “Imagine, for example, an individual who omits the detail of a specific, identifiable tattoo from a witness statement, in order to conceal the identity of a perpetrator. In such a situation, the omission *is* an act of concealment or falsification.” *Ibid.*; accord *United States v. Lanham*, 617 F.3d 873, 887 (6th Cir. 2010) (“Material omissions of fact can be interpreted as an attempt to ‘cover up’ or ‘conceal’ information.”).

So in *Moyer*, the Third Circuit concluded that the defendant police officer’s omission of information from a police report constituted knowing falsification of that report in violation of Section 1519. 674 F.3d at 207-208 & n.8; *id.* at 207 (“It borders on the ridiculous to assert that a Chief of Police would *not* have a duty to disclose the identity of suspects in his official police reports or, conversely, that withholding the names of suspects—known to him—in those official police reports would be deemed acceptable.”). And in *Lanham*, the Sixth Circuit explained that prison guards falsified an incident report written following the rape of a

detainee by knowingly leaving out information showing that the guards had conspired with other prisoners to harm the detainee and knew that an attack on him was likely to occur. 617 F.3d at 886-887.

Smith's case is of a piece with *Moyer* and *Lanham*. If Smith had written a report about his traffic stop of J.G. and knowingly left out his sexual assault of K.H., then he would have "falsifie[d]," "cover[ed] up," and "conceal[ed]" a record just like the defendants in those two cases. 18 U.S.C. 1519; *Moyer*, 674 F.3d at 207-208; *Lanham*, 617 F.3d at 887. The fact that Smith used a camera rather than a pen to record what happened makes no difference. Like the defendants in *Moyer* and *Lanham*, Smith purported to create a full record of his actions during his shift. *See Moyer*, 674 F.3d at 207; *Lanham*, 617 F.3d at 881; A. Vol. II at 372-373, 378-380, 425-427, 435-437, 439-441. And like the defendants in both those cases, Smith knowingly manipulated this record to ensure that inculpatory information would not appear. *See Moyer*, 674 F.3d at 207-208; *Lanham*, 617 F.3d at 887; A. Vol. I at 297; A. Vol. II at 344-345, 373, 380-382, 384-385, 432-433, 443-445, 449.

The Ninth Circuit's *Singh* decision further supports the conclusion that Section 1519's plain language covers Smith's deactivation of his

cameras, which omitted a recording of his sexual assault of K.H. In that case, the court rejected the defendant's argument that Section 1519 does not cover omissions from a record under the *expression unius* statutory canon of construction because it lists only *affirmative* prohibited acts. 979 F.3d at 717. The court first observed that statutory canons of construction "have long been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose." *Ibid.* (citation omitted). Because "Congress intended for § 1519 to apply to a broad range of conduct" that is "*done with the intent* to obstruct, impede, or influence [an] investigation," the court concluded, "an omission satisfies § 1519's actus reus element, especially since terms such as 'conceal' and 'false entry,' specifically listed in the statute, refer to similar actions." *Ibid.* (citation omitted).

2. Smith does not attempt a textual analysis of Section 1519 or cite any cases supporting his argument. Instead, he contends that the statute does not cover his conduct because it "does not use any words with an ordinary meaning that would include 'deactivating' a camera." Br. 20. As the district court correctly concluded, however, Smith's deactivation of his cameras was "merely the means by which [he] committed the criminal

conduct,” and “it is of no effect that the statute does not *specifically* criminalize ‘deactivating a camera.’” Supp. A. Vol. I at 18 (emphasis added).

No more persuasive is Smith’s suggestion that Section 1519 does not apply here because it immediately follows statutory provisions aimed at corporate fraud and financial audits in the chapter of the United States Code addressing obstruction of justice. Br. 19, 21. The federal courts of appeals have widely held that Section 1519 applies to reports prepared by law enforcement officers. *See, e.g., United States v. Gonzalez*, 906 F.3d 784, 794 (9th Cir. 2018) (collecting cases).

