State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF PUBLIC INTEGRITY AND ACCOUNTABILITY
25 MARKET STREET
PO BOX 085
TRENTON, NJ 08625-0085

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

DREW SKINNER
Executive Director

November 22, 2024

VIA ECOURTS

Hon. Peter E. Warshaw, Jr., P.J.Cr.
Mercer County Criminal Courthouse
400 S. Warren Street
Trenton, New Jersey 08608

Re: State v. George E. Norcross, III, et al.
Docket No.: MER-24-06-0111-S
Indictment No.: 24-06-00111-S

Dear Judge Warshaw:

Please accept this letter on behalf of the State in anticipation of a more formal response should the Court require one. On Wednesday morning, November 20, 2024, the State received defendant William M. Tambussi's motion to compel production of Title III wiretap applications and related materials, which was filed on behalf of all defendants. The State writes to correct the distorted factual and legal assertions in defense counsel's supporting brief, provide context for his arguments, and—above all—urge that this motion need not have been filed.

To begin, the State has made every effort to satisfy its discovery obligations and has been as transparent as possible with the defendants and their counsel from the outset. The State understands its ongoing duty to provide discovery and has made—and will keep making—its best efforts to provide the defense with all materials to which they are entitled. So far, the State has turned over to the defense more than 4.3 million files ranging in length from one-page documents to documents that are thousands of pages long. The State has also given the defense more than 6,000 wiretap recordings and at least 700 hours of audio recordings, which include the interviews of about 100 people.

As for the defendants' claims about the Title III materials, the defendants here do—despite what's said in the first paragraph of defense counsel's brief—have the federal wiretap applications and affidavits directly relating to the intercepted calls pertinent to this case and the crimes charged in the Indictment. Def. Br. 1. Counsel recently requested more documents that the State does not possess and, soon after, the State requested them—on behalf of the defendants—from federal authorities. And while the State advised Tambussi's defense counsel about that request hours before counsel moved to compel disclosure of the documents, he still filed the motion—never once mentioning his knowledge that the State is, in fact, seeking the very documents he would have this Court compel it to turn over. To make matters worse, defense counsel's brief describes the Attorney General as having "steadfast[ly] refuse[d]" to provide these documents to the defense. Def. Br. 4. That is false.

The truth is, the Title III documents the defense seeks stem from an unrelated federal investigation of George Norcross's associate, John Dougherty, who—along with multiple co-conspirators—was convicted by juries from the Eastern District of Pennsylvania for federal crimes involving public corruption in Philadelphia City Council and embezzlement from a Philadelphia-based labor union. And the federal court that oversaw those wiretaps rejected all challenges to the validity of the wiretap documents that the defense seeks in this case. See Exhibit A (July 9, 2020 Opinion and Order of Hon. Paul S. Diamond, U.S.D.J., denying Dougherty's motion to suppress Title III wiretap evidence). The intercepts of George Norcross and others in this case were essentially spun off from the legally authorized intercepts of conversations between Dougherty and George Norcross during the investigation into Dougherty.

That the U.S. Attorney's Office on the Pennsylvania side of the Delaware River used wiretap materials that federal officials alone generated to prosecute a Norcross associate while declining to pursue Norcross and his codefendants for different criminal schemes in New Jersey is no barrier to this prosecution, for as the U.S. Supreme Court explained, the "States' 'powers to undertake criminal prosecutions, … do not derive[] … from the Federal Government." See Commonwealth of Puerto Rico v. Sanchez Valle, 579 U.S. 59, 69 (2016) (citation omitted). Even before "forming the Unions, the States possessed separate and independent sources of power and authority, which they continue to draw upon in enacting and enforcing criminal laws." Ibid. That is precisely what New Jersey, a "separate sovereign from the Federal Government," is doing here to safeguard its residents from corruption—even if it invites the wrath of powerful people like George Norcross or less powerful people like Tambussi. Ibid.

Next, in what can only be reasonably viewed as a transparent attempt to try this case in the press on assertions that have no bearing on the evidence amassed against the defendants, counsel urges this court to draw incomplete and incorrect conclusions about complex investigations into wide-ranging criminality that captured the attention of many federal and state agencies. Counsel contorts the actual facts and bases his arguments on mischaracterizations of documents that he almost certainly knows are inadmissible at trial and do not support the picture he paints in his filing.

