

NOT RECOMMENDED FOR PUBLICATION

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Case No. 24-5988

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

Oct 23, 2026

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ASHLEY GRAYSON,

Defendant-Appellant.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
TENNESSEE

OPINION

Before: THAPAR, NALBANDIAN, and READLER, Circuit Judges.

READLER, Circuit Judge. Ashley Grayson recruited two others to kill three people in exchange for money. Based on that conduct, a jury convicted Grayson of conspiring to use interstate commerce facilities in the commission of murder-for-hire, in violation of 18 U.S.C. § 1958. She appealed, raising several challenges to her conviction, and we affirmed. *See United States v. Grayson*, No. 24-5988, 2025 WL 2366262 (6th Cir. Aug. 14, 2025).

Consistent with the government’s position at the certiorari stage, the Supreme Court later granted certiorari, vacated our judgment, and remanded for “further consideration in light of the position asserted by the Solicitor General” with respect to a recorded FaceTime conversation played at trial. *Grayson v. United States*, 146 S. Ct. 1872 (2026) (mem.). On remand, the lone issue for resolution before us is Grayson’s challenge to the admission of that recording. Assuming without deciding that the recording was inadmissible, we conclude that its admission was harmless. We therefore affirm.

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I.

A. In light of our prior opinion in this case, we incorporate those facts and summarize here only those details pertinent to the issue on remand. *See Grayson*, 2025 WL 2366262, at *1–3.

Residing in Dallas, Ashley Grayson worked as a social media influencer. Through her online activities, Grayson met Olivia Johnson, a Memphis-based influencer. In August 2022, Grayson invited Johnson and Johnson’s husband, Brandon Thomas, to visit Grayson in Texas and agreed to pay their travel expenses. During the visit, Grayson asked Johnson and Thomas to kill three people—Grayson’s ex-boyfriend and two women who had criticized Grayson online. Grayson offered \$80,000 for the murder of all three individuals.

Johnson and Thomas agreed to the plan. But, unbeknownst to Grayson, they had no intention of carrying it out. Instead, they pretended to go along while gathering evidence that they could eventually turn over to authorities.

Johnson and Thomas returned to Memphis, where Johnson followed up with Grayson by text. Johnson asked Grayson about a deposit for the murder-for-hire scheme. Grayson expressed reluctance to discuss their “business plan” by text, so the two instead made contact over FaceTime. R. 145, PageID 1258. Using Thomas’s phone, Johnson secretly recorded a video of the FaceTime conversation and later transferred the video to her own phone. During the call, Johnson told Grayson that she and Thomas had been to one intended victim’s home and that it would be “real easy to get her.” Ex. 11, Video Clip 1, at 00:18–00:22. Grayson, for her part, indicated that she wanted that murder committed as soon as possible and offered Johnson and Thomas an additional \$5,000 to carry it out within a week and a half. The call ended with Johnson telling Grayson that she and Thomas planned to go to the victim’s home that evening.

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That same evening, Johnson and Thomas called Grayson from an unrelated crime scene in Memphis. Against a backdrop of lights and sirens, Johnson claimed that she and Thomas had “shot . . . up” the victim’s home. Grayson then agreed to pay them \$10,000, at which point Johnson and Thomas drove back to Dallas, where they met Grayson and her husband at her husband’s apartment building. Surveillance footage captured the meeting, including Grayson’s husband handing Thomas the agreed-upon \$10,000 in cash. Johnson and Thomas then drove back to Memphis.

Matters soon escalated. Johnson sent Grayson a clip of the recorded FaceTime call. Grayson responded by accusing Johnson of threatening her, going so far as to contact the FBI to report that Johnson was engaging in extortion. The FBI recorded that roughly 23-minute call, during which Grayson described the FaceTime conversation in detail. She explained that she told Johnson that the people who had targeted Grayson online “deserved to die” and that, when Johnson asked whether Grayson would pay to have something happen to them, Grayson responded that she would. Ex. 24 at 10:43–11:28. Johnson, meanwhile, on the advice of counsel, provided federal agents with the FaceTime recording and text messages between her and Grayson.