Smith also asserts that under the Government’s interpretation, Section 1519 creates an affirmative duty for defendants to record their conduct in violation of their Fifth Amendment right against self-incrimination. Br. 20. As an initial matter, Smith waived this challenge, which he did not present to the district court, by failing to comply with Federal Rule of Appellate Procedure 28’s requirements. To receive appellate review, an appellant’s argument must contain his “contentions and the reasons for them, with citations to the authorities and parts of the record on which [he] relies,” Fed. R. App. P. 28(a)(8)(A), and “for each

issue, a concise statement of the applicable standard of review,” Fed. R. App. P. 28(a)(8)(B). Smith’s one-sentence argument, bereft of any citation other than to the Fifth Amendment, “is a textbook example of [an] issue[] adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation,” and is therefore waived. *United States v. Clay*, 148 F.4th 1181, 1202 (10th Cir. 2025) (citation and internal quotation marks omitted), *cert. pending*, No. 25-877 (filed Jan. 20, 2026). Smith waived this argument for the additional reason that he failed to cite, much less apply, the plain-error standard to this unpreserved argument. *See United States v. McBride*, 94 F.4th 1036, 1044-1045 (10th Cir. 2024).

Regardless, this argument misses the mark. Section 1519 does not create a freestanding affirmative duty for a police officer to make a record of his conduct. Rather, the statute’s prohibition on “alter[ing],” “conceal[ing],” “cover[ing] up,” and falsif[ying]” a record bars an officer who is already creating a record from knowingly *omitting* information from that record with the requisite intent to impede a federal investigation, as explained above.

Moreover, “[t]o qualify for the Fifth Amendment privilege, a communication must be testimonial, incriminating, and compelled.” *United States v. Von Behren*, 822 F.3d 1139, 1144 (10th Cir. 2016) (citation omitted). Prohibiting a police officer from manipulating a recording of his ordinary law-enforcement activity satisfies none of these factors: the recording is not a communicative act that is testimonial; does not present a danger of self-incrimination that is “real and appreciable, as opposed to imaginary and unsubstantial”; and is not in response to a threat from the state to impose substantial penalties if the officer elects to exercise his Fifth Amendment right. *Id.* at 1144, 1147.

C. Sufficient evidence supported the jury’s finding that Smith altered or falsified records in violation of Section 1519.

Smith also argues that the district court erred in denying his Motion for Judgment of Acquittal on Counts 2 and 3 because the record evidence demonstrates that he docked his SPD body-worn and dashboard cameras at the proper port at the police station without deleting any footage, and thus he did not alter or falsify a record in violation of Section 1519. Br. 23. However, for the reasons discussed above, Smith’s knowing deactivation of his cameras violated Section 1519. Smith does not contest

that the evidence, viewed in the light most favorable to the Government, was more than sufficient for the jury to find that Smith deactivated his cameras to prevent them from capturing the footage of his sexual assault of K.H. Because that action satisfies Section 1519, Smith’s sufficiency-of-the-evidence argument fails.³

III. Smith’s 480-month sentence is substantively reasonable.

A. Standard of review

“This [C]ourt reviews the substantive reasonableness of a district court’s sentence for abuse of discretion.” *United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022). “A district court abuses its discretion when it renders a judgment that is arbitrary, capricious, whimsical, or manifestly unreasonable.” *United States v. Crosby*, 119 F.4th 1239, 1246 (10th Cir. 2024) (citation omitted).

³ In a one-sentence after-thought, Smith asserts (Br. 23) that “the local Savanna police activity of Mr. Smith pulling over [J.G. and K.H.] was not a matter within federal jurisdiction.” Smith has waived this argument by failing to develop the argument adequately or provide any authorities in support thereof. *See McBride*, 94 F.4th at 1047-1049.

B. The district court appropriately weighed the Section 3553(a) factors in sentencing Smith.

“Substantive reasonableness focuses on the length of the sentence and requires that sentences be neither too long nor too short.” *United States v. Walker*, 844 F.3d 1253, 1255 (10th Cir. 2017). “When reviewing a sentence for substantive reasonableness, [this Court] focus[es] on whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a).” *United States v. Cookson*, 922 F.3d 1079, 1091 (10th Cir. 2019) (citation and internal quotation marks omitted). This Court “do[es] not reweigh the sentencing factors but instead ask[s] whether the sentence fell within the range of rationally available choices that facts and the law at issue can fairly support.” *United States v. Ware*, 93 F.4th 1175, 1180 (10th Cir. 2024) (citation and internal quotation marks omitted).