First, counsel flatly misstates both the significance and the language of the irrelevant and inadmissible declination letters to which he refers. The language in the declination letters from the United States Attorneys' Offices for the Eastern District of Pennsylvania and the District of New Jersey, which counsel cites in his brief, hardly say that defendants committed "no crime." Def. Br. 1-2. And that aside, courts across America recognize that prosecutors may not charge a defendant "for a variety of reasons that have nothing to do with his guilt or innocence, taking into consideration the availability of prosecutorial resources, alternative resources, the expectation of prosecution by other authorities, or any number of other valid discretionary reasons." United States v. Bingham, 653 F.3d 983, 999 (9th Cir. 2011); see also, e.g., United States v. Benson, 957 F.3d 218, 237 (4th Cir. 2020) (same); United States v. Hill, No. 12-CR-214, 2014 WL 198813, at *2 (E.D.N.Y. Jan. 14, 2014) (barring cross-examination about prosecutor's decision not to charge person with crime because "its minimal probative value is substantially outweighed by a danger of confusing the issues, causing undue delay, and wasting time.") (citation omitted). That defense counsel would suggest that the federal prosecutors' letters say "no crime" occurred signals his intent to circumvent the legal process and indoctrinate the press, the public, and, worst of all, the prospective jury pool, with a slanted version of the investigations.

Unfortunately, this motion is only the latest evidence of the defense's apparent interest in staging a spectacle for the media rather than presenting a case grounded in the facts and law. In July, after the defendants' arraignment, one attorney called the Attorney General's pursuit of justice a "jihad" against George Norcross. See E. Young, Powerful Democrat Pleads 'Emphatically' Not Guilty to Racketeering, N.Y. Times, July 9, 2024, p. A19. Lawyers on the defense team later spoke to a reporter from the Star Ledger who, in late September, inappropriately published the lawyers' personal take on the strength of the State's evidence. See T. Moran, A Prediction: George Norcross Will Beat the Corruption Charges, The Star-Ledger: Web Edition, Sept. 29, 2024, available at https://www.nj.com/opinion/2024/09/a-prediction-george-norcross-will-beat-the-corruption-charges-moran.html; see also Pressler &

Verniero, Current N.J. Court Rules, Official Comment on RPC 3.6 (2024). But mischaracterizations made by the lawyers of powerful people will not derail New Jersey's efforts to seek justice for the victims of the Norcross Enterprise.[1]

Indeed, the State will not be deterred by defense counsel's twisting of the truth when he claims that the grand jury indicted the defendants based on "the exact same evidence" as that gathered during the U.S. Attorneys' Offices' investigations. Def. Br. 2. As the defense well knows, the New Jersey Attorney General's probe, which generated new evidence entirely distinct from the federal investigations, continued for at least a year after the U.S. Attorney's Office for the Eastern District of Pennsylvania memorialized a decision not to pursue federal charges. Counsel is likewise wrong to imply that federal authorities—who, in 2019, were cross-designated as state agents in order to share information—are working with the Attorney General's Office today. Def. Br. 6. They are not.[2] Federal prosecutors from Philadelphia closed their file on the investigation in 2023, well before the New Jersey grand jury investigation that led to the defendants' indictment even began. The U.S Attorney's Office for the District of New Jersey closed their investigation into George Norcross and his associates years earlier, in 2018. Defendants cannot and do not explain how assessments by different sovereigns that did not have the State's evidence into ongoing criminality, accumulated over a longer period of time, have any relevance whatsoever.

Just as troubling as these mischaracterizations is the defense's mistaken insistence that the State can override the Department of Justice (DOJ), U.S. Supreme Court precedent, and the even the U.S. Constitution itself by turning over all the Title III documents—which, again, the State neither generated nor fully possesses—without federal authorization.

While the State has made and will keep making every effort to obtain and turn

---

[1] In their eagerness to corrupt public opinion through a filing that seeks relief beyond this Court's authority, the defense has flagrantly disregarded the privacy of uncharged third parties and the strict limitations federal authorities placed on the disclosure of Title III materials—choosing to recklessly broadcast sensitive documents on the public docket without justification.