B. Based on the information Johnson shared, a federal grand jury charged Grayson and her husband with conspiring to commit murder for hire in violation of 18 U.S.C. § 1958. Before trial, Grayson moved to exclude the FaceTime recording on the ground that Johnson had obtained the recording in violation of the Federal Wiretap Act. 18 U.S.C. §§ 2510–2523. By way of background, the Act makes it unlawful to “intentionally intercept[] . . . any wire, oral, or electronic communication,” and prohibits unlawfully intercepted communications from being used as evidence in a subsequent trial or hearing. *Id.* §§ 2511(1)(a), 2515. The Act also carves out exceptions. One of them is the “one-party consent” rule. When the “person” who “intercept[s]”

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the communication is also a party to the communication, or when one of the parties “has given prior consent” to interception, the interception is not unlawful. *Id.* § 2511(2)(d). But there is an exception to the exception: When the “communication is intercepted for the purpose of committing any criminal or tortious act,” the carve-out does not apply. *Id.*

Although Johnson was a party to the call, Grayson maintained that the statute’s consent exception did not apply because Johnson recorded the call for the purpose of committing a crime (extortion), rendering the recording inadmissible. The district court disagreed. Relying on *United States v. Murdock*, 63 F.3d 1391 (6th Cir. 1995), the court reasoned that a “clean hands” exception permits the government to use an unlawfully intercepted communication at trial if the government played no part in intercepting the communication. R. 87, PageID 245–48.

At trial, the government sought to prove Grayson’s participation in the murder-for-hire plot. When the government sought to introduce the FaceTime recording, Grayson objected. The district court overruled the objection and admitted the video into evidence. In the end, the jury convicted Grayson but acquitted her husband. Grayson later moved for a new trial, again challenging the admission of the FaceTime recording. The district court denied the motion.

Grayson appealed. We affirmed. With respect to Grayson’s Wiretap Act challenge, we agreed with the district court that our earlier decision in *Murdock* foreclosed Grayson’s challenge, observing that “[r]ight or wrong . . . *Murdock* controls.” *Grayson*, 2025 WL 2366262, at *6. We therefore faithfully applied the “clean hands exception” that *Murdock* found in the Federal Wiretap Act. *Id.* (noting, however, that if we were interpreting the Federal Wiretap Act as a matter of first impression, we would not “consider the statute’s legislative history in interpreting [its] text in the way *Murdock* chose to do”).

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Grayson petitioned for a writ of certiorari. In response, the Solicitor General agreed with Grayson that *Murdock* erred in recognizing a “clean hands” exception to the Wiretap Act’s exclusionary rule. Brief for the United States in Opposition at 9–11, *Grayson v. United States*, 146 S. Ct. 1872 (2026) (No. 25-851). The Solicitor General nonetheless maintained that any error was harmless and urged the Supreme Court to deny review, or alternatively to vacate and remand. The Supreme Court took the latter course. It granted certiorari, vacated our judgment, and remanded “for further consideration in light of the position asserted by the Solicitor General.” *Grayson*, 146 S. Ct. at 1872.

When the case returned to our Court, we ordered supplemental briefing. We now turn to the remaining issue in Grayson’s case: whether she is entitled to a new trial due to the government’s use of the FaceTime recording during her underlying trial.

II.

A. Grayson contends that the admission of the FaceTime recording violated the Federal Wiretap Act, requiring that Grayson be retried. In light of the position the Solicitor General took in the Supreme Court, we assume for today’s purposes that the Wiretap Act does not have a “clean hands” exception that would have allowed the FaceTime recording before a jury. But doing so was harmless, so we affirm the district court’s judgment.

An evidentiary “error is harmless unless it is more probable than not that the error materially affected the verdict.” *United States v. Grogan*, 133 F.4th 553, 563 (6th Cir. 2025) (citation modified). In making that assessment, we look for “fair assurance” that the challenged evidence did not “substantially sway” the jury. *United States v. English*, 785 F.3d 1052, 1057 (6th Cir. 2015) (citation modified). Here, we can comfortably conclude that, “[e]ven setting aside the

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FaceTime recording,” the jury heard sufficient evidence establishing Grayson’s guilt related to the murder-for-hire scheme. *Grayson*, 146 S. Ct. at 1873 (Alito, J., dissenting).