In crafting a sentence using the Section 3553(a) factors, the district court must follow the “parsimony principle,” which requires that “the sentence be ‘sufficient, but not greater than necessary, to comply with the purposes’ of criminal punishment.” *United States v. Martinez-Barragan*, 545 F.3d 894, 904 (10th Cir. 2008) (quoting 18 U.S.C. 3553(a)). A “sentence within the advisory Guidelines range is entitled to a

presumption of reasonableness” that a defendant may rebut “by demonstrating the sentence is unreasonable when viewed against the[se] factors.” *Ware*, 93 F.4th at 1180 (citation and internal quotation marks omitted).

The district court properly considered and weighed Section 3553(a)’s factors and the Sentencing Guidelines in denying Smith’s Motion for a Downward Variance and sentencing him to 480 months’ imprisonment. The court first noted that it considered these factors and the Guidelines in determining that a sentence within the Guidelines range was reasonable and sufficient but not greater than necessary to meet Section 3553(a)’s requirements and objectives. A. Vol. III at 677-678. The court then recounted Smith’s sexual assault of K.H. and his concealment thereof and observed that these actions “create[d] fear among citizens unnecessarily so, and . . . erode[d] the public trust in law enforcement officers.” A. Vol. III at 679; *see* 18 U.S.C. 3553(a)(1) (requiring consideration of “the nature and circumstances of the offense”), 3553(a)(2)(A) (requiring consideration of “the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense”).

Because Smith's resulting sentence was within the properly calculated Sentencing Guidelines range, it is presumptively reasonable, and he bears the burden to rebut this presumption. *See Ware*, 93 F.4th at 1180. Smith's argument (Br. 23) that his sentence was "unreasonable and unconscionable" consists of generic and cursory objections that do not come close to carrying his burden. *See United States v. Varnell*, No. 20-6040, 2021 WL 5875718, at *7 n.4 (10th Cir. Dec. 13, 2021) (unpublished).

First, Smith argues that his sentence "shocks the conscience" because it is "more than double the statutory maximum [sentence for] assault on a federal officer." Br. 24 (citing [1]8 U.S.C. 111). To the extent that Smith is arguing that the district court failed to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of *similar* conduct," 18 U.S.C. 3553(a)(6) (emphasis added), he is mistaken. Because Section 3553(a)(6) "does not require the district court to consider disparities between individuals found guilty of different crimes, as opposed to those who have engaged in similar conduct," *United States v. Clark*, 201 F. App'x 594, 596-597 (10th Cir. 2006) (emphasis omitted), the court was not required to contemplate the hypothetical maximum sentence for assault *on* an

officer in sentencing Smith for assault *by* an officer. Indeed, this Court has recognized that commission of “a crime while acting under color of law will result in a higher sentence . . . rather than a lower sentence” because such a crime violates the public trust. *United States v. LaVallee*, 439 F.3d 670, 708 (10th Cir. 2006) (citing Sentencing Guidelines § 2H1.1(b)(1)).

Second, Smith argues that his 40-year sentence is cruel and unusual punishment in violation of the Eighth Amendment. Br. 24. As an initial matter, Smith has waived this unpreserved, one-sentence argument by failing to argue for plain-error review and by inadequately developing it on appeal. *See* pp. 24-25, *supra*. Moreover, as Smith readily concedes (Br. 24), this Court’s precedent provides that “[i]n general, a sentence within the limits imposed by statute is neither excessive nor cruel and unusual under the Eighth Amendment.” *United States v. Delacruz-Soto*, 414 F.3d 1158, 1168 (10th Cir. 2005); *accord United States v. Newsome*, 898 F.2d 119, 122 (10th Cir. 1990). Smith’s sentence is within the statutory limits provided by 18 U.S.C. 242 and 250(b)(3) and he offers no reason for this Court to deviate from its general rule in this case.