[2] Assistant U.S. Attorney K.T. Newton, who counsel claims had an "opinion" about the state prosecution, Def. Br. at 2, had nothing to do with the grand jury presentation in, or prosecution of, this case and indeed left the U.S. Attorney's Office in June.

over the documents, it will not entertain defense counsel's appeal for it to break the law. In United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951), the Supreme Court held that a DOJ subordinate could lawfully refuse to obey a subpoena for documents possessed by DOJ based on a regulation issued by the U.S. Attorney General. Id. at 468. Federal agencies, such as DOJ, are congressionally authorized to "prescribe regulations for the … custody, use, and preservation of its records, papers, and property," known as Touhy regulations. See 5 U.S.C. § 301; Touhy, 340 U.S. at 463. And under DOJ's Touhy regulations, "no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status or because of that person's official statutes without prior approval of the proper Department official in accordance with [28 C.F.R. §§ 16.24 and 16.25]." 28 C.F.R. § 16.22(a) (emphasis added).

Without the prior approval of a proper DOJ official, the State thus cannot lawfully do what the defense asks. The defense apparently does not care to recognize that "Touhy regulations have the force of federal law and must be followed even in state court proceedings and that sovereign immunity bars direct enforcement by the state court of the [demand] against the Department or its employees." See Dept. of Justice, Justice Manual § 1-6.000 (DOJ Personnel As Witnesses) (citing, e.g., Edwards v. U.S. Dep't of Justice, 43 F.3d 312, 316 (7th Cir. 1994) ("The review action must be in federal court pursuant to 5 U.S.C. § 702, rather than in a state court that lacks jurisdiction"). Courts far and wide, however, recognize that "under the Constitution's Supremacy Clause, state court power could not override federal regulations." Leyh v. Modicon, Inc., 881 F. Supp. 420, 422 (S.D. Ind. 1995) (citing Boron Oil Co. v. Downie, 873 F.2d 67, 71 (4th Cir. 1989)); see also, e.g., State v. Vance, 339 P.3d 245, 250-51 (Wash. Ct. App. 2014) ("The Touhy regulations, and not a state court's order, control federal agents[]."). Plainly put, defense counsel's claims clash with an "unbroken line of authority" directly supporting the State's point, and this Court should bat every one of them away. See Boron Oil, 873 F.2d at 69.

The bottom line is that the defendants' sophisticated counsel must know that this motion to compel is improper and beyond the Court's jurisdiction, just as they must know that their months-long effort to barrage the media with inflammatory rhetoric designed to sway the jury pool is an affront to the integrity of the judicial process. That attorneys would flagrantly use motion practice as a prop to bend the media narrative in their clients' direction is a threat to a bedrock principle of American law: that "[t]he outcome of a criminal trial is to be decided by impartial

jurors, who know as little as possible of the case, based on material admitted into evidence before them in a court proceeding." Gentile v. State Bar of Nevada, 401 U.S. 1030, 1072 (1991). That end will prove hard to achieve if defense counsel, as they have done since the day the Indictment was unsealed, keep roiling the processes of justice by improperly trying their case in the court of public opinion and flouting our Rules of Professional Conduct.[3]

Sincerely,

MATTHEW J. PLATKIN
Attorney General of New Jersey

By: /s/ **Michael Grillo** (No. 037892009)
Michael Grillo
Assistant Attorney General
Grillomi@njdcj.org

/s/ **Adam D. Klein** (No. 128862014)
Adam D. Klein
Deputy Attorney General
Kleina@njcdj.org

[3] See, e.g., RPC 3.6(a) (barring lawyers from making extrajudicial statements that they know or reasonably should know "will have a substantial likelihood of materially prejudicing an adjudicative proceeding."); RPC 3.3(a) (barring lawyers from knowingly making false statements of material fact or law to tribunal); RPC 3.1 (barring lawyers from asserting issues in proceedings unless they know or reasonably believe that there is a basis in law and fact for doing so that is not frivolous).