Start with Johnson’s testimony. She described how Grayson paid for Johnson and Thomas to fly to Dallas. When Johnson arrived, Grayson told her that she wanted three people killed and said that she had cash available for a deposit. Grayson then provided Johnson the locations of the intended victims and offered Johnson and Thomas substantial sums to carry out the killings.

Other aspects of trial reinforced Johnson’s account of things. Thomas’s testimony corroborated significant portions of Johnson’s account, including the discussions surrounding the contemplated killings. With respect to evidentiary items, the government presented text messages reflecting that when Johnson pressed Grayson about taking “risks for nothing,” Grayson declined to discuss the matter in writing, asking, “What did you expect me to write and text you back? Did you want me to text you the whole business plan out?” R. 145, PageID 1256–58. And after Johnson tricked Grayson into thinking she and Thomas had shot at the home of one of the plot’s targets, Grayson agreed to pay the couple \$10,000. What is more, surveillance footage captured Johnson and Thomas meeting with Grayson and her husband, at which point Grayson’s husband, according to testimony by both Johnson and Thomas, handed Thomas \$10,000.

And then there are Grayson’s own words, which were presented to the jury by playing her recorded call with the FBI. During the call, Grayson reported that Johnson was extorting her. Grayson went on to describe her conversations with Johnson about killing online bullies who were harassing her. Grayson also acknowledged that she had told Johnson that she would be willing to pay to have “something . . . happen to them.” Ex. 24 at 10:43–11:28. Those admissions, coupled with Johnson’s testimony and corroborating travel and surveillance evidence, demonstrate Grayson’s guilt independent of the FaceTime recording.

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In response, Grayson faults us for placing too little weight on the recording's impact on the overall trial evidentiary record and her ensuing conviction. Grayson emphasizes that the government characterized the recording as "the whole crime," and backed up that assertion by playing the recording at numerous points during Johnson's testimony and relying on it during closing argument. R. 144, PageID 1129. Because the government wove the recording throughout its presentation, Grayson adds, the jury never considered the remaining evidence independently. Instead, the recording supplied the "filter" through which the jury understood Johnson's testimony, the FBI call, the text messages, and the \$10,000 payment. Appellant Suppl. Br. at 11–15. For support, she points to the fact that the jury acquitted her husband, who did not participate in the recorded call.

We see a number of flaws in that analysis. To start, it is not apparent how the acquittal of Grayson's husband has any bearing on the FaceTime recording's role in Grayson's conviction. Grayson's husband was not on any of the text messages between Grayson and Johnson. And he was not part of the conversation during which Grayson told Johnson that she wanted three people killed and said that she had cash available for a deposit. He also was not on Grayson's call with the FBI. It is thus difficult to see how his acquittal sheds light on the propriety of Grayson's verdict once the FaceTime recording falls out of the evidentiary mix.

As for Grayson's remaining argument that the recording tainted the entire case against her, we note that her conviction did not depend on the recording's incriminating force. Johnson testified that Grayson solicited the murders before the recorded call occurred. Contemporaneous texts and the subsequent \$10,000 payment corroborated her account. On top of that, Grayson acknowledged to the FBI that she wanted her online antagonists dead and had told Johnson that

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she was willing to pay. Taken together, this evidence served as a sufficient basis to convict Grayson independent of the FaceTime recording.

True, as Grayson notes, the recording likely influenced the jury to some degree. But even evidence that typically has a “profound and dramatic effect on the course of a trial” still may not have a “substantial and injurious effect or influence in determining the jury’s verdict” in a particular case. *Bachynski v. Stewart*, 813 F.3d 241, 250 (6th Cir. 2015) (citation modified); *see also United States v. DeAngelo*, 13 F.3d 1228, 1232–33 (8th Cir. 1994) (holding that an erroneously admitted recording did not substantially sway the jury despite having some influence). So, while the recording may have reinforced the government’s account of Grayson’s murder-for-hire scheme, it did not create that account. We thus have fair assurance that the recording did not “tip[] the scales” against Grayson. *English*, 785 F.3d at 1057.

B. Grayson also raises challenges to the jury instructions. Nothing in the Supreme Court’s order, however, alters our analysis of Grayson’s other disagreements with our decision to affirm her conviction. We therefore reinstate the portions of our prior opinion rejecting Grayson’s other challenges. *See Grayson*, 2025 WL 2366262, at *6–9.

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We again affirm Grayson’s conviction.