Finally, Smith contends that his sentence runs afoul of the parsimony principle and that a ten-year sentence would satisfy Section 3553(a)'s objectives. Br. 24-25. This Court has declined to find a district court's sentence substantively unreasonable under the parsimony principle where "[t]he record clearly reflects that the district court was aware of its responsibilities under § 3553(a)" and "evinces the court's intention to tailor a sentence to" the defendant. *Martinez-Barragan*, 545 F.3d at 904. The district court's statement that it had considered the Section 3553(a) factors to reach an appropriate and reasonable sentence (A. Vol. III at 677-678) satisfied this obligation. *See United States v. Chavez-Calderon*, 494 F.3d 1266, 1269 (10th Cir. 2007). Given Smith's inability to complete his *very first* solo shift as a law enforcement officer without engaging in an outrageous abuse of power, "he would be hard-pressed to establish that the district court perceived that a lesser sentence would be equally effective in complying with the statutory purposes of sentencing." *Martinez-Barragan*, 545 F.3d at 904.⁴

⁴ Smith also makes "[m]iscellaneous" claims of error regarding certain evidentiary rulings that permitted and prohibited certain pieces of testimony. Br. 25-26. Smith waived these cursory arguments by failing

CONCLUSION

For the foregoing reasons, this Court should affirm Smith's convictions and sentence.

Respectfully submitted,

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to argue a standard of review on appeal, in addition to failing to develop the arguments adequately. *See United States v. McBride*, 94 F.4th 1036, 1047-1049 (10th Cir. 2024).

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 6579 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 Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Date: February 20, 2026

ATTACHMENT 1 – ECF 55

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-CR-139-JFH

JEFFREY SCOTT SMITH, JR.,

Defendant.

OPINION AND ORDER

Before the Court is a Motion to Dismiss Counts Two and Three of the Superseding Indictment (“Motion”) filed by Defendant Jeffrey Scott Smith, Jr. (“Defendant”). Dkt. No. 43. The United States of America (“Government”) filed a response in opposition. Dkt. No. 48. For the following reasons, Defendant’s Motion [Dkt. No. 43] is DENIED.

BACKGROUND¹

On August 9, 2023, Defendant was charged by indictment with three counts: one count of Deprivation of Rights Under Color of Law, in violation of 18 U.S.C. §§ 242 and 250(b)(3) and two counts of Falsification of Records, in violation of 18 U.S.C. § 1519. Dkt. No. 2. A superseding indictment was filed on September 13, 2023 to correct a typographical error in the original indictment. Dkt. No. 29. This case is currently set on the Court’s March 4, 2024 jury trial docket. Dkt. No. 41.

On January 23, 2024, Defendant filed the instant motion to dismiss Counts Two and Three of the superseding indictment for failure to state an offense pursuant to Federal Rule of Criminal

¹ “An indictment should be tested solely on the basis of the allegations made on its face, and . . . [c]ourts should refrain from considering evidence outside the indictment when testing its legal sufficiency.” *United States v. Hall*, 20 F.3d 1084, 1087 (10th Cir. 1994) (citing *United States v. Sampson*, 371 U.S. 75, 78-79 (1962)). Therefore, for the purposes of this Motion, the Court considers only the allegations contained in the indictment.

Procedure 12(b)(3)(B)(iv), arguing that 18 U.S.C. § 1519 does not encompass the allegations contained in Counts Two and Three. Dkt. No. 43 at 1.

Counts Two and Three of the superseding indictment allege:

On or about November 2, 2022, within the Eastern District of Oklahoma, the defendant, Jeffrey Scott Smith, Jr., acting in relation to and in contemplation of a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, knowingly altered, concealed, covered up, and falsified a record with the intent to impede, obstruct, and influence the investigation and proper administration of that matter.