EXHIBIT A

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 19-64-JLS**
	:	
JOHN DOUGHERTY ET AL.	:	

MEMORANDUM

Diamond, J. **July 9, 2020**

The grand jury has charged labor leader John Dougherty and seven others with stealing vast amounts of Union money, corrupting Philadelphia government, and related crimes. Acting pursuant to Title III of the Omnibus Crime Control and Safe Streets Act, I had earlier issued a warrant authorizing the interception of Dougherty's phone. 18 U.S.C. §§ 2510 et seq. Dougherty now moves for suppression of the wiretap evidence, arguing, *inter alia*, that, given his "very well-documented, quotidian life," there was no "necessity" (as required by Title III) for the Government "to gather extraneous evidence against him and others." (Def.'s Mot. to Suppress 18, 3, Doc. No. 97.) Surely, the contention refutes itself. I recently denied Dougherty's request for an evidentiary hearing on his Suppression Motion, finding that Dougherty was simply seeking pretrial discovery to which he is not entitled. I will now deny the Motion itself.

I. BACKGROUND

Dougherty has led Local 98 of the International Brotherhood of Electrical Workers since 1993. During his tenure, Dougherty has been the subject or target of several public corruption and fraud investigations. (Blake Aff. ¶¶ 19–22.) Most recently, Dougherty found himself the target of a federal investigation into the purported theft of Union assets. Viewing security footage and pole camera surveillance, agents saw Dougherty's confidants repeatedly use Local 98 credit cards to buy personal items, apparently for Dougherty. Text messages and phone calls monitored on

pen registers suggested that Dougherty had directed these purchases, many of which were made at the South Philadelphia Target, blocks from Dougherty's home. Agents learned that Dougherty regularly took large sums of money, without explanation, from Local 98's petty cash fund, and bank records revealed that Dougherty sought Union payments for suspected personal expenditures.

Although agents thus uncovered incriminating conduct, they could not: identify all participants in the apparent scheme; confirm that Dougherty instructed his confidants to make the purchases and deliver goods to him; or determine whether Dougherty intended to reimburse the Union. As I discuss below, agents decided not to employ certain investigatory methods before seeking the Title III Warrant, concluding that these methods would either be ineffective or would likely jeopardize both the investigation and the any cooperating witnesses.

Accordingly, the Government sought a Warrant to wiretap Dougherty's cellphone and continue their investigation of the "target offenses": embezzlement and conspiracy to embezzle assets from a labor organization. (Blake Aff. ¶ 3); see 18 U.S.C. § 2518(1)(c). On April 29, 2015, I approved the Warrant, which the Government supported with the Affidavit of FBI Special Agent James Blake. With my approval, the wiretap investigation continued until August 2016.

On January 29, 2019, the grand jury charged Dougherty, Philadelphia City Councilman Robert Henon (who, along with Marita Crawford, joins in the instant Motion), and five others in a 116 Count Indictment, alleging embezzlement of Union assets, as well as wire, tax, and honest services fraud, and other crimes. (See Doc. No. 1.) Once again, Dougherty has moved to suppress the Government's wiretap evidence, arguing that the Government violated Title III's "necessity" requirement. 18 U.S.C. § 2518(3)(c); (see generally Def.'s Mot.) The Government opposes his Motion. (See Gov't Opp'n, Doc. No. 106.)

Under this District's Local Rules, as the Judge who issued the challenged Warrant, I must

rule on Dougherty's Suppression Motion. See Local. R. Crim. P. 41.1(b). Trial is presently set to begin before Judge Schmehl on October 26, 2020.

II. LEGAL STANDARDS

Wiretap evidence should be suppressed when "the order of authorization or approval under which it was intercepted is insufficient on its face." 18 U.S.C. § 2518(10)(a)(ii). Before the court may authorize a Title III wiretap, it must determine, based on the Government's "full and complete statement," *inter alia*, that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(c)(3). This does not mean, however, that the Government must first "exhaust all other investigative procedures" before seeking a wiretap. United States v. Williams, 124 F.3d 411, 418 (3d Cir. 1997). Rather, the Government establishes Title III "necessity" when it "lay[s] a 'factual predicate' sufficient to inform the judge why other methods of investigation are not sufficient." United States v. McGlory, 968 F.2d 309, 345 (3d Cir. 1992) (citing United States v. Armocida, 515 F.2d 29, 38 (3d Cir. 1975)).