Dkt. No. 29 at 2-3. The superseding indictment alleges that at the time of charged conduct, Defendant was working as a police officer for the Savanna Police Department (“SPD”) and conducted a traffic stop on a car in which K.H. was a passenger. *Id.* at 1. It is further alleged that during the traffic stop, Defendant “groped K.H.’s breast and penetrated K.H.’s genital opening with his finger without her consent and without a legitimate law enforcement purpose.” *Id.* at 2. Regarding Counts Two and Three, the superseding indictment specifies that Defendant “knowingly altered, concealed, covered up, and falsified an SPD record by deactivating his [SPD body worn camera and SPD dashboard camera] during the traffic stop.” *Id.* at 2-3.

Section 1519 states as follows:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 1519. To convict Defendant under 18 U.S.C. § 1519, the Government must prove beyond reasonable doubt that Defendant “(1) knowingly altered, destroyed, mutilated, concealed, covered up, or falsified [the record at issue], and (2) did so with the intent to impede, obstruct, or

influence the investigation or proper administration of any matter within the jurisdiction of the [federal agency].” *United States v. Richter*, 796 F.3d 1173, 1199 (10th Cir. 2015).

Defendant argues that because “deactivating a camera,” the alleged conduct underlying Counts Two and Three, is not expressly enumerated in the plain language of § 1519, the Government has failed to state an offense and, therefore, Counts Two and Three must be dismissed. Dkt. No. 43 at 2-3. Defendant further argues that while the statute encompasses the act of creating a false record, it does not encompass the act of failing to make a record. *Id.* Therefore, Defendant argues that the act of not making a record—by deactivating his body worn and dashboard cameras—does not fall within the scope of conduct covered by § 1519. *Id.* Finally, Defendant argues that the Government may not use extrinsic evidence to expand the scope of § 1519. *Id.* at 3-4. In particular, Defendant takes issue with evidence it anticipates the Government will present at trial to prove Counts Two and Three. Dkt. No. 43 at 3-4.

In response, the Government argues that Counts Two and Three are constitutionally sufficient and adequately set forth the elements of the offense. Dkt. No. 48 at 7. The Government further argues that it is not seeking to expand the scope of § 1519, but that the conduct described in the superseding indictment falls squarely within the statute. *Id.* at 8-11. Finally, the Government asks the Court to reject Defendant’s argument regarding extrinsic evidence, arguing that evidence it intends to use to establish the elements of the offense at trial is wholly irrelevant to Defendant’s challenge to the superseding indictment. *Id.* at 11-12.

ARGUMENT AND AUTHORITIES

“An indictment is sufficient if it sets forth the elements of the offense charged, puts the defendant on fair notice of the charges against which he must defend, and enables the defendant to assert a double jeopardy defense.” *United States v. Todd*, 446 F.3d 1062, 1067 (10th Cir. 2006)

(quoting *United States v. Dashney*, 117 F.3d 1197, 1205 (10th Cir. 1997)). “[W]here the indictment quotes the language of a statute and includes the date, place, and nature of illegal activity, it need not go further and allege in detail the factual proof that will be relied upon to support the charges.” *United States v. Doe*, 572 F.3d 1162, 1173-74 (10th Cir. 2009) (emphasis added).

“On a motion to dismiss an indictment, the question is not whether the government has presented sufficient evidence to support the charge, but solely whether the allegations in the indictment, if true, are sufficient to establish a violation of the charged offense.” *Todd*, 446 F.3d at 1068 (citing *United States v. Sampson*, 371 U.S. 75, 78–79 (1962)). “Challenging an indictment is not a means of testing the strength or weakness of the government's case, or the sufficiency of the government's evidence.” *Id.* at 1067 (citing *United States v. Hall*, 20 F.3d 1084, 1087 (10th Cir.1994)). Rather, “[a]n indictment should be tested solely on the basis of the allegations made on its face, and such allegations are to be taken as true.” *Id.* (quoting *Sampson*, 371 U.S. at 78-79). Accordingly, courts should “avoid considering evidence outside the indictment when testing the indictment’s legal sufficiency.” *Id.* (citing *Hall*, 20 F.3d at 1087). Therefore, for purposes of considering the instant Motion, the Court will consider only the allegations contained in the superseding indictment and will accept those allegations as true. Accordingly, as an initial matter, Defendant’s arguments related to extrinsic evidence, or evidence he anticipates the Government will present at trial, are rejected.

Defendant’s arguments regarding the plain language of § 1519 also fail. Section 1519 criminalizes knowingly altering, destroying, mutilating, concealing, covering up, or falsifying the record at issue and doing so with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of a federal agency. 18 U.S.C. § 1519. The superseding indictment alleges that Defendant violated 18 U.S.C. § 1519 by knowingly

altering, concealing, covering up, and falsifying a record. Dkt. No. 29 at 2-3. Deactivating his body worn and dashboard cameras is merely the means by which Defendant committed the criminal conduct. While statutes describe the offensive conduct, they generally do not set forth each and every manner and circumstance in which the offense may be committed. Therefore, contrary to Defendant’s argument, it is of no effect that the statute does not specifically criminalize “deactivating a camera.” Whether deactivating a camera is sufficient to prove falsification of records under § 1519 is for the jury to decide. But for purposes of the superseding indictment, it is sufficient that the superseding indictment alleges that Defendant knowingly altered, concealed, covered up, and falsified a record.

Likewise, the Court is not convinced by Defendant’s argument that failing to make a record is not covered under § 1519. Several courts have concluded that an omission is equivalent to falsifying a record. *See e.g., United States v. Jackson*, 186 Fed.Appx. 736, 738 (9th Cir. 2006) (unpublished) (FBI agent deliberately omitting a confession from an official investigation report was sufficient to support a conviction under 18 U.S.C. § 1519); *United States v. Moyer*, 674 F.3d 192, 207 (3d Cir. 2012) (Finding that “[i]t borders on the ridiculous to assert that a Chief of Police would not have a duty to disclose the identity of suspects in his official police reports or, conversely, that withholding the names of suspects—known to him—in those official police reports would be deemed acceptable” and holding that 18 U.S.C. § 1519 covers omissions); *see also United States v. Gray*, 692 F.3d 514, 517–21 (6th Cir. 2012) (assuming without discussion that § 1519 covers omissions); *United States v. Taohim*, 529 Fed.Appx. 969, 974 (11th Cir. 2013) (unpublished) (affirming a conviction under § 1519 for conduct that included omissions, but without analyzing whether the statute applies to omissions); *see also United States v. Mays*, Case No. 1:14-cr-120-3, 2015 WL 4624196 (S.D. Ohio Aug. 3, 2015) (unpublished) (police officer

charged under 18 U.S.C. § 1519 for positioning himself in front of a surveillance camera to obstruct the camera's view while fellow police officers physically assaulted inmate). This Court agrees with this line of cases.

“The starting point for interpreting a statute is the language of the statute itself. When words are not defined within the statute, we construe them in accordance with their ordinary or natural meaning. . . . [R]esorting to dictionary definitions may be helpful.” *United States v. Black*, 773 F.3d 1113, 1115 (10th Cir. 2014) (internal citations and quotations omitted). “Falsify” means to make false, distort, or misrepresent. *Falsify*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/falsify> (last visited Feb. 12, 2024). Causing a record to be incomplete, or omitting portions of a record, undoubtedly distorts or misrepresents the record as a whole. Additionally, the Court finds that omitting portions of a record could also fall within the definitions of altering, concealing, and covering up, as set forth in the statute and the superseding indictment.² Considering the words of the statute, along with other courts' interpretations of the statute, this Court is confident that failing to make a record falls within the conduct contemplated under 18 U.S.C. § 1519.

Fundamental to the instant Motion, Counts Two and Three of the superseding indictment set forth the language of 18 U.S.C. § 1519, set forth the elements necessary to constitute the offense intended to be punished, and provide enough information so that Defendant is aware of the specific conduct at issue. In other words, the superseding indictment contains “a plain, concise, and

² “Alter” means to change or modify. *Alter*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/alter> (last visited Feb. 12, 2024). “Conceal” means to prevent disclosure. *Conceal*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/conceal> (last visited Feb. 12, 2024). “Cover up” means a concerted effort to keep an illegal or unethical act or situation from being made public or a device or stratagem for masking or concealing. *Cover up*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/cover-up> (last visited Feb. 12, 2024).

definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1). This is sufficient for the superseding indictment to survive a motion to dismiss.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss Counts Two and Three of the Superseding Indictment [Dkt. No. 43] is DENIED.