I must review the Government's factual predicate in a "practical and commonsense fashion." Id. at 345 (quoting United States v. Vento, 533 F.2d 838, 849 (3d Cir. 1976)). The Third Circuit has admonished that the Government's burden in establishing "necessity" under Title III "is not great." Armocida, 515 F.2d at 38.

III. DISCUSSION

Dougherty argues that: (1) the wiretap was premature because the Government obtained the Warrant before exhausting traditional investigatory methods; (2) the Warrant was "unnecessary" as the evidence already gathered would have justified the search of Dougherty's residence and office, which, in turn, should have ended the investigation; and (3) even with the

wiretap evidence, the Government could not prove Dougherty's guilt. (Compare Def.'s Mot. 8 (accusing the Government of "improperly us[ing] wiretapping as its primary investigative tool") (capitalization altered), with id. 10 ("The government in its affidavit set forth an advanced investigation that had already purportedly developed substantial evidence of the target offenses . . . ."), and id. 9 ("[T]he evidence at trial will ultimately prove [Dougherty's] innocence.").) Close review of the 63-page Blake Affidavit confirms that Dougherty's contradictory positions are incorrect. See Williams, 124 F.3d at 418 ("[A] court 'may properly take into account affirmations which are founded in part upon the experience of specially trained agents.'") (quoting United States v. Ashley, 876 F.2d 1069, 1072 (1st Cir. 1989)).

A. "Traditional" Investigative Techniques

The Government "provide[d] a sufficient 'factual predicate' for a finding that 'normal investigative techniques' . . . were unlikely to succeed." Williams, 124 F.3d at 419. Experienced in conducting wiretap investigations, Agent Blake set out those techniques in detail:

> The investigative techniques that were tried or considered were: 1) physical surveillance, 2) undercover agents, 3) confidential sources, 4) pen registers, telephone toll records, text messages and cell site data, 5) interviews of subjects, 6) arrests of violators, 7) grand jury subpoenas, 8) search warrants, and 9) trash searches.

(Gov't Opp'n 5–6; see generally Blake Aff.); United States v. Bailey, 840 F.3d 99, 114 (3d Cir. 2016). Blake provided a more than sufficient explanation for why these techniques were inadequate or impracticable.

Physical Surveillance

Agent Blake explained why surveillance necessarily was inadequate. In challenging that explanation, Dougherty relies primarily on decisions involving investigations where the Government sought a wiretap after only "limited (but undisclosed) physical surveillance." United

States v. Landeros-Lopez, 718 F. Supp. 2d 1058, 1065–66 (D. Ariz. 2010); see United States v. Gonzalez, Inc., 412 F.3d 1102, 1112 (9th Cir. 2005). The Government's surveillance efforts here were robust. Agents examined substantial footage from pole and security cameras along with months of pen register records. (See Blake Aff. ¶ 31.) Although the agents' "efforts undoubtedly uncovered useful information," they left key aspects of the investigation unresolved. United States v. Kaplan, 2009 WL 3806277, at *11 (E.D. Pa. Nov. 13, 2009); see United States v. Cao, 471 F.3d 1, 3 (1st Cir. 2006) ("[T]he *partial* success of the investigation do[es] not mean that there [i]s nothing more to be done."). Surveillance could not "provide evidence of Dougherty instructing or authorizing the target interceptees to purchase the goods and deliver them to his or their residence," nor could it identify all coconspirators. (Blake Aff. ¶ 59 (capitalization altered).) Because the Government's target offenses include *mens rea* elements of intent and knowledge, surveillance could not help the Government to distinguish between conspirators and non-culpable participants.

Pen Registers, Telephone Toll Records, Text Messages, and Cell Site Data

The Government employed these means to monitor communications in and around the suspect transactions. Although pen registers and toll records disclose the phone numbers involved, they reveal neither the actual speaker nor the substance of the communication. (Blake Aff. ¶ 64.) It is thus unsurprising that pen registers often give rise to wiretaps. See, e.g., United States v. Rivera, 532 F. App'x 304, 306 (3d Cir. 2013); United States v. Bennett, 219 F.3d 1117, 1122–23 (9th Cir. 2000). Moreover, the mere occurrence of the calls and texts "was insufficient to reveal the 'full nature and scope' of the conspiracy." United States v. Williams, 827 F.3d 1134, 1150 (D.C. Cir. 2016) (quoting United States v. Becton, 601 F.3d 588, 597 (D.C. Cir. 2010)); cf. Armocida, 515 F.2d at 38 (Government need not terminate "an investigation before the entire

scope of the narcotics distribution network is uncovered and the identity of its participants learned"). Similarly, "[c]ell site data can provide approximate location, but cannot provide content." (Blake Aff. ¶ 64); see United States v. Tyree, 2008 WL 11343040, at * 6 (D. Colo. May 16, 2008) (Government met necessity requirement even though it did not analyze cell site data before obtaining wiretap).

Undercover Agents

The Government determined that this means was unlikely to be effective because: (1) having been the subject or target of several investigations, Dougherty suspected that he would again be investigated; (2) Dougherty thus communicated directly only with his loyal "inner circle" of associates, who depended on him for their livelihoods. (Blake Aff. ¶ 60.) For instance, during a separate 2014 investigation, Dougherty refused to speak directly with an undercover agent or an informant doing business with Local 98. (Id.) Instead, he had them speak with an intermediary. (Id.)

Interviews, Confidential Sources, and Arrests

Blake explained that recruiting Union members as informants would likely be ineffective. Once again, because Dougherty directly communicated only with his confidants, who themselves were part of the alleged conspiracy, Blake doubted that arresting culpable individuals would yield any useful cooperation. (See Blake Aff. ¶ 69). The Agent explained that witness interviews would similarly be less than useful. Based on his years of experience investigating labor organizations, Blake understood that members invariably remain loyal to the union and their associates. (Blake Aff. ¶ 71); see Williams, 124 F.3d at 418. Blake also understood that such witnesses would have feared Dougherty's retaliation. Indeed, Blake described how Dougherty—with complete control over the Union—punished a member who had the temerity to state publicly that Dougherty had

mismanaged Union resources. (Blake Aff. ¶ 67.)

The Grand Jury

Subpoenaing witnesses would give rise to the same difficulties as interviewing them. Once again, in Blake's experience, union members are unfailingly loyal to their organizations and thus quite reluctant to cooperate against their associates. Moreover, as with interviews, subpoenaing "such persons would create the very real likelihood that they would tip off Dougherty and others to the existence of this ongoing, secret investigation." (Blake. Aff. ¶ 71); see United States v. Edwards, 889 F. Supp. 2d 1, 12 (D.D.C. July 26, 2012).

Search Warrants

Agent Blake explained that, like other "overt" investigatory techniques, executing search warrants "would reveal the investigation and likely cause the subjects of this investigation to further camouflage their activities, making ultimate detection even more difficult." (Blake Aff. ¶ 71.) Title III does not require the Government to compromise its investigation by prematurely revealing to its targets that an investigation is underway. See Williams, 124 F.3d at 419 ("[T]he affidavit stated that execution of a search warrant was unlikely to succeed because it would reveal the facts of the investigation to the targets."); see also United States v. Lopez, 300 F.3d 46, 54 (1st Cir. 2002); id. at 53 ("Title III does not 'force the government to run outlandish risks . . . before seeking a wiretap.'") (quoting United States v. Hoffman, 832 F.2d 1299, 1306 (1st Cir. 1987) (alteration in original)). Indeed, Dougherty himself acknowledges that the Government's investigation would necessarily conclude once search warrants were executed. (Def.'s Mot. 14–15, 17.) Blake thus noted that he would "execute search warrants only after the covert investigation [wa]s completed." (Blake Aff. ¶ 58.)

Finally, Dougherty quotes an Affidavit passage that well shows why Blake believed that

search warrants would otherwise be ineffective:

> [T]he seizure of documents may not reveal DOUGHERTY's and the other TARGET INTERCEPTEES' knowledge of or involvement in the embezzlement scheme. . . . [E]xpense reports may not indicate that DOUGHERTY directed [Codefendants] FIOCCA and NIKO RODRIGUEZ to make the [suspect] purchases.

(Def.'s Mot. 18 (quoting Blake Aff. ¶ 72).) Once again, the purchase records recovered during a search likely would not indicate whether the purportedly illegal purchases were made on Dougherty's orders. See Kaplan, 2009 WL 3806277, at *10–11.

Trash Searches

Blake explained that such searches could not be effectuated because Dougherty had his trash taken from his home each day and placed in a dumpster on Local 98's property, which was under constant video surveillance and enclosed by a fence. (Blake Aff. ¶ 73); see Armocida, 414 F.2d at 37 ("Merely because a normal investigative technique is theoretically possible, it does not follow that it is likely.") (quoting 1968 U.S. Code Cong. & Admin. News at p. 2190).

* * *

In sum, Blake offered a "full and complete" explanation of which "normal investigative procedures ha[d] been tried and ha[d] failed or reasonably appear[ed] to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(1)(c) & 3(c). In thus "lay[ing] a 'factual predicate' sufficient to inform [me] why other methods of investigation were not sufficient," the Government fulfilled its obligation under Title III. Williams, 124 F.3d at 418 (quoting McGlory, 968 F.2d at 345).

B. Necessity Standard—Non-drug Cases

Finally, Dougherty suggests that the necessity standard is more stringent when drug crimes are not being investigated. Dougherty thus urges that wiretapping "may be justified in a drug

conspiracy case" because drug dealers do not maintain "extensive paper and digital records." (Def.'s Mot. 6–7; see also id. at 16, 20.) Wiretaps were unnecessary

> [h]ere, [because] the government is employing the same resources it would on an under-the-radar drug kingpin with an unidentified network of dealers to [a] union leader with an easily discernible network of colleagues and family, with known names, addresses, phone numbers, and financial records.

(Def.'s Mot. 20–21.)

The suggestion is as legally baseless as it is offensive. As alleged, Dougherty ran his Union much as any other "kingpin" might run his criminal enterprise. Dougherty purportedly: refused to speak directly to anyone but trusted associates—now his Codefendants; had his trash taken each day from his home to the Union's fenced in dumpster, which was under constant surveillance; and punished those who criticized him. Dougherty thus made it as difficult as possible to investigate his activities using "traditional" methods. Accordingly, wiretapping Dougherty's phone was necessary under Title III, even though this was not a "drug" investigation. To the contrary, Dougherty is hardly the first defendant charged with financial crimes whose phone the Government permissibly intercepted under Title III. See, e.g., United States v. Weaver, 220 F. App'x 88, 90 (3d Cir. 2007); United States v. McGuiness, 764 F. Supp. 888, 897 (S.D.N.Y. 1991).

IV. CONCLUSION

Dougherty urges that suppression is warranted under the necessity standard because: (1) the Government could have conducted its traditional investigation more effectively, and (2) Title III allows wiretaps only as a last resort. As I have discussed, however, the Government had good reason not to conduct its investigation in the "effective" manner Dougherty urges. See Armocida, 414 F.2d at 37–38. Moreover, "necessity" does not restrict the Government so that it may employ wiretaps only as a last resort. See United States v. Edwards, 69 F.3d 419, 429 (10th Cir. 1995) ("[L]aw enforcement officials are not required to exhaust all other conceivable investigative

procedures before resorting to wiretapping.") (internal quotation marks and citation omitted); accord Williams, 124 F.3d at 418.

I will deny Dougherty's Motion because the Government has certainly satisfied Title III's necessity requirement.

An appropriate Order follows.

/s/ Paul S. Diamond

July 9, 2020 Paul S. Diamond, J.

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 19-64-JLS**
	:	
JOHN DOUGHERTY ET AL.	:	

O R D E R

AND NOW, this 9th day of July, 2020, for the reasons provided in my Memorandum Opinion (Doc. No. 149), it is hereby **ORDERED** that Defendant John Dougherty's Motion to Suppress Title III Wiretap Evidence (Doc. No. 97) is **DENIED**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.