DATED this 13th day of February 2024.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

ATTACHMENT 2 – ECF 65

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-CR-139-JFH

JEFFREY SCOTT SMITH, JR.,

Defendant.

OPINION AND ORDER

Before the Court is an Opposed Motion to Continue Jury Trial and Extend Pretrial Motion Deadlines (“Motion”) filed by Defendant Jeffrey Scott Smith, Jr. (“Defendant”). Dkt. No. 61. The United States of America (“Government”) filed a response in opposition to the Motion. *Id.* at 64. For the reasons set forth below, the Motion [Dkt. No. 61] is DENIED.

Defendant’s Motion requests a continuance to the Court’s May 6, 2024 jury trial docket to allow his retained counsel additional time to review discovery and prepare for trial. Dkt. No. 61 at 2-3. The Court does not find this is a sufficient reason to extend the trial.

This case is set for trial to begin on March 4, 2024. Dkt. No. 41. The Court held a pretrial conference in this matter on February 15, 2024. Dkt. No. 60. At that hearing, the Federal Public Defender’s Office—Defendant’s counsel at that time—informed the Court that Defendant intended to retain counsel for his representation at trial. The Court acknowledged Defendant’s choice to retain counsel but warned that it would not grant a continuance based on retained counsel’s appearance in the case. Defendant’s retained counsel, John P. Cannon, entered his appearance in the case later that day. Dkt. No. 57. The Court’s admonition regarding a request to continue was clearly ignored.

The Court has inherent authority to manage its docket. *See Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (“[A] district court possesses inherent powers that are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” (quotation omitted)). The Court has experienced unprecedented caseloads and jurisdictional complexities in the past several years. *See Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486, 2492 (2022) (describing the “significant challenge for the Federal Government and for the people of Oklahoma” in the wake of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020)); *United States v. Budder*, --- F. Supp. 3d ---, 2022 WL 1948762, at *7 (E.D. Okla. Apr. 29, 2022) (collecting cases where federal courts “noted *McGirt’s* tremendous impact”). In light of this, rescheduling trials at short notice is a drastic measure which the Court will consider in only the most compelling situations.

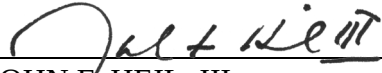
The Court does not find such a compelling situation here. The Indictment in this case was filed on August 9, 2023 and, at the parties’ request, the Court previously continued the trial on two previous occasions. As agreed by the parties at the pretrial conference, discovery is complete, all issues have been fully briefed and litigated, and this case stands ready for trial. As acknowledged by Defendant, this case is not complex. Dkt. No. 61 at 4. And, as clarified by the Government, discovery in this case consists of only 2,544 pages of discovery, as opposed to retained counsel’s estimation of “roughly 4,000 [pages].” *Id.*; Dkt. No. 64 at 5. The Court finds that there is reasonable time necessary for effective preparation for trial in this matter in the exercise of due diligence.

The Court may grant a continuance under the Speedy Trial Act “on the basis of [its] findings that the ends of justice served by taking such action outweigh the best interest *of the public* and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A) (emphasis added). The Court

does not find that a continuance would serve the ends of justice here. This case stands ready for trial and there is reasonable time necessary for effective preparation by Defendant's retained counsel. A continuance would not be in the best interest of the public, including the victim, the Government, its witnesses, and the Court. *See United States v. Toombs*, 574 F.3d 1262, 1273 (10th Cir. 2009) (finding that it is the responsibility of the district court to "protect the interests of the public by ensuring adherence to the requirements of the Speedy Trial Act.").

IT IS THEREFORE ORDERED that Defendant's Opposed Motion to Continue Jury Trial and Extend Pretrial Motion Deadlines [Dkt. No. 61] is DENIED.

Dated this 21st day of February 2024.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE