APPENDIX

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Nos. 17-1377/1465

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JUSTIN JENKINS; QUINTIN HOWELL, Defendants-Appellants.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

BEFORE: GIBBONS, BUSH, and LARSEN, Circuit Judges.

JULIA SMITH GIBBONS, Circuit Judge.

Justin Jenkins and Quintin Howell appeal the denial of their motions to suppress evidence, which they claim was obtained through searches conducted in violation of the Fourth Amendment. Following denial of these pretrial motions, Jenkins and Howell entered conditional guilty pleas, reserving the right to appeal the district court's determinations of their motions. Because the district court correctly concluded that the evidence seized during these searches should not be suppressed, we affirm.

I.

This case involves an investigation by the Kalamazoo Valley Enforcement Team ("KVET") of a heroin-trafficking operation in and around Kalamazoo, Michigan. In October 2014, a confidential informant ("CI1") informed KVET that he had purchased heroin from a local group, led by an individual known as "Ghost." CI1 provided investigators with the number to a cell phone that he would call to arrange heroin purchases from the group (the "Ghost Phone"). He

described how this phone was rotated among the group and how "Ghost," often accompanied in the same vehicle by a man known as "Dreds," would deliver heroin after CI1 called to place an order. Based on prior arrest photos, CI1 identified "Dreds" as Maurice Streeter and "Ghost" as Quintin Howell. In connection with a prior arrest, Howell had listed his address as 3130 Dori Drive, Apartment 103, Oshtemo Township, Michigan ("Dori Drive").

A. Dori Drive

KVET then staged five controlled-buys using CI1 as the purchaser. For each operation, CI1 would place a recorded call to the Ghost Phone, speak to a member of the distribution group—generally Howell—to order heroin, and then agree to meet at a designated location to make the buy. KVET officers would then observe as CI1 met up with members of the distribution group, handed over cash, and received heroin. After each buy, officers tested and confirmed the purchased substance, and CI1 had a debriefing interview with KVET officers.

After the first controlled buy, investigators obtained a GPS phone ping search warrant for the Ghost Phone. Using this warrant, they tracked the Ghost Phone's location and discovered that it was frequently in the area of Dori Drive during the day and overnight. During one of the controlled buys in November 2014, KVET officers observed CI1 make contact with a black Chrysler, which was registered to Howell's girlfriend, Lashonda Reynolds, at Dori Drive. CI1 informed officers that Streeter was driving and that Howell was the passenger and had sold him the heroin. In early December 2014, CI1 completed a fourth controlled buy, and immediately following this buy investigators observed Howell driving the black Chrysler registered to Dori Drive past the location where CI1 had just purchased heroin. On December 11, 2014, KVET officers conducting surveillance on Dori Drive observed Howell looking out of the apartment's

second-floor window. Howell then walked outside to meet up with the individual who had sold CI1 heroin during the fourth controlled buy in front of Dori Drive.

Less than 24 hours after the fifth controlled buy, on December 16, 2014, investigators filed a warrant application for 3130 Dori Drive Apartment 103, with the affidavit citing the above-listed evidence as well as the officer's training and experience with drug trafficking. The warrant was granted, and on December 18, 2014, KVET officers executed the search of Dori Drive and discovered, among other things, 0.65 grams of heroin, a scale with heroin residue, a police scanner, firearms, ammunition, $1,933 in cash, and numerous cell phones.

KVET continued its investigation of the distribution ring, and in December 2014, a confidential informant ("CI2")[1] told investigators of a second cell phone by which he had arranged purchases of heroin from "Ghost" (now identified as Howell). This number, however, was quickly phased out, and CI2 advised police that the primary phone used by the group to arrange heroin deals was now shared between two men known as "Mike" and "Giovanni" (the "Mike/Giovanni Phone"). Investigators later identified "Giovanni" as Henry Hall and "Mike" as Justin Jenkins. Then, between February and April of 2015, KVET staged six controlled buys in which CI2 used the Mike/Giovanni Phone to arrange heroin purchases. The method for these controlled buys was the same as in the 2014 investigation.

B. Dragonfly, Edwin, and Candlewyck

During this time, investigators also began surveilling three locations believed to be connected with the distribution ring—755 Dragonfly, Apartment 265, Oshtemo Township, Michigan ("Dragonfly"); 520 Edwin, Kalamazoo, Michigan ("Edwin"); and 300 Candlewyck

[1] The warrant applications do not specify that this was the same informant as CI1, but the district court noted that "[i]t appears that the CI for the 2015 investigation was the same CI for the Fall 2014 investigation." DE 227, Order, Page ID 1301 n.6.

Drive, Apartment 1203, Kalamazoo, Michigan ("Candlewyck"). On April 7, 2015, investigators applied for search warrants for these three residences, citing as support their earlier investigation of Howell, information developed from CI2, the six controlled purchases, and officers' surveillance, as well as the officers' knowledge of and experience with drug trafficking.

Specifically, as to Dragonfly, the affidavit submitted the following: Investigators observed Howell at Dragonfly and determined that he resided there. The registered tenant of Dragonfly was Reynolds—Howell's girlfriend and mother of his child. The affidavit listed that Reynolds had rented a gold Chevy Malibu and that on April 6, 2015, officers observed Howell exit Dragonfly and enter the Chevy Malibu rental and then drive to meet CI2 for a controlled buy—which was audio and video recorded. After this controlled buy, officers observed Howell return to Dragonfly and enter the apartment. Investigators submitted the warrant affidavit for Dragonfly the next day.

In support of the Candlewyck warrant, that warrant affidavit described how on February 25, 2015, CI2 made two controlled buys of heroin from Hall, which had been arranged by calling the Mike/Giovanni Phone. For the first buy, investigators observed Hall arrive at the designated place for the drug deal in a baby blue Toyota Yaris and make the sale to CI2. After the buy, officers then observed Hall park in the area of Candlewyck and use a key to enter the secured door of building 300.[2] Shortly thereafter, KVET officers watched Hall leave Candlewyck and drive to three separate business parking lots to meet up with individuals in cars. Hall left each parking lot without entering any of the businesses. The affiant stated that based on his experience, these brief interchanges were indicative of drug sales. Later that day, CI2 arranged a second controlled buy of heroin by calling the Mike/Giovanni Phone. Investigators then observed CI2 purchase heroin

[2] The affidavit indicates that apartment 1203 is located inside of building 300. A key, however, was required to enter building 300. The affidavit cited examples of Hall entering building 300 using a key, a suspect—likely Hall—entering apartment 1203, and a vehicle registered to apartment 1203 being observed in connection with the 2014 investigation of Howell.

from an individual in the same blue Yaris, who CI2 later confirmed was Hall. Hall, in the Yaris, then departed the buy site, picked up a passenger at a hotel, and returned to Candlewyck. On March 3, 2015, KVET investigators observed three men arrive at Candlewyck in the baby blue Toyota Yaris and enter the building. About an hour and a half later, the driver and one of the passengers, who was carrying a black duffel bag, exited the building and got into the Yaris. The Yaris then drove to Edwin, and the passenger got out of the vehicle with the duffle bag and entered that residence. After dropping off the passenger, officers observed the Yaris return to Candlewyck. The next day, a KVET investigator observed the driver of the Yaris key into Apartment 1203 at Candlewyck. On March 31, 2015, officers again observed Hall leave Candlewyck, this time driving a tan Chevy Trailblazer, to make two quick meetings with individuals in parking lots—apparent drug sales. Investigators then had CI2 make a recorded call to the Mike/Giovanni Phone to arrange a controlled buy that day. Investigators then observed CI2 make contact with the Trailblazer and purchase heroin from the driver, later confirmed by audio and video recordings to be Hall.

For the Edwin warrant, the affidavit also described the Howell investigation, the controlled buys using CI2, and KVET's surveillance of Hall and the Candlewyck apartment, including the March 3 trip between Candlewyck and Edwin. It also included details of surveillance from a February 19, 2015, controlled buy in which the suspect who had just sold heroin to the informant switched vehicles to a dark-colored Chevy Malibu registered to Karnease Langston at the Edwin address. The affidavit additionally provided that on April 1, 2015, investigators observed Hall leave Candlewyck and drive to Edwin, where he met up with Howell, driving the gold Malibu registered to Reynolds, and another individual in a black Yukon. Investigators followed the men and observed Hall receive a black plastic bag from the driver of the Yukon at a nearby parking lot.

The Yukon driver and Hall later returned to Candlewyck. The next day, investigators observed Hall again drive his Trailblazer from Candlewyck to Edwin. Hall idled in the driveway, and an individual emerged from the residence and met with Hall briefly inside the Trailblazer before going back inside Edwin. Then, on April 6, 2015, CI2 arranged a controlled buy from "Mike" (now identified as Jenkins). Just prior to the controlled-buy operation, investigators saw the Edwin-registered Malibu in the driveway of Edwin. During the controlled buy—which was captured on audio and video recording—"Mike" drove this Malibu to meet CI2 and sold him heroin and cocaine. Twenty minutes after the completion of the controlled buy, investigators again observed the Malibu Jenkins had just driven to the drug deal in the driveway of Edwin.[3]

Investigators applied for the Dragonfly, Candlewyck, and Edwin warrants on April 7, 2015—less than 24 hours after the final controlled buy—and executed the warrants on April 8. During the search of Dragonfly, investigators found 1.92 grams of heroin, multiple cell phones, and over $2,000 in cash. During the search of Candlewyck, investigators found 13.89 grams of cocaine base (crack), multiple scales with heroin residue, six cell phones, and over $9,000 in cash. And at Edwin, investigators discovered a little over 5 grams of cocaine and a digital scale.

C. Suitcase and Rental Car

Based on this information and evidence, a grand jury returned an indictment for Howell, Hall, Jenkins, and other members of the distribution ring. Howell was arrested on August 11, 2015. That same day, investigators went to the residence of Hall's girlfriend, Kailah Lee, in Benton Harbor, Michigan, in an attempt to find and arrest Hall. Lee told investigators that Hall had been there earlier that morning with another guy she knew as "P," but that she had asked Hall to leave and not to let "P" in the house. Lee gave investigators permission to enter the apartment

[3] The warrant affidavit for Candlewyck also described the April 6 controlled buy and the April 1 surveillance.

and search for Hall, whom they did not find. Lee then gave investigators permission to search the house generally. During this search, investigators observed a suitcase on the living room floor—inside of the suitcase investigators discovered 118 grams of heroin and the Michigan State ID card of Jenkins, whom Lee identified as "P." Apparently Hall and Jenkins had been inside the apartment but fled when they saw the police approaching.

On a table next to the suitcase were the keys to a Ford Fusion rental car, which was parked on the street in front of Lee's apartment. Police towed the Fusion to the station and obtained a search warrant for the car. Prior to obtaining the warrant, police determined that the Fusion was rented to Karmease Langston, Jenkins's girlfriend, at the Edwin address. Inside the Fusion, police found four stolen, loaded guns, a plate with heroin residue, and a scale. Jenkins was later located and arrested in Missouri on August 20, 2015.

Howell's and Jenkins's trials proceeded jointly. The men filed multiple pretrial motions to suppress evidence they claim was obtained in violation of the Fourth Amendment: Howell filed motions to suppress the evidence from the Dragonfly and Dori Drive searches, and Jenkins filed motions to suppress the evidence from the Dragonfly, Candlewyck, and Edwin searches, as well as the evidence seized from the suitcase in Lee's apartment and from the Ford Fusion. The district court denied all of these motions.

Following the district court's denial of their motions, Jenkins pled guilty to possession of 100 grams or more of heroin with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(i), and possession of firearms in furtherance of the drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). Howell pled guilty to conspiracy to possess 100 grams or more of heroin with intent to distribute, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(B)(i), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C.

§ 924(c)(1)(A)(i). These pleas were conditional, reserving the defendants' rights to seek review of the district court's denial of their pretrial motions and withdraw their guilty pleas should the denials be reversed on appeal. The men then filed this consolidated appeal.

II.

When reviewing denial of a motion to suppress, we review the district court's factual findings for clear error and its legal conclusion as to the existence of probable cause *de novo*. *United States v. Williams*, 544 F.3d 683, 685 (6th Cir. 2008). In doing so, we "view the evidence in the light most favorable to the government" and "give great deference to an issuing judge's finding of probable cause in a search warrant application." *Id.*; *see also United States v. Laughton*, 409 F.3d 744, 747 (6th Cir. 2005) ("[T]he duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." (alteration in original) (quoting *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983))). We review a district court's determination that the good-faith exception to suppression applies *de novo*. *See United States v. Frazier*, 423 F.3d 526, 533 (6th Cir. 2005).

A.

Jenkins and Howell first claim that the district court erred in denying their motions to suppress evidence seized during KVET's searches of the four residences in this case. Howell challenges the district court's denial of his motion to suppress the evidence seized from Dori Drive, Jenkins challenges the district court's denial of his motion to suppress the evidence seized from Edwin and Candlewyck, and both men challenge the district court's denial of their motions to suppress the evidence seized from Dragonfly. The district court concluded that the Dori Drive and Dragonfly search warrants were supported by probable cause and concluded, without determining whether probable cause existed, that the good-faith exception to suppression applied to the

warrants issued for Edwin and Candlewyck. We agree and therefore conclude that the district court correctly denied the defendants' motions to suppress these warrants.

1.

The Fourth Amendment requires that there be probable cause for a search warrant to issue. U.S. Const. amend. IV; *see Williams*, 544 F.3d at 686. "An issuing judge may find probable cause to issue a search warrant when 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Williams*, 544 F.3d at 686 (quoting *Laughton*, 409 F.3d at 747); *see also Gates*, 462 U.S. at 238. This requires that the affidavit or warrant request "state a nexus between the place to be searched and the evidence sought." *Williams*, 544 F.3d at 686 (quoting *United States v. Bethal*, 245 F. App'x 460, 464 (6th Cir. 2007)); *see also United States v. Van Shutters*, 163 F.3d 331, 337 (6th Cir. 1998) (requiring a "nexus between the premises and the criminal activity")). This belief that the items sought will be found at the location to be searched may "be supported by less than prima facie proof but [requires] more than mere suspicion." *Williams*, 544 F.3d at 686 (quoting *Bethal*, 245 F. App'x at 464); *see also United States v. Johnson*, 351 F.3d 254, 258 (6th Cir. 2003) ("Probable cause is defined as reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion." (quoting *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990))).

Although we have stated that "an issuing judge may infer that drug traffickers use their homes to store drugs and otherwise further their drug trafficking," *Williams*, 544 F.3d at 687, our cases have clarified that a "defendant's status as a drug dealer, standing alone," will not "give[] rise to a fair probability that drugs will be found in his home," *Frazier*, 423 F.3d at 533. Therefore, to meet the probable cause standard, an affidavit must include some facts connecting the residence to drug-dealing activity beyond just the defendant's status as a drug dealer. *United States v. Brown*,

828 F.3d 375, 382–84 (6th Cir. 2016) ("[O]ur cases teach, as a general matter, that if the affidavit fails to include facts that directly connect the residence with the suspected drug dealing activity, or the evidence of this connection is unreliable, it cannot be inferred that drugs will be found in the defendant's home—even if the defendant is a known drug dealer."); *cf. United States v. Raglin*, 663 F. App'x 409, 412 (6th Cir. 2016), *cert. denied*, 138 S. Ct. 354 (2017) (mem.). Here, the warrant affidavits for Dori Drive and Dragonfly supplied such facts.

Howell argues that the government did not show the required nexus between criminal activity and the Dori Drive residence to establish a fair probability that contraband would be found there, as the affidavit established only that he lived at Dori Drive and did not draw any direct connection between it and drug-dealing activity. This is not the case. The affidavit did establish that Howell lived at Dori Drive, based on his own report related to a prior arrest and investigators' surveillance during 2014, and that Howell was a known drug dealer, based on CI1's statements, investigators' surveillance, and several controlled buys in which CI1 bought heroin directly from Howell. But more than this, the affidavit presented reliable evidence directly linking Dori Drive to the ongoing drug-dealing operation.

As noted by the district court, the affidavit linked a key instrumentality of the crime—the Ghost Phone—to the Dori Drive address. The affidavit stated that the GPS data from the Ghost Phone showed Dori Drive as a "consistent address[] frequented during the day and overnight" by users of the phone. DE 162-1, Dori Aff. & Warrant, Page ID 837. The Ghost Phone was used to arrange all five 2014 controlled buys, including the final buy that occurred less than 24 hours before the warrant application for Dori Drive was filed. Howell points to *United States v. Helton* to argue that the GPS evidence did not establish a nexus, but his reliance is misplaced. In *Helton*, we concluded that an allegation that a defendant had called a known drug dealer across several

months, averaging three phone calls a month, did not provide probable cause to search the *defendant's* home. 314 F.3d 812, 821 (6th Cir. 2003). Here, instead, investigators identified and tracked a phone consistently used to arrange drug sales by the *dealers* to Dori Drive, making the inference that drugs would be stored in the home much stronger.

In addition, the Dori Drive warrant affidavit linked a car repeatedly used in the drug-dealing operation to Dori Drive. During the third controlled buy, Howell sold CI1 heroin from a black Chrysler registered to the Dori Drive address, and Howell was spotted driving this Chrysler immediately after the fourth controlled buy. The affidavit also cited investigators' surveillance of Dori Drive—noting that Howell was observed meeting with the individual who had sold CI1 heroin during the fourth controlled buy in front of Dori Drive just a few days prior to the warrant application. Taken together with Howell's status as a known drug dealer, this evidence satisfies the probable cause standard. *United States v. Gunter*, 266 F. App'x 415, 419 (6th Cir. 2008) ("[A] nexus exists between a known drug dealer's criminal activity and the dealer's residence when some reliable evidence exists connecting the criminal activity with the residence."); *see also Brown*, 828 F.3d at 382.

Howell and Jenkins[4] also challenge the Dragonfly search on nexus grounds, claiming an insufficient connection between drug-dealing activity and that residence. The Dragonfly affidavit, however, presented particularly strong evidence establishing probable cause. That affidavit outlined Howell's involvement in the ongoing heroin trafficking operation, recounted facts from

[4] As noted by the district court, Jenkins has not presented evidence that he had a privacy interest in, and therefore standing to contest the search of, Dragonfly. *See Rakas v. Illinois*, 439 U.S. 128, 134 (1978). However, "[s]tanding to challenge a search or seizure is a matter of substantive Fourth Amendment law rather than of Article III jurisdiction . . . meaning that the government can waive the standing defense by not asserting it." *United States v. Huggins*, 299 F.3d 1039, 1050 n.15 (9th Cir. 2002), *quoted in United States v. Dyer*, 580 F.3d 386, 390 (6th Cir. 2009); *see Byrd v. United States*, 138 S. Ct. 1518, 1530 (2018) ("Because Fourth Amendment standing is subsumed under substantive Fourth Amendment doctrine, it is not a jurisdictional question."). The government did not raise the issue of Jenkins's standing to contest the residence searches in the district court and has not raised it on appeal; we therefore do not address it here.

KVET's 2014 investigation and controlled-buy operations, and provided evidence that Howell resided at Dragonfly, where his girlfriend was the registered tenant. It also linked specific drug-dealing activity to Dragonfly: it describes how officers observed Howell exit Dragonfly, drive the gold Malibu from Dragonfly to the controlled buy on April 6, 2015, sell heroin to CI2, drive back to Dragonfly, and then reenter Dragonfly. Investigators applied for the Dragonfly warrant less than 24 hours after this sale.

Howell and Jenkins point to the fact that the affidavit does not allege that anyone ever purchased drugs directly from the Dragonfly residence or observed drugs inside of that residence to argue there was not probable cause here. But such a level of involvement is not required for a finding of probable cause. *See Gunter*, 266 F. App'x at 419 (officer observing known drug dealer "visit[] his residence right before he traveled to the site of a drug sale" provided "reliable evidence" establishing nexus). Drug dealers cannot immunize themselves from search of a residence used to store their supply simply by ensuring that all drug deals take place in parking lots. Indeed, in hypothesizing what *would* constitute a sufficient nexus between a residence and drug activity, we postulated in *Brown* that "[a] more direct connection . . . , such as surveillance indicating that [a defendant] had used the car [registered to his home] to transport heroin from his home to [a co-conspirator's] on the day in question" would have be sufficient to meet the nexus requirement. 828 F.3d at 383. Here, the affidavit stated that investigators observed Howell leave Dragonfly in a car registered to Reynolds—the registered tenant of Dragonfly—sell drugs, and then immediately return to Dragonfly. Taken together with the inference "that drug traffickers use their homes to store drugs and otherwise further their drug trafficking," *Williams*, 544 F.3d at 687, and the additional specific facts articulated in the affidavit, there was probable cause to support issuance of the Dragonfly warrant.

2.

Jenkins next argues that the district court erred in denying his motions to suppress the evidence seized during the Candlewyck and Edwin searches under application of the good-faith exception to suppression. We conclude that the good-faith exception applies.

"When evidence is obtained in violation of the Fourth Amendment, the judicially developed exclusionary rule usually precludes its use in a criminal proceeding against the victim of the illegal search and seizure." *United States v. Carpenter*, 360 F.3d 591, 595 (6th Cir. 2004) (en banc) (quoting *Illinois v. Krull*, 480 U.S. 340, 347 (1987)). There is, however, "an exception to the exclusionary rule where 'the officer conducting the search acted in objectively reasonable reliance on a warrant issued by a detached and neutral magistrate that subsequently is determined to be invalid.'" *United States v. Watson*, 498 F.3d 429, 431 (6th Cir. 2007) (quoting *Massachusetts v. Sheppard*, 468 U.S. 981, 987–88 (1984)); *see also United States v. Leon*, 468 U.S. 897, 922–23 (1984). The good-faith exception, however, will not apply where "the affidavit is 'so lacking in [indicia of] probable cause as to render official belief in its existence entirely unreasonable'" or "where the officer's reliance on the warrant was neither in good faith nor objectively reasonable."[5] *Frazier*, 423 F.3d at 533 (quoting *Leon*, 468 U.S. at 923.)

Jenkins contends that the good-faith exception should not apply to the Candlewyck and Edwin searches, as the warrants were supported only by "bare bones" affidavits, making law enforcement's reliance on the warrants unreasonable. He similarly argues that the affidavits clearly lacked indicia of probable cause because they failed to establish the required nexus between criminal wrongdoing and the place to be searched. Jenkins's arguments that the affidavits were

[5] The good-faith exception will also not apply when "the supporting affidavit contained knowing or reckless falsity" or "the issuing magistrate wholly abandoned his or her judicial role," neither of which is alleged here. *Frazier*, 423 F.3d at 533.

"bare bones" and that they "clearly lacked indicia of probable cause" both point to the purported lack of nexus between the residences and the drug-dealing activity, making the analysis for each claim essentially the same and equally uncompelling.

In determining whether an affidavit "is so bare bones as to preclude application of the good-faith exception," we look to whether the affidavit includes "particularized facts that indicate veracity, reliability, and basis of knowledge and that go beyond bare conclusions and suppositions." *United States v. Rose*, 714 F.3d 362, 367 (6th Cir. 2013); *see also United States v. White*, 874 F.3d 490, 496 (6th Cir. 2017). This determination, however, "is a less demanding inquiry than the one involved in determining whether an affidavit provides a substantial basis for the magistrate's conclusion of probable cause." *Rose*, 714 F.3d at 367; *see also Carpenter*, 360 F.3d at 595–96. Like with probable cause, the affidavit "must draw some plausible connection" between the alleged drug-dealing activity and the residence to meet the good-faith standard. *Brown*, 828 F.3d at 385–86. But we have found that the good-faith exception will apply when "the affidavit contained a minimally sufficient nexus between the illegal activity and the place to be searched . . . , even if the information provided was not enough to establish probable cause." *Carpenter*, 360 F.3d at 596; *see also Frazier*, 423 F.3d at 537; *Van Shutters*, 163 F.3d at 338.

The warrant affidavits for Candlewyck and Edwin certainly articulate this "minimally sufficient nexus"—far from being "totally lacking in facts," both affidavits included details of drug-dealing activity related to each residence. *Carpenter*, 360 F.3d at 596. As outlined, among other factual allegations, the Candlewyck affidavit identified Hall as a member of the drug-distribution organization. It detailed how Hall sold heroin to CI2 in two controlled buys while driving the Toyota Yaris and how Hall drove this Yaris to Candlewyck and entered the secured

building containing apartment 1203 after both sales. The affidavit also stated that investigators observed Hall leave Candlewyck in the Yaris and drive to several parking lots where he met up with individuals in cars in a manner consistent with drug sales. And during another controlled buy a week before the Candlewyck warrant was issued, CI2 again bought heroin from Hall, who was on that occasion driving a Trailblazer that officers had observed him in when he departed Candlewyck earlier that day. Further, although the district court found that "neither affidavit firmly shows that a conspirator resided at [Candlewyck or Edwin]," Hall's repeated use of a key to gain entry to Candlewyck, and investigators' repeated observations of Hall at Candlewyck, strongly link Hall to that residence, providing additional support for a nexus between Candlewyck and drug-dealing activity. DE 227, Order, Page ID 1322; *see Williams*, 544 F.3d at 687.

Further, both the Candlewyck and Edwin affidavits describe how on April 1, 2015, investigators observed Hall drive to Edwin from Candlewyck to meet up with Howell and another individual in a black Yukon and then, the men reconvened at a parking lot, where Hall received a small black plastic bag from the Yukon driver. The Edwin warrant affidavit also included information about the distribution-ring players, the controlled buys, and surveillance of Edwin, drawing connections between that residence and drug-dealing activity. Although that affidavit did not specifically allege that Jenkins lived at Edwin, it did state that one of the subjects of the conspiracy "known as 'Mike'" (now identified as Jenkins), "utilizes 520 Edwin," and included repeated observations of "Mike" at Edwin. DE 170-1, Edwin Aff. & Warrant, Page ID 917. And, making the nexus to Edwin particularly strong, the affidavit described the April 6, 2015, controlled buy from "Mike," in which Jenkins drove the Edwin-registered Malibu, which had been surveilled at Edwin "just prior to the controlled-buy operation," to the drug deal. *Id.* at 922. The Malibu was

then "observed back in the driveway of 520 Edwin" 20 minutes after this sale. *Id.* The warrant affidavit and application were submitted the next day, on April 7, 2015.

Jenkins contends that his case is similar to *Laughton*, where we found the good-faith exception inapplicable, but he is incorrect. The warrant affidavit in question in *Laughton* provided only that an informant had purchased controlled substances and had observed controlled substances at the defendant's residence, but it did "not even say explicitly that the confidential informant had purchased the narcotics from the suspect" and did "not indicate where that residence was or when these observations were made." *Laughton*, 409 F.3d at 751; *see also Rose*, 714 F.3d at 368 (noting that in *Laughton* there was "no 'modicum of evidence, however slight, to connect the criminal activity described in the affidavit to the place to be searched'" (quoting *Laughton*, 409 F.3d at 749)). Therefore, the warrant affidavit in *Laughton* provided a much more tenuous connection between the residence and the criminal activity than the Candlewyck and Edwin affidavits here.

Indeed, we have found the good-faith exception applicable to warrants supplying a much thinner connection between criminal activity and a place to be searched than the Candlewyck and Edwin affidavits. For example, in *Carpenter*, we held that the good-faith exception applied to a warrant where the affidavit stated only that aerial surveillance showed a "road connecting" a marijuana field to a home that was "near." 360 F.3d at 593. We held that this provided a "minimally sufficient nexus between the illegal activity and the place to be searched," even though it contained no details about the individuals who used the path and no allegation of illegal activity directly connected to the home. *Id.* at 596. The information provided in the Candlewyck and Edwin affidavits provides a stronger nexus than in *Carpenter*—each of these affidavits connected the residences to ongoing drug-dealing activity and identified suspects in the distribution group.

See United States v. Washington, 380 F.3d 236, 243 (6th Cir. 2004) (holding that an affidavit "clearly satisf[ied] the 'so lacking' standard necessary for *Leon*'s good-faith exception" in a similar situation where police observed a defendant complete several drug deals in a car registered to the residence for which the warrant was issued and that had been observed at the residence immediately prior to a drug sale). These warrants therefore meet the good-faith exception, and the district court correctly denied Jenkins's pretrial motion to suppress the evidence seized from Candlewyck and Edwin.

B.

Jenkins next challenges the district court's denial of his motion to suppress the heroin that police found in the suitcase that he left behind in Lee's apartment. After holding a suppression hearing, the district court concluded that Jenkins did not have standing to contest this search, as he had no legitimate expectation of privacy in the suitcase. We agree and therefore conclude that the district court correctly denied Jenkins's motion to suppress this evidence.

To have standing to contest a search, a defendant must show that "he had a legitimate expectation of privacy in the area searched or items seized." *United States v. Mathis*, 738 F.3d 719, 729 (6th Cir. 2013); *see Rakas v. Illinois*, 439 U.S. 128, 134 (1978). This legitimate expectation of privacy exists only if "the defendant exhibited an actual subjective expectation of privacy" and "the defendant's subjective expectation of privacy is 'one that society is prepared to recognize as reasonable.'" *United States v. Gillis*, 358 F.3d 386, 391 (6th Cir. 2004) (quoting *United States v. Knox*, 839 F.2d 285, 293 (6th Cir. 1988)); *see also Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

The district court concluded that Jenkins did not demonstrate this required first prong, a subjective expectation of privacy in the suitcase, and, moreover, that any such expectation would

not have been objectively reasonable because "Jenkins left his unlocked suitcase in the living room of a person he did not know, who did not want him in her apartment, and who, especially, wanted no part of transporting heroin." DE 233, Findings & Concl., Page ID 1352–53. Jenkins, however, contends that this court's holding in *United States v Waller*, 426 F.3d 838 (6th Cir. 2005), supports that he maintained a legitimate expectation of privacy in a suitcase left behind at another person's residence. But in *Waller*, the defendant had asked a friend if he could store some personal belongings in the friend's apartment, to which the friend agreed. 426 F.3d at 842. After "[c]onsidering all of the relevant circumstances," including that "Waller left the bag zipped, closed, and stored in the bedroom closet of the apartment"; that the apartment's occupants "did not open his luggage because they believed it contained his personal effects"; and that Waller had "shown by his conduct that he sought to preserve the contents of his luggage bag as private," we concluded that Waller had demonstrated a subjective expectation of privacy in the bag and that this expectation was reasonable. *Id.* at 844.

Jenkins's situation is inapposite to Waller's. Considering all of the relevant circumstances, Jenkins demonstrated no subjective expectation of privacy in the suitcase because "by his conduct," he did not seek "to preserve [it] as private." *Mathis*, 738 F.3d at 729 (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)); *see Gillis*, 358 F.3d at 391. Jenkins was aware that Lee had not agreed to store or safekeep his suitcase for him—he had never even met Lee before. Lee had not invited Jenkins inside her apartment and had specifically instructed Hall not to let "P" inside. And Jenkins's treatment of the suitcase showed no identifiable precautions—it was not locked, and he left it lying in the main living area of Lee's apartment. *See Gillis*, 358 F.3d at 391–92 (no reasonable expectation of privacy when a car that was treated like a "storage shed" was unlocked,

the windshield and several side windows were missing, and the defendant had taken no reasonable precautions to keep the storage private).

We have noted that "[k]ey to [showing a subjective expectation of privacy] is that the defendant showed, not merely by his statements during litigation, but by his conduct, that he sought to preserve something as private." *Mathis*, 738 F.3d at 730. Jenkins cannot make this showing here. And even if he could, society would not be prepared to recognize as reasonable an uninvited guest's expectation of privacy in unlocked luggage left behind in the middle of a stranger's home. *See Gillis*, 358 F.3d at 391. Indeed, it is hard to imagine that upon discovering such a suitcase, the apartment's occupant *would not* examine its contents. *Cf. Waller*, 426 F.3d at 844 (factor showing defendant's subjective expectation of privacy was that the apartment's occupants "did not open his luggage because they believed it contained his personal effects"). The district court therefore correctly concluded that Jenkins has not shown a legitimate expectation of privacy in the suitcase and does not have standing to challenge this search.

C.

Jenkins next challenges the district court's denial of his motion to suppress the evidence obtained from the search of the Ford Fusion. After holding a suppression hearing, the district court concluded that Jenkins did not have standing to contest the search because "Jenkins presented no evidence to establish his standing with regard to the Fusion" and "the only evidence in the record shows that Kar[m]ease Langston rented the Fusion."[6] DE 233, Findings & Concl., Page ID 1356.

A defendant has the "burden of establishing his standing to assert a Fourth Amendment violation." *United States v. Smith*, 263 F.3d 571, 582 (6th Cir. 2001). Here, Jenkins presented no evidence supporting any reasonable expectation of privacy in the Fusion—he did not testify at the

[6] The district court mistakenly referred to Karmease Langston as Karnease in its opinion denying the motions to suppress the evidence found in the suitcase and rental car.

suppression hearing, and he presented no record evidence indicating that he had the renter's permission to use the Fusion.[7] Jenkins's failure to present any evidence indicating an expectation of privacy in the Fusion means that he has not met his baseline burden to show standing to contest the search.[8] *See United States v. Pino*, 855 F.2d 357, 360–61 (6th Cir. 1988), *as amended*, 866 F.2d 147 (6th Cir. 1989). The district court therefore correctly denied this suppression motion.[9]

III.

We affirm the district court's denial of the motions to suppress.

[7] At oral argument, Jenkins's counsel "concede[d] that no evidence was presented at the hearing regarding [Jenkins's] particular standing" for the search of the Fusion. 17-1377 Oral Arg. Rec. at 27:56–28:07.

[8] The Supreme Court's recent decision in *Byrd v. United States*, which held that "as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver," does not affect this conclusion. *Byrd*, 138 S. Ct. at 1524. The defendant in *Byrd* testified at the suppression hearing that his girlfriend, the registered renter of the car, had given him permission to drive the rental car and that he had exclusive control over the vehicle from the time she gave him the keys. Petition for Writ of Cert., *Byrd v. United States* (No. 16-1371), at 7–8. Jenkins presented no such evidence that he was in lawful possession and control of the rental car.

[9] The district court further held that "[e]ven if Jenkins had standing, his motion fails on the merits." DE 233, Findings & Concl., Page ID 1357–58. Because we hold Jenkins lacks standing, we do not address this alternative holding.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:15-CR-120

HON. GORDON J. QUIST

QUINTIN HOWELL, a/k/a 'Ghost," a/k/a "Q," MAURICE STREETER, a/k/a "Dreds,"and JUSTIN JENKINS, a/k/a "Peanut," a/k/ "Mike,"

Defendants.
/

OPINION REGARDING DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE OBTAINED FROM SEARCHES

Defendants, Quintin Howell, Maurice Streeter, and Justin Jenkins, have been charged in a first superseding indictment containing nine counts alleging violations of drug and firearm laws.[1] Howell, Streeter, and Jenkins filed motions to suppress evidence obtained from various locations in December 2014 and April 2015. In particular, Howell moves to suppress evidence obtained from searches of 3130 Dori Drive (Dori Drive), Apartment 103, Oshtemo Township, Michigan on December 18, 2014, and 755 Dragonfly (Dragonfly), Apartment 265, Oshtemo Township, Michigan, on April 8, 2015. Streeter moves to suppress evidence obtained from a search of 4309 Lakesedge,

[1]Count 1 charges all Defendants with conspiracy to distribute heroin and cocaine base from in or about 2013 through and including August 21, 2015. Counts 2 through 4 charge Howell and Streeter with possession with intent to distribute heroin, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C); felon in possession of a firearm, in violation of 18 U.S.C. § 2 and 18 U.S.C. §§ 921(a), 922(g)(1), and 924(a)(2); and possession of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. § 924(c)(1)(A)(I). Count 5 charges Howell and Jenkins with possession with intent to distribute heroin in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Finally, Counts 6 through 9 charge Jenkins with possession with intent to distribute cocaine base and cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); possession with intent to distribute heroin, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(I), and 841(b)(1)(C); felon in possession of a firearm, in violation of 18 U.S.C. § 2 and 18 U.S.C. §§ 921(a), 922(g)(1), and 924(a)(2); and possession of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. § 924(c)(1)(A)(I). The superseding indictment also contains various criminal forfeiture allegations.

Apartment C, Kalamazoo, Michigan (Lakesedge) on December 18, 2014. Finally, Jenkins moves to suppress evidence obtained from the search of Dragonfly and searches of 300 Candlewyck Drive, Apartment 1203, Kalamazoo, Michigan (Candlewyck) and 520 Edwin (Edwin), Kalamazoo, Michigan, on April 8, 2015.

The Court heard oral argument on the motions on August 10, 2016. For the reasons explained below, the Court will deny the motions as to all of the searches because the search warrants were supported by probable cause and/or the *Leon* good faith exception applies. In addition, the Court will deny Howell's and Streeter's motions for a *Franks* hearing.

I. BACKGROUND

A. Fall 2014 Heroin Investigation[2]

In the fall of 2014, investigators from the Kalamazoo Valley Enforcement Team (KVET), the Drug Enforcement Administration, and the Federal Bureau of Investigation conducted an investigation of drug trafficking occurring in Kalamazoo and Benton Harbor, Michigan. In late October, investigators began working with a confidential informant (CI) who said that he had purchased heroin from a group of individuals and had arranged the purchases by calling cell phone number (269) 348-1824 (Ghost Phone). The CI said that an individual known as "Ghost" was the leader and another individual known as "Dreds" was also involved. The CI also said that "Dreds" and "Ghost" often traveled together in the same vehicle to the drug transactions.

At some point, investigators showed the CI a prior arrest photograph of Howell, who was also known as "Ghost," and the CI identified Howell as "Ghost." In connection with a prior arrest, Howell had listed his address as 3130 Dori Drive, Apartment 103, Oshtemo Township, Michigan. Investigators also showed the CI a prior arrest photograph of Streeter; the CI identified Streeter as the person he knew as "Dreds."

[2]The facts pertaining to the fall 2014 investigation are taken from the affidavit of Officer Chris Reiser in support of the warrant for Dori Drive.

1. Five Controlled Buys

Between October 23, 2014 through approximately December 15, 2014, the CI set up five separate controlled purchases of heroin. The routine for each purchase was similar. After investigators searched the CI and the CI's vehicle for contraband, they provided the CI with registered "buy money." The CI then placed a recorded call to the Ghost Phone and was instructed, usually by Howell, where to go to buy the heroin. Investigators observed the CI during the entire transaction and made video and audio recordings of at least some of the purchases. Following the transaction, investigators met with the CI and obtained the suspected drugs. The investigators searched the CI again for the presence of contraband. The substance was obtained from the CI and field tested, and in each instance the substance tested positive for heroin.

The details of each controlled purchase are as follows[3]:

- October 23, 2014. After placing a recorded call to the Ghost Phone, the CI was advised to meet at a location in Kalamazoo. The CI made contact with two black males in a black BMW who were identified as "Dreds and Ghost" (Streeter and Howell). The CI said that "Dreds" was the driver and delivered the heroin and that Ghost was the passenger.

- October 30, 2014. After placing a recorded call to the Ghost Phone, the CI was advised to meet at a location in Kalamazoo. KVET officers observed the CI make contact with a maroon Jeep Cherokee. The driver, identified as "Dreds," told the CI to get into the Jeep, where "Ghost" was sitting in the passenger seat with a plastic bag filled with separately packaged bindles of heroin. The CI paid the money to "Ghost," who gave the CI the heroin and told him to get out of the car. On debriefing, the CI confirmed that ""Ghost," a/k/a Howell, was the individual who sold the heroin to the CI.

- November 17, 2014. The CI placed a recorded call to the Ghost Phone and was told to go to a location in Kalamazoo to purchase heroin. KVET officers observed the CI make contact with a black Chrysler 300, Michigan license plate DFD 9251. Ths Chrysler was registered to Lashonda Reynolds of 3130 Dori Drive, Apartment 103, who was Howell's girlfriend. KVET officers identified "Dreds," a/k/a Streeter, as the driver. The CI told investigators that "Ghost" was the passenger and was the individual who sold the CI the heroin.

[3]Audio/Visual recordings were made for at least the October 23, October 30, and November 17 controlled purchases.

- Early December 2014. The CI placed a recorded call to the Ghost phone, and was told by Howell to call another cell phone number. The CI called that number and was instructed to drive to the west side of Kalamazoo to purchase heroin. The CI drove to the Best Western Hotel parking lot, and within several minutes an unknown vehicle pulled into the parking lot driven by an unknown black male, later identified as Kyle Lewis (a co-Defendant who has pled guilty and been sentenced by this Court). The CI made contact with the unknown male, who sold the CI heroin from the drivers seat. After the deal was complete, investigators observed Howell drive past the sale location in the black Chrysler 300 registered to Lashonda Reynolds.

- Mid December 2014. In the final buy, the CI placed a recorded call to the Ghost phone. The individual the CI spoke to in the previous transaction told the CI to go to the Best Western parking lot. After arriving at the Best Western parking lot, the CI placed another call and was told to go to the Holiday Inn parking lot. A black 2014 Toyota with Colorado License Plate 912XBO arrived in the parking lot, where KVET investigators observed the informant purchase heroin from the driver's window of the Toyota.

Following the first controlled purchase in October, KVET investigators obtained a GPS phone ping search warrant on the Ghost Phone number for the purpose of obtaining call location data. The surveillance conducted pursuant to that warrant showed that the Ghost Phone was frequently in the area of both Dori Drive and Lakesedge during the day and overnight.

2. Other Surveillance

In addition to observing the controlled purchases, KVET officers conducted surveillance of Dori Drive and Lakesedge. On December 11, 2014, KVET investigators saw Howell looking out of the second story window of Dori Drive. Howell later exited the building after a red Nissan pulled into the parking lot. The driver, a black male, recognized as the seller of the heroin in the fourth purchase, exited his vehicle and met with Howell. This driver returned to the red Nissan and followed Howell as Howell walked to an adjacent parking lot. The two men then entered a blue Buick with a Minnesota license plate, 628 NJR, and drove away.

In early December 2014, a KVET investigator observed the maroon Jeep Cherokee, license plate ABN672, that was involved in the October 30, 2014 controlled purchase, parked in front of Lakesedge. The vehicle was registered to Demaurious Lamar Streeter of 392 Thurgood Ave.,

Benton Harbor, Michigan. Around the same time in December, a KVET investigator observed the Ghost Phone ping in the area of Lakesedge. While pulling into the apartment complex, the investigator observed the blue Buick previously driven by Howell heading toward the back of the complex with three black males inside. The unknown black male (Lewis) seen previously in the Red Nissan was driving; Howell was the front seat passenger; and Streeter was in the back seat. The investigator observed the blue Buick travel to the Cedar Trails Apartment Complex, where it engaged in a suspected drug deal. The blue Buick then returned to Lakesedge, where Streeter and a small child exited the vehicle and entered the apartment.

3. December 18, 2014 Search Warrants

On December 18, 2014, investigators executed search warrants at Dori Drive and Lakesedge, as well as three other locations. KVET Officer Chris Reiser prepared and submitted the supporting affidavits, which detailed, among other things: (1) the controlled purchases; (2) cellular location data for the Ghost Phone; and (3) surveillance conducted during the investigation.[4] As a result of the search of Dori Drive, officers discovered 0.65 grams of heroin, a scale with heroin residue, a police scanner, firearms, ammunition, $1,933 in cash, numerous cell phones, and hotel keys. During the search of Lakesedge, officers discovered 13.88 grams of heroin, firearms, and ammunition.

B. The 2015 Investigation[5]

In December 2014, a confidential informant[6] (CI) told KVET investigators about a second cell phone, (469) 404-9440 (Ghost Phone 2), through which the CI could purchase heroin from "Ghost"/Howell. The CI also said that, after making several purchases from Ghost, a person known

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[4] Defendants have not challenged the warrant for a stash house, located at 6038 Eagle Court, Portage, Michigan, where investigators found 34.35 grams of heroin, or Room 416 of the Candlewood Suites—a hotel room where investigators discovered a woman flushing powder down the toilet at Lewis's instruction after he fled.

[5] The facts pertaining to the 2015 investigation are taken from the affidavits of Officer Reiser in support of the warrant applications for Dragonfly, Candlewyck, and Edwin.

[6] It appears that the CI for the 2015 investigation was the same CI for the Fall 2014 investigation.

as "Giovanni" started answering the Ghost Phone and delivering heroin. Investigators later identified Giovanni as Henry Hall, a co-Defendant who has since pled guilty and was sentenced by this Court. The informant also said that he could purchase heroin indirectly from an individual known as "Mike," who investigators later identified as Jenkins. Later, the CI told investigators that he received a text on February 23, 2015 providing a new phone number for heroin purchases, (702) 271-6908, and that the Ghost Phone 2 number had been phased out. The CI said that the new phone number was shared by "Mike"/"Giovanni" (Jenkins and Hall). During the 2015 investigation, KVET investigators conducted six controlled purchases, using the same procedures used for the 2014 controlled purchases, through the CI and conducted surveillance at three locations—Dragonfly, Candlewyck, and Edwin.

1. Dragonfly

KVET investigators determined that Howell was living at 755 Dragonfly, Apartment 265, and that Lashonda Reynolds, Howell's girlfriend and the registered owner of the black Chrysler 300 used in at least one of the 2014 controlled purchases, was the listed tenant for 755 Dragonfly, Apartment 265. On April 1 through the morning of April 2, 2015, investigators observed a gold Chevrolet Malibu parked outside of Dragonfly. Reynolds had leased the gold Malibu, bearing Ohio license plate GIF4906, from Hertz. On the morning of April 2, 2015, investigators observed Howell exit Dragonfly, drive the gold Malibu to Benton Harbor, and return to Dragonfly.

On April 6, 2015, the CI told a KVET investigator that Howell had called him within the last few days to say that Hall would be out of town for a while and the CI should contact Howell to purchase heroin. That same day, the CI arranged a controlled purchase from Howell by placing a recorded call to Howell. Prior to the purchase, an investigator observed Howell leave Dragonfly and enter the gold Malibu. Howell subsequently arrived at the Dover Hills apartment complex and sold heroin to the CI. After the sale, investigators observed Howell return to Dragonfly, exit the Malibu, and enter the apartment.

2. Candlewyck/Edwin

On February 19, 2015, the CI made a controlled buy of heroin. Prior to the purchase, the CI placed a call to the Ghost Phone 2 cell number. Pursuant to instructions, the informant went to an apartment complex and made contact with a black male in a gold Chevrolet Malibu. Following the purchase, the gold Malibu was observed going to a nearby gas station, where the driver was seen switching to a black Chevrolet Malibu bearing Michigan license plate 7LFN85. The black Malibu was registered to Karmease Langston of 520 Edwin.

On February 25, 2015, the CI made two controlled purchases of heroin from Hall. For the first purchase, the CI called the (702) number and was instructed to go to an apartment complex parking lot. After the CI parked at the apartment complex, a baby blue Toyota Yaris bearing Missouri license plate PJ7U4S appeared, and investigators saw the CI make contact with the driver of the Yaris. KVET investigators confirmed that Hall was the driver. Following the sale, officers saw Hall park in the area of 300 Candlewyck and use a key to enter the building. Hall left Candlewyck a short time later and stopped in parking lots of three businesses, where he made brief contacts with individuals in other vehicles in a manner indicative of drug sales. Hall then drove to another apartment complex where he made contact with two additional vehicles. Later that day, the CI called the same (702) phone number to set up a second purchase and was instructed to go to an apartment complex. At the apartment complex, the CI purchased heroin from the driver of the baby blue Toyota Yaris. After the sale, the driver of the Yaris picked up a passenger at the Value Place Hotel and returned to Candlewyck.

KVET investigators reviewed the tenant list for 300 Candlewyck and learned that Yaquina Walker was the listed tenant for apartment 1203. Walker's address with the Secretary of State was listed in Benton Harbor. During surveillance, KVET investigators observed Walker's 2008 Chevrolet Uplander parked in the area designated for 300 Candlewyck. During the 2014

investigation, Walker's Chevrolet Uplander had been observed parked next to one of Howell's vehicles at the Value Place Hotel just prior to one of the controlled buys. The Uplander left the hotel parking lot within a couple of minutes after Howell's vehicle left.

On March 3, 2015, KVET investigators observed three black males arrive at Candlewyck in the baby blue Toyota Yaris and enter the building. About an hour and a half later, the driver and one of the passengers, who was carrying a black duffel bag, exited the building and got into the Yaris. The Yaris drove to 520 Edwin, where the passenger got out of the vehicle with the duffle bag and entered 520 Edwin. At that time, a black Yukon Denali, registered to Alexandria Lashon-Monique Parker of Benton Harbor, was parked in the driveway. After dropping off the passenger, the Yaris returned to Candlewyck. The following day, March 4, 2015, a KVET investigator observed the driver of the Yaris key into 300 Candlewyck, Apartment 1203.

On March 5, 2015, a KVET investigator observed a tan Chevy Trailblazer parked in front of Candlewyck. On March 31, 2015, Hall was observed exiting Candlewyck and driving the tan Trailblazer to two different apartment complexes, where he made brief contacts with drivers of other vehicles. While the Trailblazer was parked at the second apartment complex, KVET investigators arranged a controlled buy of heroin in that parking lot by having the CI make a recorded call to the (702) number. Investigators observed the CI make contact with the Trailblazer and purchase heroin from the driver, later confirmed to be Hall.

On April 1, 2015, KVET investigators observed Hall driving the Trailblazer from Candlewyck to Edwin, where the black Yukon Denali was parked and occupied by a black male. After Hall parked in front of Edwin, the black Yukon drove away. After the Yukon left, Howell arrived in the gold Malibu and parked next to the curb in front of Edwin. At some point, the black Yukon returned and parked in the driveway. Hall and Howell exited their vehicles and the driver of the Yukon left his vehicle. All three individuals hung around the driveway, talking and getting

into and out of the Yukon and Malibu. Eventually, all three vehicles left Edwin. Hall drove to the parking lot of Dunham's, a sporting goods store, where he met up with the black Yukon. The driver of the Yukon went into the store with a child, exited the store with two large plastic bags, and returned to the Yukon. Hall got out of the Trailblazer and walked up to the Yukon, where the driver of the Yukon handed Hall a small black plastic bag. Both vehicles then left the parking lot. Hall picked up a female, who was carrying an infant car seat, and returned to Candlewyck. A short time later, the black Yukon arrived at Candlewyck.

On April 2, 2015, KVET investigators observed Hall and the female with an infant car seat leave Candlewyck and drive away in the tan Trailblazer. Hall was watched to Edwin, where he arrived without the female. A black male exited the front door of Edwin and got into the Trailblazer. After a short time, the black male exited the Trailblazer and went back inside Edwin. Hall then left Edwin in the Trailblazer and made several brief stops around Kalamazoo. Hall drove the Trailblazer to Benton Harbor on April 4, 2015.

On April 6, 2015, after Howell contacted the CI about Hall being out of town, KVET had the CI arrange a controlled buy from "Mike" (Jenkins). The CI used the (702) number to call "Mike" and was instructed where to meet. Prior to the buy, investigators conducted surveillance on Edwin and observed the blue Malibu (previously described as black in connection with the February 19, 2015 controlled buy) parked in the driveway. Subsequently, investigators observed the Malibu arrive at the pre-arranged location to meet the CI. About twenty minutes after the sale occurred, the blue Malibu was observed back in the driveway of Edwin.

3. April 8, 2015 Search Warrants

On April 8, 2015, investigators executed search warrants on Dragonfly, Candlewyck, and Edwin. KVET Officer Reiser prepared and submitted the supporting affidavits, which detailed, among other things: (1) the 2014 heroin conspiracy investigation involving Howell; (2) the six

controlled purchases involving Ghost Phone 2 and the (702) phone number; (3) evidence from the December 2014 search warrants; and (4) the surveillance conducted by investigators. During the search of Dragonfly, investigators found 1.92 grams of heroin, three cell phones, and $1,200 in cash. During the search of Candlewyck, investigators found 13.89 grams of cocaine base, a scale with heroin residue, and over $9,000 in cash. At Edwin, investigators discovered 5.19 grams of cocaine, a digital scale, a glass bowl with suspected cocaine residue, and numerous cell phones.

II. DISCUSSION

A. Probable Cause Standard

"Probable cause is defined as 'reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion.'" *United States v. Smith*, 182 F.3d 473, 477 (6th Cir. 1999) (quoting *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990)). To establish probable cause, an affidavit in support of "a search warrant need not establish beyond a reasonable doubt that incriminating evidence will be found on the premises to be searched." *United States v. Blakeney*, 942 F.2d 1001, 1025 (6th Cir. 1991). The affidavit need not be "perfect" or "provide every specific piece of information to be upheld." *Hale v. Kart*, 396 F.3d 721, 725 (6th Cir. 2005). However, there must be a "substantial basis" for concluding that evidence of a crime will be found at the location to be searched. *See id.* (citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

> The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis" for concluding that probable cause existed.

Gates, 462 U.S. at 238, 103 S. Ct. at 2332. In other words, "[p]robable cause for the issuance of a search warrant is defined in terms of whether the affidavit sets out facts and circumstances which indicate a fair probability that evidence of a crime will be located on the premises of the proposed

search." *United States v. Finch*, 998 F.2d 349, 352 (6th Cir. 1993). Whether probable cause exists thus "depends on the totality of the circumstances." *United States v. Frazier*, 423 F.3d 526, 531 (6th Cir. 2005) (citing *Gates*, 462 U.S. at 230, 103 S. Ct. at 2328).

An affidavit must demonstrate the existence of a nexus, *i.e.*, it must provide enough facts to establish a fair probability that incriminating evidence will be found in the particular place. *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (en banc). Thus, "the affidavit must suggest 'that there is reasonable cause to believe that the specific "things" to be searched for and seized are located on the property to which entry is sought' and not merely 'that the owner of property is suspected of a crime.'" *United States v. McPhearson*, 469 F.3d 518, 524 (6th Cir. 2006) (quoting *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970, 1976–77 (1978)).

Although search warrant affidavits are presumed to be valid, a defendant may challenge a warrant's validity if he "makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and . . . the allegedly false statement is necessary to the finding of probable cause." *Franks v. Delaware*, 438 U.S. 154, 155–56, 98 S. Ct. 2674, 2676 (1978). The search warrant must be voided and the results of the search excluded only where the defendant establishes his allegations by a preponderance of the evidence and the remaining content is insufficient to establish probable cause. *Id.* at 156, 98 S. Ct. at 2676. While an omission in an affidavit may support a *Franks* hearing, the Sixth Circuit has recognized that an omission"is less likely to present a question of impermissible official conduct than one which affirmatively includes false information." *United States v. Atkin*, 107 F.3d 1213, 1217 (6th Cir. 1997) (citing *United States v. Martin*, 920 F.2d 393, 398 (6th Cir. 1990)). "This is so because an allegation of omission potentially opens officers to endless conjecture about investigative leads, fragments of information, or other matter that might, if included, have redounded to defendant's benefit." *Id.*

B. Good Faith Exception

Even when probable cause is absent, suppression of evidence obtained pursuant to a warrant is not automatically required. *See United States v. Washington*, 380 F.3d 236, 241 (6th Cir. 2004). In *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405 (1984), the Supreme Court held that "suppression of evidence obtained pursuant to a warrant [lacking probable cause] should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Id.* at 918, 104 S. Ct. at 3418. The Court observed that because the exclusionary rule is designed to deter police misconduct, application of the rule does not further its purpose "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope." *Id.* at 920, 104 S. Ct. at 3419. Pursuant to *Leon*, "only police conduct that evidences a 'deliberate, reckless, or grossly negligent' disregard for Fourth Amendment rights" will warrant application of the exclusionary rule. *United States v. Kinison*, 710 F.3d 678, 685 (6th Cir. 2013) (quoting *Davis v. United States*, 564 U.S. 229, 238, 131 S. Ct. 2419, 2427 (2011)). An affiant's lack of good faith can be shown in four instances:

> (1) where the issuing magistrate was misled by information in an affidavit that the affiant knew was false . . .; (2) where the issuing magistrate wholly abandoned his judicial role . . .' (3) where the affidavit was nothing more than a "bare bones" affidavit that did not provide the magistrate with a substantial basis for determining the existence of probable cause, or where the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where the officer's reliance on the warrant was not in good faith or objectively unreasonable, such as where the warrant is facially deficient.

United States v. Hython, 443 F.3d 480, 484 (6th Cir. 2006) (citing *Leon*, 468 U.S. at 923, 104 S. Ct. at 3421).

C. The Searches

1. Dori Drive (Howell) and Lakesedge (Streeter)

Howell moves to suppress evidence obtained from the search of Dori Drive and Streeter moves to suppress evidence obtained from the search of Lakesedge. In addition, Howell and

Streeter both request a *Franks* hearing. Because the affidavits for Dori Drive and Lakesedge contained essentially the same information, and because Howell and Streeter assert the same grounds for a *Franks* hearing, the Court will address those searches together.

As previously noted, Officer Reiser's affidavit set forth facts describing: (1) the Ghost Phone and its connection to heroin trafficking, including two of its users, "Ghost" and "Dreds"; (2) details of the five controlled purchases, including the procedures used, descriptions of the vehicles, and, in some instances registration information connecting the vehicles to Howell and Streeter; (3) cellular location ping data for the Ghost Phone, connecting it to Dori Drive and Lakesedge; (4) details of surveillance conducted on Dori Drive and Lakesedge close in time to the warrant applications; and (5) Officer Reiser's statements that, based on his training and experience, Howell, Streeter, and the other unidentified black male were working in a coordinated effort to sell and distribute heroin; that drug traffickers commonly use family members, girlfriends, and others to assist in drug trafficking by obtaining residences, vehicles, and other items in their own names; and that drug traffickers often maintain drugs and instrumentalities of drug trafficking at their residences. Although Howell focuses his arguments primarily on his motion for a *Franks* hearing, Streeter raises several arguments pertaining to the sufficiency of the affidavit.

a. CI's Credibility

Streeter first argues that the affidavit lacked any information establishing the CI's credibility. Streeter notes that until October 2014, the informant was unknown to KVET and lacked a prior track record substantiating that his statements were reliable. Streeter notes that because most of the information came from the CI and the affidavit lacked allegations providing a basis for crediting the CI's statements, the CI's statements cannot be considered as part of the probable cause determination. Streeter contends that, without the CI's statements, the affidavit fails to establish probable cause.

Streeter's argument fails because the affidavit sufficiently establishes the informant's credibility through substantial police corroboration. "[A]n affidavit that supplies little information concerning an informant's reliability may support a finding of probable cause, under the totality of the circumstances, if it includes sufficient corroborating information." *United States v. Woosley*, 361 F.3d 924, 927 (6th Cir. 2004) (citing *Gates*, 462 U.S. at 241–45, 103 S. Ct. at 2334–35). For example, "[k]nowledge of illegal drug activities, obtained by law enforcement officials through a confidential informant and independent surveillance, supports a district court's finding of probable cause to support the issuance of a warrant." *United States v. Jones*, 159 F.3d 969, 974 (6th Cir. 1998). In addition, an informant's credibility is bolstered when police officers observe behavior consistent with an informant's prediction of criminal activity. *United States v. Howard*, 632 F. App'x 795, 804 (6th Cir. 2015).

In the instant case, the CI told investigators that he could arrange purchases of heroin by calling the Ghost Phone. The CI also stated that an individual known as "Ghost," and at other times, an individual known as "Dreds," would answer the phone, and that both individuals would often travel together. Over the course of about two months, the CI set up five controlled buys—all resulting in purchases of heroin—while under constant surveillance by KVET investigators. Streeter and Howell were identified by KVET investigators and the CI as direct participants in three of the purchases. In addition, the CI identified Howell as "Ghost" and Streeter as "Dreds" based on Howell's and Streeter's prior arrest photos.

Other evidence corroborated the CI's assertions that Howell and Streeter were involved in a heroin distribution conspiracy. For example, the cell phone ping location data confirmed that the Ghost Phone was often used at Dori Drive—Howell's known address—and Lakesedge—an apartment that investigators associated with Streeter through surveillance of the maroon Jeep Cherokee, registered to Demaurious Lamar Streeter and parked in the Lakesedge parking lot, as well

as Streeter's entry of the premises. Finally, the affidavit stated that within seven days of the warrant application, Ghost Phone location data indicated that it was in the area of Lakesedge, and at or around that time Howell, Streeter and the unknown suspect (later identified as Lewis) were observed in the blue Buick conducting a suspected drug deal in an apartment complex, and that after the transaction, the Buick returned to Lakesedge and dropped Streeter and a small child off and they entered Apartment C. Based on all of this information, the CI's statements were sufficiently corroborated.

b. Staleness

Streeter next argues that the affidavit used stale information to establish probable cause. He notes that the affidavit only alleges that Streeter engaged in three transactions that occurred over three weeks in October and November at various locations throughout Kalamazoo, but the last time Streeter is identified as a seller (although the CI identified Streeter as an occupant of the vehicle in the two other transactions) was October 23, 2014—almost eight weeks before Lakesedge was searched. Streeter argues that the affidavit does not offer fresh information indicating that Streeter was continuing to sell drugs closer in time to the affidavit.

Whether evidence is stale must be determined based on the circumstances of each case. *United States v. Spikes*, 158 F.3d 913, 923 (6th Cir. 1998). Courts consider "four practical, fact-dependent considerations" in determining whether evidence is stale. *United States v. Burney*, 778 F.3d 536, 540 (6th Cir. 2015). Those considerations are:

> (1) the character of the crime (chance encounter in the night or regenerating conspiracy?), (2) the criminal (nomadic or entrenched?), (3) the thing to be seized (perishable and easily transferrable or of enduring utility to its holder?), and (4) the place to be searched (mere criminal forum or secure operational base?).

Id. at 540–41 (quoting *United States v. Frechette*, 583 F.3d 374, 378 (6th Cir. 2009)). Application of these factors in this case shows that the evidence was not stale. First, the investigation concerned an ongoing heroin conspiracy involving at least three individuals, as evidenced by the October and

November controlled purchases involving Streeter and the December controlled purchases from Lewis, in which Streeter was not a participant. Such "[e]vidence of ongoing criminal activity will generally defeat a claim of staleness." *United States v. Greene*, 250 F.3d 471, 481 (6th Cir. 2001). Moreover, Streeter's argument that the affidavit lacked fresh evidence of his participation ignores the affidavit's statement that within seven days prior to the affidavit the Ghost Phone was pinging in the Lakesedge complex and, shortly thereafter, Officer Reiser observed Howell, Streeter, and Lewis participate in a suspected drug transaction, after which Streeter and a small child returned to 4309 Lakesedge, Apartment C. Although Streeter dismisses the "suspected narcotics deal" statement as speculation, Officer Reiser had a well-founded basis to conclude that the three conspirators were selling drugs—all of the observed heroin transactions were conducted in the same manner, from cars in apartment and hotel parking lots. Second, there is no indication that Streeter was nomadic. In fact, the affidavit states that Lakesedge was one of the locations Ghost Phone users frequented during the almost two-month investigation. Third, while it is true that heroin and other controlled substances are perishable, the warrant also covered tools, equipment, records, notes, currency and firearms, which are "unlikely to be consumed or to disappear, precisely because [such] evidence . . . is not readily consumable and is of enduring utility to its holder." *Burney*, 778 F.3d at 541 (internal quotation marks omitted). Finally, the Lakesedge apartment was "a secure operational base" rather than a mere criminal forum.

c. Probable Cause

Dori Drive

There is little question that the affidavit for Dori Drive shows that Howell was engaged in criminal activity. The pertinent question, however, is whether the affidavit established the required nexus between Howell's drug trafficking and Dori Drive. As support for a nexus, the Government relies principally upon a number of Sixth Circuit cases holding that, in the case of a known drug

dealer, a magistrate may infer that evidence of drug trafficking is likely to be found in the drug dealer's house. In particular, the Sixth Circuit has recognized the "logical, and indeed legally correct . . . [view] that it is reasonable to suppose that some criminals store evidence of their crimes in their homes, even though no criminal activity or contraband is observed there." *United States v. Williams*, 544 F.3d 683, 686–87 (6th Cir. 2008) (internal quotation marks omitted). This rule has often been applied in cases of ongoing drug trafficking, where the Sixth Circuit has "held that an issuing judge may infer that drug traffickers use their homes to store drugs and otherwise further their drug trafficking." *Id.* at 687 (citing, among others, *United States v. Miggins*, 302 F.3d 384, 393–94 (6th Cir. 2002) (holding that probable cause existed because the affidavit established that the defendants were involved in drug dealing and sufficiently connected the defendants to the place to be searched)); *see also United States v. Goward*, 188 F. App'x 355, 359–60 (6th Cir. 2006) (stating that "drug trafficking, which the affiant witnessed and is further substantiated from his experience and training, establishes a sufficient nexus to support a finding of probable cause to search the place where the drug trafficker presently lives"); *United States v. Jones*, 159 F.3d 969, 975 (6th Cir. 1998) ("The recited statements supporting the search warrant and the fact that in the case of drug dealers, evidence is likely to be found where the dealers live, support a finding of probable cause to support the issuance of the warrant." (internal quotation marks, brackets, and citation omitted)). Other cases suggest that something more than drug dealer status is required to infer a nexus. For example, in *United States v. Frazier*, 423 F.3d 526 (6th Cir. 2005), the court said that *Miggins*, *Jones*, and other Sixth Circuit cases do not support "the proposition that the defendant's status as a drug dealer, standing alone, gives rise to a fair probability that drugs will be found in his home." *Id.* at 533. The court explained, however, that

> [w]here, as here, the warrant affidavit is based almost exclusively on the uncorroborated testimony of unproven confidential informants (none of whom witnessed illegal activity on the premises of the proposed search), the allegation that the defendant is a drug dealer, without more, is insufficient to tie the alleged criminal activity to the defendant's residence.

Id. The court did not indicate whether the "more" could simply be corroborated confidential informant statements or whether some direct evidence physically tying drug dealing to the premises to be searched is required. More recently, in *United States v. Brown*, __ F.3d __, 2016 WL 3584723 (6th Cir. July 31, 2016), the Sixth Circuit stated that

> our cases teach, as a general matter, that if the affidavit fails to include facts that directly connect the residence with the suspected drug dealing activity, or the evidence of this connection is unreliable, it cannot be inferred that drugs will be found in the defendants' motion—even if the defendant is a known drug dealer.

Id. at *6; *but see Williams*, 544 F.3d at 688 (stating that "we join other circuits which have held, in cases involving a variety of suspected crimes, that an issuing judge may infer that a criminal suspect keeps the instrumentalities and fruits of his crime in his residence" (internal quotation marks omitted)).

The affidavit established that Howell resided at Dori Drive, based upon Howell's own report in connection with his prior arrest and subsequent police surveillance. In addition, the affidavit presented the CI's statements, independently corroborated, that Howell was a known drug dealer. To the extent something more is required under Sixth Circuit precedent, the location data for the Ghost Phone—an instrumentality of the crime—indicated that it was regularly used at Dori Drive, thus allowing the issuing judge to directly connect Howell's drug dealing to his residence. The fact that Howell used a vehicle registered to his girlfriend at Dori Drive in one of the controlled purchases and was present nearby in the same vehicle for another controlled purchase provided additional support for a nexus. *Cf. Washington*, 380 F.3d at 243 (observing that the fact that the defendant drove to two drug deals in a vehicle registered to a person at the searched premises, along with other facts, "very well" might have been enough to support probable cause). Finally, the observed suspected drug deal within seven days of the date of the affidavit, in which Howell was a participant, indicated an ongoing narcotics conspiracy, from which the issuing judge could infer

the likelihood that evidence pertaining to drug dealing would be found at Dori Drive. *See Williams*, 544 F.3d at 687 (stating that "the warrant application demonstrated 'continuing and related illegal firearm activity' from which the issuing judge could further infer that evidence pertaining to the handguns would be found in Williams's residence"). Accordingly, based on the totality of the circumstances, the Court concludes that the warrant for Dori Drive was supported by probable cause.

Lakesedge

Whether there was probable cause to search Lakesedge is, in the Court's judgment, a closer question because Streeter's connection to Lakesedge, as laid out in the affidavit, is more tenuous than Howell's connection to Dori Drive. In contrast to Howell, the affidavit did not list Lakesedge as the address on file for Streeter in connection with his prior arrest, nor did it state that investigators had identified the lessee. In this circumstance the Court may assume a lack of probable cause and proceed to the good faith exception.[7] *See Washington*, 380 F.3d at 240 (assuming a lack of probable cause because the good faith exception clearly applied).

As already noted, when officers rely in good faith on a search warrant that is subsequently found to be defective, the exclusionary rule will not bar admission of evidence seized pursuant to the warrant unless one of four exceptions applies. *United States v. Laughton*, 409 F.3d 744, 748 (6th Cir. 2005). Streeter argues that the good faith exception does not apply because no reasonably well-trained police officer could have believed that the affidavit sufficed to establish probable cause. In particular, Streeter argues that reliance on the affidavit was unreasonable because the affidavit did not establish the CI's credibility. However, as the Court has already found, the affidavit

[7]In his reply, Streeter argues, correctly, that the Court may not consider in a probable cause determination the information about the December 14, 2014 incident in which police officers found heroin that Howell had discarded in a bathroom at a gas station. Because such information was not included in the affidavit and apparently not otherwise presented to the issuing judge, the court may not consider it in determining whether an objectively reasonable police officer would have relied on the warrant. *See United States v. Laughton*, 409 F.3d 744, 752 (6th Cir. 2005) (holding that "the good faith exception to the exclusionary rule does not permit consideration of information known to a police officer, but not included in the affidavit, in determining whether an objectively reasonable officer would have relied on the warrant").

demonstrated the informant's reliability through independent police corroboration. Specifically, with regard to Streeter, the CI identified Streeter as a participant in three of the controlled purchases and KVET investigators confirmed Streeter's role as a participant through surveillance and through the CI's identification of Streeter's arrest photograph as the person the CI knew as "Dreds." Registration information for the maroon Jeep Cherokee, an observation of Streeter entering the Lakesedge apartment, the Ghost Phone location data, and the observation of Streeter participating in a suspected drug deal with Howell and Lewis further corroborated the CI's statements, even if, as Streeter argues, investigators were only able to visually confirm Streeter's involvement in one of the controlled purchases.

As was the case with the Dori Drive affidavit, nexus is the central issue with regard to the Lakesedge affidavit. The Sixth Circuit has stated that, for purposes of the good faith exception, "[t]he conclusion that the officers' reliance on the warrant was objectively reasonable requires a less demanding showing than the substantial basis threshold required to prove the existence of probable cause." *United States v. Soto*, 794 F.3d 635, 646 (6th Cir. 2015) (internal quotation marks omitted). "Thus, it is entirely possible that an affidavit could be insufficient for probable cause but sufficient for 'good-faith' reliance." *Washington*, 380 F. 3d at 241. In the context of good faith, all that is required is facts establishing a "minimally sufficient nexus between the illegal activity and the place to be searched." *United States v. Carpenter*, 360 F.3d 591, 596 (6th Cir. 2004).

Several cases from the Sixth Circuit illustrate the parameters of the "minimal nexus" requirement for objective good faith. In *Washington*, the court observed that the facts "might very well . . . [have been] enough to establish probable cause," but the court opted to consider them under the good faith exception. *Washington*, 380 F.3d at 243. The defendant in *Washington* drove a blue Cadillac, registered to a person at 3112 Crossgate Road, to two drug transactions in which the affiant was involved. Prior to the second transaction, the defendant said that he would be delayed because

he had to pick up his car at a repair shop. *Id.* at 238–39. Shortly thereafter, officers observed the defendant leaving 3112 Crossgate Road and getting into a Chevrolet Blazer, which dropped the defendant off at a repair shop. After the defendant picked up the Cadillac, he called a participant in the transaction and instructed the participant to go to a Burger King parking lot. *Id.* at 239. The Cadillac eventually arrived at the Burger King and the defendant engaged in the drug transaction. Although the affiant was not able to identify the defendant at that time, the affiant subsequently observed the Cadillac in the driveway of 3112 Crossgate Road on two separate days. *Id.* In addition to these facts, the affidavit stated that an armed robbery had occurred at 3112 Crossgate Road two months prior, which was indicative of suspects searching for narcotics or cash. *Id.* The court concluded that these facts "clearly satisfied the 'so lacking' standard necessary for *Leon*'s good-faith exception to be applied." *Id.* at 243. In particular, the court noted that "[t]here was a visible nexus connecting Washington to the house, Washington to the Cadillac, and the Cadillac to the house." *Id.*

In *Carpenter*, the police discovered marijuana growing fields through aerial surveillance. The police also saw beaten paths from the back door of a nearby residence to the marijuana patches and two men walking from the fields toward the residence. 360 F.3d at 593. The court said that this information fell short of the required showing of nexus for probable cause because the facts were "too vague, generalized, and insubstantial." *Id* at 595. However, the court observed that "the affidavit was not completely devoid of any nexus between the residence and the marijuana that the police observed . . . [because] it noted both that the marijuana was growing 'near' the residence and that 'there is a road connecting' the residence and the marijuana plants." *Id.* at 595–96. The court concluded that "these facts . . . were not so vague as to be conclusory or meaningless." *Id.* at 596.

United States v. Schultz, 14 F.3d 1093 (6th Cir. 1994), likely represents the outer limits of what constitutes a minimally sufficient nexus, as one panel has described *Schultz* as "perhaps the

weakest link between criminal activity and the place to be searched." *Laughton*, 409 F.3d at 749. In *Schultz*, a police officer arrested a suspect for possession of drugs and the suspect told the officer the name of his supplier. Through a series of subsequent arrests, the officer learned the name of the defendant, Schultz, as the local supplier with Jamaican connections. *Schultz*, 14 F.3d at 1096. None of the individuals who supplied information to the officer had ever been used as police informants. Through investigation, the officer confirmed that phone records showed that calls were made from Jamaica to the phone number of a woman in whose car Shultz had once been issued a traffic citation, that Schultz had been parking his car at the apartment complex connected to the phone number, that Schultz had prior convictions for possession of marijuana and had been observed in Fort Myers, Florida, to where calls had been made from the phone number, and that Schultz maintained safe deposit boxes at a bank. *Id.* at 1091. The court found probable cause lacking because the affidavit failed to demonstrate "any material connection between the bank and any criminal activity" other than the officer's statement that based on his training and experience he believed that it was not uncommon for drug dealers to maintain records of drug distribution in bank safe deposit boxes. *Id.* The officer's "training and experience" was an insufficient basis to establish a nexus because the officer "did not have anything more than a guess that contraband or evidence of a crime would be found in the boxes." *Id.* at 1097–98. Nonetheless, the court held that the good faith exception applied:

> [W]e cannot say that this warrant was "so lacking[]" [in probable cause]. . . .Officer Ideker certainly had probable cause to believe that Schultz had committed a crime. Moreover, although we have held that his "training and experience" were not sufficient to establish a nexus of probable cause between that crime and the safe deposit boxes, the connection was not so remote as to trip on the "so lacking" hurdle.

Id. at 1098.

Based on the foregoing cases, the Lakesedge affidavit was not "so lacking" in probable cause because it met the minimal nexus requirement. Officer Reiser's affidavit confirms Streeter's

involvement in the heroin conspiracy, and connects the maroon Jeep Cherokee, used in the second controlled purchase, to Lakesedge. The Cherokee was observed on at least two occasions parked at Lakesedge (the last date being on the date the affidavit was prepared) and it was registered to someone named Streeter from Benton Harbor. Moreover, Streeter was observed entering the Lakesedge apartment after participating in a suspected drug deal with Howell and Lewis. Finally, the Ghost Phone location data showing its frequent use at or near Lakesedge buttressed the connection between Lakesedge and illegal activity.[8]

d. *Franks* Motions

Howell and Streeter have also filed motions for a *Franks* hearing on the Dori Drive and Lakesedge affidavits. First, they argue that Officer Reiser's own report with regard to the first controlled buy on October 23, 2014 contradicts the affidavits. Howell and Streeter note that, whereas the affidavits state that the informant said that Dreds was the driver and Ghost was the passenger, Officer Reiser's report states that the CI said that Dreds had an unknown passenger with him. (*Compare* ECF No. 143-2 at PageID.573 and ECF No. 199-1 at PageID.1178 *with* ECF No. 143-4 at PageID.593.) Second, with regard to the second controlled buy on October 30, 2014 in which Dreds is identified as the driver of the maroon Jeep Cherokee, Howell and Streeter note that Sergeant VanderEnde, who conducted surveillance, reported seeing Streeter Driving a BMW without mention of a passenger, but then contradicted himself and reported that Streeter got out of

[8]Streeter cites the Sixth Circuit's recent decision in *United States v. Brown*, __ F.3d __, 2016 WL 3584723 (6th Cir. June 27, 2016), to support his argument that the affidavit did not establish probable cause and that the good faith exception does not apply. However, *Brown* is distinguishable on its facts. In *Brown*, the court noted in its probable cause analysis that the affidavit did not state that the defendant had distributed drugs from his home, that any suspicious activity had taken place there, that police had conducted surveillance on the defendant's home, or that the recorded telephone conversations linked drug trafficking to the defendant's home. *Id.* at *5. In the instant case, officers surveilled Streeter's apartment, noted that a vehicle registered to a person named Streeter used in one of the prior transactions was parked there, had the Ghost Phone location data linking Streeter's apartment to the heroin distribution, and saw Streeter entering Lakesedge following a suspected drug transaction. Moreover, the court in *Brown* concluded that the good faith exception did not apply because the police waited 22 days after they arrested the defendant to seek a warrant to search the defendant's residence, even though they had not obtained any additional evidence of significance prior to seeking the warrant. *Id.* at *7.

a red Jeep, made contact with driver of the driver of the BMW, and then drove off in the Jeep, followed by the BMW. (ECF No. 143-5 at PageID.605–06.) Finally, Howell and Streeter note that with regard to the third purchase on November 17, 2014, the affidavits state that Streeter was driving the black Chrysler 300, but Officer Reiser's report states that Howell was the driver and sold heroin to the CI and that Streeter was the passenger. (*Compare* ECF No. 143-2 at PageID.574 and ECF No. 199-1 at PageID.1179 *with* ECF No. 143-5 at PageID.610.)

Howell and Streeter fail to make a substantial showing that false information was knowingly or recklessly included in the affidavit, as required for a *Franks* hearing. As to the first controlled buy on October 23, 2014, the police report states that the CI could not identify the passenger in the car. However, the affidavit makes clear that it was the officers who identified Howell as the passenger. Although the CI knew of "Ghost" as the supplier from the Ghost Phone, it appears that the CI did not know Howell as "Ghost" at the time of the first controlled purchase. Nonetheless, the affidavit confirms that at some point the CI confirmed from Howell's prior arrest photograph that Howell was the person he had seen with Streeter. The second basis also fails to show the inclusion of a false statement in the affidavits. The apparent contradiction in Sergeant VanderEnde's report does not exist. Streeter was first observed driving the BMW from Lakesedge to Dori Drive and later, apparently before the controlled purchase occurred, switched to driving the maroon Jeep Cherokee the conspirators used in the second controlled purchase. In fact, Sergeant VanderEnde's report makes clear that Streeter drove the Jeep to a gas station, made contact with the driver of the BMW, got back into the Jeep, and both vehicles drove away. The report indicates that the purchase occurred after the activity at the gas station. Finally, as to the difference between the affidavits and Officer Reiser's report of the November 17 sale, it appears that the affidavit mistakenly switched the driver and passenger. Reiser's report is probably correct—that Howell was the driver of the Chrysler 300 and sold the drugs and Streeter was the passenger—because the Chrysler 300 was

registered to Howell's girlfriend at the Dori Drive address. Either way, Howell and Streeter were both confirmed present during the sale.

2. Dragonfly (Howell and Jenkins)

Regarding Dragonfly, Officer Reiser's affidavit set forth: (1) facts concerning the 2014 investigation which revealed that Howell was a conspirator in the heroin conspiracy involving individuals who (a) had moved from Benton Harbor to Kalamazoo to further heroin trafficking (b) used residences primarily rented out by females and (c) frequently switched vehicles and took turns delivering the drugs; (2) facts concerning the 2014 searches and the results of those searches; (3) information pertaining to the Ghost Phone 2 and the (702) number (although no cell phone location data was obtained); (3) that Lashonda Reynolds, Howell's girlfriend and the mother of his child, was listed as the lessee for Dragonfly; (4) that a gold Chevy Malibu Reynolds was leasing had been parked outside of Dragonfly on several days, including overnight, and that Howell had driven the Malibu; (5) that Howell had called the CI and told the CI that Hall would be out of town and that the CI should call Howell to purchase heroin; and (6) that the CI made a controlled purchase from Howell within 24 hours of the affidavit and that, prior to the sale, Howell was observed exiting Dragonfly and driving away in the Malibu to the sale location, then returning to Dragonfly, exiting the Malibu, and entering the apartment.

These facts provide a substantial basis for probable cause, including support for a nexus between Howell's drug dealing and Dragonfly. The affidavit showed that Howell was still engaged in drug dealing and was still living with Reynolds—the lessee of Dragonfly. Based on the presumption discussed above and the recited facts concerning the controlled purchase, Officer Reiser had a strong basis to conclude that evidence of drug trafficking would be found inside Dragonfly.

Splitting hairs, Jenkins argues that the affidavit's statement that Howell arrived at the site of the controlled purchase "soon after" he exited Dragonfly and drove away in the Malibu is too vague and imprecise to support an inference that Howell drove directly from Dragonfly to the sale because the word "soon" has no precise temporal meaning.[9] Jenkins's argument lacks merit. "Soon" means "within a short period after this or that time, event, etc." *Random House Dictionary of the English Language* 1820 (2d ed. 1987). Context is everything. A student beginning his senior year of high school will soon graduate from high school. A trip to Europe planned a year ago but now only a month off will happen soon. Howell was leaving his apartment to sell drugs and arrived at the parking lot "soon after" he left Dragonfly, *i.e.*, a short time later.[10]

3. Candlewyck and Edwin (Jenkins)

The searches of Candlewyck and Edwin are considered together because the facts in both affidavits substantially overlap.

As with Lakesedge, the Court will assume that probable cause is lacking and proceed to the good faith exception in discussing Candlewyck and Edwin because neither affidavit firmly shows that a conspirator resided at the premises, for purposes of applying the presumption discussed above. While the Candlewyck affidavit shows that Hall was often present at Candlewyck, he was not the lessee, his relationship to the lessee is unknown, and there is some question as to whether it was his residence. The Edwin affidavit did not contain any owner/lessee information for the premises, and there is no indication that any defendant resided there.

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[9]The Court understands that standing to challenge a search is an issue of Fourth Amendment jurisprudence rather than Article III jurisdiction and, therefore, by failing to raise Jenkins's standing to challenge the search of Dragonfly, the Government has waived the issue. *See United States v. Dyer*, 580 F.3d 386, 390 (6th Cir. 2009). In any event, it is interesting to note that Jenkins is challenging the search of an apartment to which he apparently has no connection, notwithstanding his counsel's statements at oral argument that Jenkins really had nothing to do with Howell.

[10]Although the Court does not specifically address the application of the good faith exception to Dragonfly, the facts set forth in the affidavit are more than sufficient to meet the "so lacking" standard and certainly establish the requisite "minimally sufficient nexus."

With regard to Candlewyck, Hall was the primary identified suspect connected to that location. KVET investigators confirmed that Hall was the suspect in at least one, and likely two, controlled purchases in which the baby blue Toyota Yaris was used. On each occasion, Hall and/or another driver drove to Candlewyck after the sale and entered the 300 building. Hall was also observed leaving Candlewyck in the Yaris and driving to several business and apartment complex parking lots, where he made brief contacts with subjects in other vehicles in a manner consistent with drug sales. The Yaris, driven by an unknown driver, was also observed traveling from Candlewyck to Edwin, where a black male passenger got out of the Yaris and carried a black duffle bag inside Edwin. A few weeks later, Hall was seen leaving Candlewyck, entering the tan Trailblazer, driving to two apartment complexes, and engaging in what appeared to be drug sales. The true nature of these transactions was confirmed when KVET investigators arranged a controlled purchase while Hall was still parked in the parking lot of the second apartment complex.

In the Court's judgment, the facts set forth in the Candlewyck affidavit provide a much stronger basis for a "minimally sufficient nexus" than was the case in *Schultz*. In the instant case, the affidavit set forth a direct connection between Hall's drug dealing and Candlewyck—Hall's leaving Candlewyck to engage in drug sales or returning to Candlewyck from drug sales. Jenkins argues that the good faith exception does not apply in this case because Officer Reiser's affidavit was a "bare bones" affidavit. The Court disagrees. A "bare bones" affidavit is one that merely "states suspicions, beliefs, or conclusions, without providing some underlying factual circumstances regarding veracity, reliability, and basis of knowledge." *United States v. Weaver*, 99 F.3d 1372, 1378 (6th Cir. 2006). As set forth above, the Candlewyck affidavit contains substantial facts, not merely suspicions or beliefs. Jenkins also argues that the affidavit failed to provide a sufficient basis to search Apartment 1203 of 300 Candlewyck, as opposed to some other unit within that building. However, the affidavit provided ample basis to conclude that Hall was connected with Apartment

1203. The affidavit states that the driver of the baby blue Yaris was observed keying into Apartment 1203. Jenkins makes much of the fact that investigator Ham only observed "the driver of the baby blue Toyota Yaris key into 300 Candlewyck drive, apartment 1203," and not Hall. However, it is reasonable to infer that any person driving the Yaris would key into the same apartment, and since Hall drove the Toyota he likely keyed into Apartment 1203. The conclusion that Hall was connected to Apartment 1203 was bolstered by the information regarding Yaquina Walker. She was the lessee of Apartment 1203, and the Chevy Uplander that was registered in her name and parked in front of 300 Candlewyck was observed at the site of a controlled buy in 2014 involving Howell and left the parking lot shortly after Howell's vehicle left. Such facts connected Apartment 1203 to the conspiracy and Hall to Apartment 1203. Finally, Jenkins argues that, given Howell's statement to the CI around June 6, 2015 that Hall would be out of town, there was no longer any reason to believe that Candlewyck would have contained evidence of drug dealing. Again, the Court disagrees. The affidavit shows that Hall had left town only recently, and nothing stated in the affidavit suggests that Hall had moved out or had stopped using Candlewyck.

As for Edwin, the affidavit establishes the following: (1) on February 29, 2015, the suspect who sold heroin to the CI from the gold Malibu left the sale and drove to a gas station and switched to a black Chevy Malibu, license plate 7LFN85, registered to Karmease Langston at 520 Edwin; (2) on March 3, 2015, the Toyota Yaris traveled from Candlewyck to Edwin, where a black male passenger exited the Yaris with a black duffle bag and entered Edwin; (3) on April 1, 2015, Hall and Howell—known drug dealers—met the driver of the black Yukon (Jenkins) at Edwin, and were hanging around and getting into and out of the Yukon and Howell's gold Malibu; and (4) just prior to the June 6, 2015 controlled purchase involving "Mike" (Jenkins), the Malibu registered to Karmease Langston of 520 Edwin was parked in the driveway of Edwin, was then driven to the site of the controlled purchase, and returned to Edwin approximately 20 minutes later. These facts

suffice to meet the "so lacking" standard and to establish a "minimally sufficient" nexus between Jenkins's and the other conspirators' drug activities and Edwin. Similar to *Washington*, "[t]here was a visible nexus connecting [Jenkins] to the house, [Jenkins] to the [Malibu], and the [Malibu] to the house." 380 F.3d at 243. That is, Jenkins drove the Malibu from Edwin to the June 6 drug sale, the Malibu was registered to a woman at Edwin, and Jenkins returned to Edwin after the sale. Although the affidavit does not state that Jenkins exited Edwin right before leaving for the sale or went inside afterward, it is reasonable to infer that Jenkins was inside Edwin before he left for the sale. Regardless, in *Carpenter*, there also was no indication in the affidavit that someone had walked on the paths from the marijuana to the residence, or vice versa, and yet the court concluded that the good faith exception applied. The Court finds no reason to conclude otherwise with regard to the affidavit for Edwin.

III. CONCLUSION

For the foregoing reasons, the Court will deny Defendants' motions to suppress evidence obtained from the searches of Dori Drive, Lakesedge, Dragonfly, Candlewyck, and Edwin. The Court will also deny Defendants' Howell's and Streeter's motions for a *Franks* hearing.

A separate order will enter.

Dated: August 23, 2016

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

QUINTIN HOWELL,
MAURICE STREETER, and
JUSTIN JENKINS,

Defendants.
_____/

Case No. 1:15:CR:120

HON. GORDON J. QUIST

ORDER DENYING DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE OBTAINED FROM SEARCHES AND FOR A *FRANKS* HEARING

In accordance with the Opinion entered today,

IT IS HEREBY ORDERED that Defendant Howell's Motions to Suppress Evidence Obtained from 3130 Dori Drive, Oshtemo Township, Michigan and 755 Dragonfly, Oshtemo Township, Michigan (ECF Nos. 161 and 162) are **DENIED**.

IT IS FURTHER ORDERED that Defendant Streeter's Motion to Suppress Evidence Obtained from Illegal Search, Interrogation, Arrest, and Detention arising out of the search of 4309 Lakesedge Apartment C, Kalamazoo, Michigan (ECF No. 132) is **DENIED**.

IT IS FURTHER ORDERED that Defendant Jenkins's Motion to Suppress Evidence Obtained During the Execution of Search Warrants Lacking Probable Cause arising out of the searches of 755 Dragonfly, Oshtemo Township, Michigan, 300 Candlewyck Drive, Apartment 1203, Kalamazoo, Michigan, and 520 Edwin, Kalamazoo, Michigan (ECF No. 169) is **DENIED**.

IT IS FURTHER ORDERED that Defendants Howell's and Streeter's Motions for a *Franks* hearing in connection with the Dori Drive and Lakesedge affidavits (ECF Nos. 138 and 162) are **DENIED**. Defendant Streeter's Motion for Leave to File a Reply Brief (ECF No. 221) is **GRANTED**.

Dated: August 23, 2016

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN JENKINS,

Defendant .
_____/

Case No. 1:15:CR:120-04

HON. GORDON J. QUIST

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DEFENDANT JENKINS'S MOTIONS TO SUPPRESS STATEMENTS AND TO SUPPRESS EVIDENCE FROM AUGUST 11, 2015 SEARCHES

Defendant Justin Jenkins has filed two motions to suppress proposed evidence. The first motion (ECF No. 165) moves to suppress statements that Jenkins made on April 8, 2015 at 300 Candlewyck Drive, Apartment 1203.[1] Kalamazoo, Michigan (Candlewyck), during the execution of a search warrant. The second motion (ECF No. 167) moves to suppress evidence—a bag of heroin—discovered during a search of 1934 East Britain Ave., Benton Harbor, Michigan, on August 11, 2015 and evidence obtained from a subsequent search of a Ford Fusion rental car, also on August 11, 2015.

The Court held an evidentiary hearing on September 1, 2016, during which the Court received testimony from several witnesses and heard argument from counsel. Jenkins did not testify.

For the reasons set forth below, the Court will deny both motions.

[1]At the time of filing this motion, counsel for Jenkins was "unclear" if officers had read Jenkins his *Miranda* rights, and expected that the hearing would provide a basis to think that Jenkins was not Mirandized. (ECF No. 166 at PageID.166.)

I. April 8, 2015 Statements

A. Findings of Fact[2]

- On April 8, 2015, investigators from the Kalamazoo Valley Enforcement Team, including investigator Ham, and the Kalamazoo Metro SWAT team, executed a search warrant for Candlewyck.
- Jenkins was inside the Candlewyck apartment at the time of the search and was seen at the kitchen sink flushing white powder down the garbage disposal.
- Jenkins was handcuffed and first restrained in the living room and then was taken to the bathroom.
- Investigator Ham read Jenkins his *Miranda* rights. Jenkins understood his rights and then voluntarily waived them. Investigator Ham then questioned Jenkins while the SWAT team continued to search the apartment.
- Jenkins later requested to speak to Investigator Wonders. Jenkins confirmed to Investigator Wonders that he wanted to continue cooperating with investigators, and Investigator Wonders continued the questioning.
- Jenkins admitted owning drugs found in the search of Candlewyck and at other locations; he also admitted that he intended to sell the drugs.

B. Conclusions of Law

1. Application of *Miranda*

Statements made by a defendant in custody and subject to interrogation are inadmissible unless the defendant is warned of his Fifth Amendment right against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444–45, 86 S. Ct. 1602, 1612 (1966). The Government must demonstrate, by a preponderance of the evidence, that the defendant's statements it intends to introduce at trial were obtained in compliance with *Miranda*. *Id.* at 479, 86 S. Ct. at 1630.

Determining whether a suspect is "in custody" for *Miranda* purposes is a two-step inquiry. Courts ask "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the

[2]Any findings of fact included with conclusions of law should be considered findings of fact. Likewise, any conclusions of law that are included with findings of fact should be considered conclusions of law.

interrogation and leave." *J.D.B. v. N. Carolina*, 564 U.S. 261, 270, 131 S. Ct. 2394, 2402 (2011) (internal quotation marks omitted). As noted above, Jenkins was handcuffed and confined while the SWAT team continued to search the apartment. No reasonable person would feel at liberty to leave under these circumstances. Jenkins was in custody while the investigators questioned him.

Miranda interrogations "include either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 309, 100 S. Ct. 1682, 1694 (1980) (internal quotation marks omitted). Multiple investigators directly asked Jenkins questions regarding his involvement in drug dealing. Jenkins was interrogated.

2. Waiver of *Miranda* Rights

The Government must show that a defendant waived his *Miranda* rights voluntarily, knowingly, and intelligently before it may introduce any post-*Miranda* warning statements. *United States v. Jones*, 205 F. App'x 327, 334 (6th Cir. 2006). Waiver must be proved by a preponderance of the evidence. *United States v. Adams*, 583 F.3d 457, 467 (6th Cir. 2009).

Investigator Ham read Jenkins his *Miranda* rights from a script on a department-issued card. Jenkins acknowledged these rights after the warning and insisted that he was willing to cooperate with investigators. Investigator Wonders arrived at the apartment not long after Investigator Ham read Jenkins his rights, and separately asked Jenkins if Jenkins wanted to continue cooperating with the investigation. Jenkins confirmed that he did. Jenkins was calm, collected, and otherwise cooperative during the questioning. Although Jenkins did not sign a written waiver of his *Miranda* rights, "the mere absence of a written waiver will not support the conclusion that there was no waiver." *United States v. Johnson*, 351 F.3d 254, 263 n.3 (6th Cir. 2003).

Jenkins raised the possibility that promises made to him by investigators rendered either his waiver of *Miranda* rights involuntary or all of his statements coerced under the Due Process Clause of the Fifth Amendment. (ECF No. 230 at PageID.1340.) Voluntariness of a confession and

voluntariness of a *Miranda* waiver are judged by the same standard, and so can be analyzed together. *Colorado v. Connelly*, 479 U.S. 157, 169, 107 S. Ct. 515, 522–23 (1986). If a defendant claims that a confession was coerced, the "government bears the burden of proving by a preponderance of the evidence that the confession [or waiver] was in fact voluntary." *United States v. Johnson*, 351 F.3d 254, 260 (6th Cir. 2003) (internal quotation marks omitted). Statements and waivers are involuntary if they are obtained "under circumstances in which the suspect clearly had no opportunity to exercise 'a free and unconstrained will.'" *United States v. Marrero*, 651 F.3d 453, 470 (6th Cir. 2011) (quoting *Oregon v. Elstad*, 470 U.S. 298, 304–05, 105 S. Ct. 1285, 1290 (1985)).

While "a promise of leniency may render a confession [or waiver] coerced, depending on the totality of the circumstances," *United States v. Stokes*, 631 F.3d 802, 808 (6th Cir. 2011) (internal quotation marks omitted), there is no evidence that Jenkins was actually *promised* leniency in exchange for cooperation. Investigator Wonders said something to Jenkins to the effect that Jenkins could "help [himself] out by cooperating," but "speculation that cooperation will have a positive effect do not make subsequent statements involuntary." *United States v. Binford*, 818 F.3d 261, 271–72 (6th Cir. 2016) (internal quotation marks omitted). Accordingly, Jenkins's waiver of his *Miranda* rights was voluntary, and his statements were not coerced.

II. August 11, 2015 Searches

A. Findings of Fact

- On July 15, 2015, the grand jury returned an indictment against Jenkins and others, including Henry Hall, charging them with various drug and firearm offenses, including participating in a heroin conspiracy.
- On the morning of August 11, 2015, investigators went to 1934 East Britain Ave., Apartment # 7, Benton Harbor, Michigan, to attempt to arrest Hall on a federal warrant.
- Hall's then-girlfriend, Kailah Lee, lived at that address with her mother, and the investigators had information that Hall might be there. Lee was in the apartment. Her mother was not there at the time.

- Jenkins was on probation at that time for a state offense. A condition of Jenkins's probation was that he reside at 520 Edwin Avenue in Kalamazoo, Michigan.

- Hall had arrived at Lee's apartment earlier that morning, around 9:00 a.m.

- Although Hall had spent the night at Lee's apartment on several occasions, Hall did not live there, he did not have a key, and he did not have permission from Lee to let anyone into her apartment. In fact, Lee had told Hall that she did not want any of Hall's acquaintances in her apartment.

- Shortly after Hall arrived, Lee and Hall began to argue. Lee wanted Hall out of her apartment, but Hall would not leave. Eventually, Lee went to her room upstairs to do her school homework.

- Before Lee went upstairs, she told Hall that whoever was coming to the apartment to see Hall—Jenkins[3]—was not to come inside the apartment.

- While Lee was in her room, she heard Hall and Jenkins speaking outside the apartment.

- Hall and Jenkins eventually entered the apartment, and Lee could hear them speaking downstairs.

- Soon thereafter, as Lee was looking out her window, she saw police officers approaching her apartment. Lee yelled something to Hall about the police and Hall said something to the effect that he would be right back.

- When Lee went downstairs, the patio door was open and police officers were standing outside. Hall and Jenkins were gone.

- Lee told the officers to meet her at the front door. The officers explained to Lee that they were looking for Hall in connection with a federal warrant.

- Lee told the officers that Hall and Jenkins had just left, but she allowed the officers inside the apartment to search for Hall.

- After the officers determined that Hall was not in the apartment, Lee gave them consent to search the apartment for contraband.

- During the search, the officers found a suitcase containing a plastic bag filled with a substance later confirmed to be heroin. The officers also found Jenkins's state ID card in the suitcase.

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[3]Lee only knew Jenkins by a nickname, "P," at the time.

- Lee looked at the ID card and identified Jenkins as the person with whom Hall was speaking earlier.
- In addition to the heroin, near the suitcase, the officers found keys to a 2015 white Ford Fusion rental car.
- Lieutenant Zehm of the Berrien County Sheriff's Department contacted Budget Rental Company and learned that the Fusion was rented by Karnease Langston, of 520 Edwin, Kalamazoo, Michigan on August 7, 2015.
- The officers had the Fusion towed to the Berrien County Sheriff's Office and then obtained a warrant to search the Fusion.
- The officers searched the Fusion and found sandwich baggies, a backpack containing four loaded firearms, a brown plate with cocaine and heroin residue on it and a digital scale.
- On August 12, 2015 , Hall sent Lee a text message to "say sorry" and refer Lee to an attorney.
- Lee reported the text messages to law enforcement officers, who obtained a cellular location warrant and determined that the phone used to send the text messages was in Missouri at the time the text messages were sent.
- On August 20, 2015, a DEA team tracked the phone to an apartment in Missouri, where agents arrested Hall and Jenkins.

B. Conclusions of Law

1. Search of the Suitcase

Jenkins requests that the Court suppress the heroin found in the suitcase because the suitcase was closed and the officers searched it without a warrant. Whether the suitcase was open or closed when the officers found it in Lee's apartment is a factual issue the Court need not decide because Jenkins lacks standing to assert a Fourth Amendment violation.

Jenkins has the burden to show that he has standing—"that he had a legitimate expectation of privacy in the area searched or items seized." *United States v. Mathis*, 738 F.3d 719, 729 (6th Cir. 2013). "In determining whether an individual has a legitimate expectation of privacy in a

particular area searched, [the Sixth Circuit] considers (1) whether the defendant exhibited an actual subjective expectation of privacy, and (2) whether the defendant's subjective expectation of privacy is 'one that society is prepared to recognize as reasonable.'" *United States v. Gillis*, 358 F.3d 386, 391 (6th Cir. 2004) (quoting *United States v. Knox*, 839 F.2d 285, 293 (6th Cir. 1988)).

A person need not own or lease the premises in order to have an expectation of privacy for purposes of the Fourth Amendment. A person's "status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." *Minnesota v. Olson*, 495 U.S. 91, 96–97, 110 S. Ct. 1684, 1688 (1990). Even a short stay as a guest is enough to create a an expectation of privacy because temporary "shelter in another's home . . . provides [the guest] with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside." *Id.* at 99, 110 S. Ct. at 1689. On the other hand, a person's status as "a trespasser . . . [or] a squatter, or any individual who occupies a piece of property unlawfully," lacks a privacy interest that society recognizes as reasonable. *United States v. Cortez-Dutrieville*, 743 F.3d 881, 884–85 (3d Cir. 2014) (footnotes, brackets, and internal quotation marks omitted); *see also United States v. Hunyady*, 409 F.3d 297, 301–302 (6th Cir. 2005) (concluding that the defendant, who was living in his deceased father's home without permission from the personal representative of his father's estate, was a trespasser who had no legitimate expectation of privacy in the premises); *United States v. Ruckman*, 806 F.2d 1471, 1472–73 (10th Cir. 1986) (holding that the defendant, who "was admittedly a trespasser on federal lands and subject to immediate ejectment," lacked a reasonable subjective expectation of privacy even though the defendant may have deemed the cave on federal lands to be his "castle").

Jenkins has no plausible argument that he had a subjective expectation of privacy in Lee's apartment or that society would recognize such expectation as reasonable. Lee did not know Jenkins, other than as someone Hall referred to as "P," she had never given Jenkins permission to

enter her apartment, and she did not want him in her apartment. Moreover, Jenkins cannot claim any right to be in Lee's apartment through Hall, because Lee told Hall that she did not want Jenkins in her apartment and, in fact, Lee did not even want Hall in her apartment. Hall thus had no authority to admit Jenkins into the residence. In short, Jenkins was a trespasser who had no legitimate expectation of privacy in Lee's apartment.

Nor can Jenkins claim a legitimate expectation of privacy in the suitcase that he left behind in Lee's apartment. In *United States v. Cortez-Dutrieville*, 743 F.3d 881 (3d Cir. 2014), the defendant was arrested at the residence of the mother of his child after law enforcement agents executed an anticipatory warrant following a controlled delivery of heroin. The defendant had been staying at the home with the mother's consent, even though he was subject to a protection order that prohibited him from entering the residence and having contact with the mother. *Id.* at 883. The court rejected the defendant's argument that he had an objectively reasonable expectation of privacy in the home as an overnight guest because the protection order rendered his presence in the home "wrongful." *Id.* at 884–85. The court also rejected the defendant's argument that he had a legitimate expectation of privacy in his overnight bag. The court reasoned:

> Because Dutrieville's mere presence in the home was unlawful, it follows that he lacked an objectively reasonable expectation of privacy in a bag that he brought with him during an unlawful visit. This is because a person legally prohibited from entering a particular place cannot reasonably expect to use that place as a private repository for his personal effects.

Id. at 885 (internal quotation marks omitted).

In the instant case, Jenkins left his unlocked suitcase in the living room of a person he did not know, who did not want him in her apartment, and who, especially, wanted no part of transporting heroin. Jenkins was a trespasser who had no right to be in Lee's apartment in the first place. In addition, similar to the defendant in *Cortez-Dutrieville*, Jenkins could not have reasonably expected that the suitcase and its contents he left behind would remain private because, by the terms

of his probation, Jenkins was authorized to reside only at 520 Edwin Avenue in Kalamazoo. In fact, once Jenkins fled and left the suitcase in the living room of Lee's apartment under Lee's exclusive control, Lee, whom Jenkins had not asked to safeguard his property, was free to open the suitcase and examine its contents, give it to someone else, throw it away, donate it to Goodwill, or give the police consent to search it. In light of these circumstances, Jenkins's reliance on *United States v. Waller*, 426 F.3d 838 (6th Cir. 2005), is misplaced. In *Waller*, the defendant's friend, Howard, agreed to store the defendant's personal belongings, including a suitcase, in Howard's one-bedroom apartment. *Id.* at 842. The defendant ate, showered, and changed clothes at Howard's apartment, but did not sleep there. *Id.* The *Waller* court held that the defendant had standing to object to the search because Howard had agreed to store the defendant's property, and the search was invalid because Howard had no authority to consent to the search of the closed suitcase. *Id.* at 844–46. *Waller* involved materially different facts and is therefore inapposite from the instant case.

Apart from his lack of standing, although relatedly, Jenkins cannot demonstrate a Fourth Amendment violation because he abandoned the suitcase when he fled Lee's apartment to evade arrest. Police officers do not violate the Fourth Amendment by searching and seizing abandoned property. *Abel v. United States*, 362 U.S. 217, 241, 80 S. Ct. 683, 698 (1960). "Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other objective facts." *United States v. Dillard*, 78 F. App'x 505, 510 (6th Cir. 2003) (citing *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir. 1973)). Abandonment turns on whether the individual retained a reasonable expectation of privacy in the item. *United States v. McClendon*, 86 F. App'x 92, 94 (6th Cir. 2004) (quoting *United States v. Rem*, 984 F.2d 806, 810 (7th Cir. 1993)). Courts make an objective assessment of the totality of the circumstances, rather than relying on the defendant's subjective intent, to determine whether abandonment occurred. *Id.*

Several Sixth Circuit cases concluded that an abandonment occurred when the defendant discarded or left an item behind while fleeing from police officers. For example, in *United States v. Collis*, 766 F.2d 219 (6th Cir. 1985) (per curiam), the defendant ran from an airport terminal into the parking lot and heaved his bag over a fence and onto a concrete ramp as DEA agents were chasing him. The Sixth Circuit affirmed the district court's conclusion that the defendant lacked standing to challenge the warrantless search of his bag because the defendant abandoned the bag when he threw it over the fence and, therefore, lacked a legitimate expectation of privacy in the discarded bag. *Id.* at 222. In *United States v. Foster*, 65 F. App'x 41 (6th Cir. 2003), a police officer stopped the defendant's vehicle for a traffic violation. During the stop, the officer searched the trunk of the vehicle and found a paper sack that contained cocaine. At that point, the defendant fled on foot and was later apprehended in another state. *Id.* at 43. The defendant left behind a cell phone in his vehicle, from which the police obtained the listed number for the cell phone. The court observed, "[b]y the time the officers confiscated the phone . . . the defendant had fled from the scene and had abandoned the vehicle he was driving. Such abandonment extinguishes any reasonable expectation of privacy the defendant might have had in the property, together with any accompanying Fourth Amendment protections." *Id.* at 46.

Similar to *Collis* and *Foster*, Jenkins abandoned the suitcase in Lee's apartment when he fled from the officers, thereby sticking Ms. Lee with the incriminating evidence. This was not a situation in which Jenkins and Hall intended only to run out to conduct a brief errand and return shortly thereafter to retrieve Jenkins's property, as they were arrested a week later several states away from Michigan. Moreover, as mentioned above, Jenkins had no reasonable expectation of privacy in property that he left in the residence of someone who did not know Jenkins and who did not want Jenkins in her residence.

2. Search of the Fusion

Jenkins also argues that evidence obtained from the search of the Fusion should be suppressed because the warrant failed to establish probable cause to believe that the Fusion would contain evidence of criminal activity. Jenkins also appears to argue that the officers unlawfully seized the Fusion by towing it to the Berrien County Sheriff's Department pending the issuance of a warrant.

Jenkins cannot challenge the search or seizure of the Fusion because he failed to establish standing. In *United States v. Smith*, 263 F.3d 571 (6th Cir. 2001), the court stated:

> We acknowledge that as a general rule, an unauthorized driver of a rental vehicle does not have a legitimate expectation of privacy in the vehicle, and therefore does not have standing to contest the legality of a search of the vehicle. However, we refuse to adopt a bright line test, as the government seems to advocate, based solely on whether the driver of a rental vehicle is listed on the rental agreement as an authorized driver.

Id. at 587. Although the defendant was not on the rental agreement, the court concluded that the defendant had standing to challenge the search because the defendant was a licensed driver who was able to produce the rental agreement when asked, and his wife (who rented the vehicle and was listed as an authorized driver) gave him permission to drive the vehicle. He also had a business relationship with the rental company—that is, he called the rental company to reserve the rental car, was provided a reservation number, and provided his credit card number that was eventually billed for the rental. *Id.* at 586–87. In the instant case, the only evidence in the record shows that Karnease Langston rented the Fusion. Although Jenkins apparently was the driver of the Fusion and may have been dating Langston, unlike the defendant in *Smith*, Jenkins presented no evidence to establish his standing with regard to the Fusion. For example, Jenkins did not call Langston at the hearing to establish that she had given him permission to drive the Fusion, nor did Jenkins show that he possessed the rental agreement or was the person who actually reserved the rental car. Moreover,

like the suitcase, Jenkins essentially abandoned the Fusion by leaving the keys in Lee's apartment when he fled from the police.

Even if Jenkins had standing, his motion fails on the merits. As to the first issue–towing the Fusion to preserve evidence until a warrant could be obtained—M.C.L. § 257.252d(1)(e) provides that a police or governmental agency may remove a vehicle from public or private property to a place of safekeeping "[i]f the vehicle must be seized to preserve evidence of a crime, or if there is reasonable cause to believe that the vehicle was used in the commission of a crime." Given the circumstances, the officers had ample cause to believe that the Fusion both contained evidence of heroin trafficking and that it was used in the commission of heroin trafficking. Moreover, the Supreme Court has made clear that exigent circumstances are not required to search an automobile, so long as probable cause exists. "If there is probable cause to believe a vehicle contains evidence of criminal activity," the police may search "any area of the vehicle in which evidence might be found." *Arizona v. Gant*, 556 U.S. 332, 347, 129 S. Ct. 1710, 1721 (2009) (citing *United States v. Ross*, 456 U.S. 798, 820–21, 102 S. Ct. 2157 (1990)). "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S. Ct. 2485, 2487 (1996) (per curiam); *see also Maryland v. Dyson*, 527 U.S. 465, 467, 119 S. Ct. 2013, 2014 (2000) (per curiam) (noting that *Labron* confirmed that "the automobile exception does not have a separate exigency requirement").

The Fusion was "readily mobile." It was parked in front of Lee's apartment, and although the police had secured the keys, nothing in the record suggests that the Fusion could not have been moved. Also, Jenkins and Hall were still at large and the officers had no reason to believe that Jenkins did not have a second set of keys for the Fusion.

As for probable cause, the warrant affidavit set forth a substantial basis to conclude that evidence of criminal activity would be found in the Fusion. The probable cause determination amounts to

> [A] practical, common-sense decision whether, given all the circumstances set forth in the affidavit before [the issuing judicial officer] . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the [judicial officer] had a substantial basis for . . . concluding that probable cause existed.

Illinois v. Gates, 462 U.S. 213, 238–39, 103 S. Ct. 2317, 2332 (1983) (internal quotation marks and brackets omitted). The affidavit states that: (1) the officers were looking for Hall to serve an arrest warrant in a federal narcotics case; (2) while looking for Hall in Lee's apartment, the officers found a suitcase containing a plastic bag filled with over 100 grams of heroin; (3) the officers also found Jenkins's state ID card in the suitcase and the keys for the Fusion next to the suitcase; (4) the Fusion was backed into a parking spot near Lee's apartment; (5) Karnease Langston rented the Fusion from Budget Rental Company on August 7, 2015; and (6) the investigation revealed that Jenkins and Hall sold large quantities of heroin in southwestern Michigan and used rental cars to transport the heroin. (ECF No. 168-1 at PageID.883.) Such facts provided an ample basis for probable cause.

Therefore, for the foregoing reasons,

IT IS HEREBY ORDERED that Defendant Jenkins's Motions to Suppress Statements Obtained in Violation of His *Miranda* Rights (ECF No. 165) and to Suppress Evidence From August 11, 2015 Searches (ECF No. 167) are **DENIED.**

Dated: September 26, 2016

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

United States District Court

Western District of Michigan

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

-vs-

Case Number: 1:15:CR:120-04

JUSTIN JENKINS

USM Number: 13428-040

Anastase Markou
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to Counts 7 and 9 of the Superseding Indictment.

☐ pleaded nolo contendere to Count(s) ___, which was accepted by the court.

☐ was found guilty on Count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

Title & Section	Offense Ended	Count No.
21 U.S.C. §§ 841(a)(1), (b)(1)(B)(i) and 851	August 11, 2015	Seven
18 U.S.C. § 924(c)(1)(A)(i)	August 11, 2015	Nine

Nature of Offense

Count Seven: Possession with Intent to Distribute 100 Grams or More of Heroin
Count Nine: Possession of a Firearm in Furtherance of Drug Trafficking

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ All remaining counts and charges are dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: March 28, 2017

DATED: March 28, 2017

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **one hundred eighty (180) months, consisting of one hundred twenty (120) months on Count Seven and sixty (60) months on Count Nine, to be served consecutively to Count Seven.**

☒ The Court makes the following recommendations to the Bureau of Prisons:

Defendant be placed in the Terre Haute facility to be close to his family.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The Defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ on _____.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2:00 P.M. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By: _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **eight (8) years on Count Seven and five (5) years on Count Nine, to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.

2. You must not unlawfully possess a controlled substance.

3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

   ☐ The above drug testing condition is suspended, based on the Court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the Court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the Court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with the law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court as has provided me with a written copy of this judgement containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a cognitive behavioral treatment program, as directed by the probation officer, and follow the rules and regulations of that program until such time as you are released from the program by the probation officer and must pay at least a portion of the cost according to your ability, as determined by the probation officer.

2. You must participate in a program of testing and treatment for substance abuse, as directed by the probation officer, and follow the rules and regulations of that program until such time as you are released from the program by the probation officer, and must pay at least a portion of the cost according to your ability, as determined by the probation officer.

3. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.

4. You must not possess or be the primary user of any cellular telephone without prior permission from the probation officer. If given permission to use/possess a cellular telephone, you must provide the number to the probation officer, and the telephone must be maintained in your name or another name approved in advance by the probation officer.

5. You must provide the probation officer with your monthly cellular and home telephone bills with each monthly report form and must report any cellular telephone you have used or own on each report form.

CRIMINAL MONETARY PENALTIES[1]

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

Assessment	Fine	Restitution
$200.00	-0-	-0-

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement: $

☐ The defendant must pay interest on restitution and/or a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The Court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the fine.

☐ the interest requirement is waived for the restitution.

☐ the interest requirement for the fine is modified as follows:

☐ the interest requirement for the restitution is modified as follows:

[1] Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of **$200.00** due immediately.
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F, below; or

B ☐ Payment to begin immediately (may be combined with C, D, or F, below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment, or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the property set forth in the Preliminary Order of Forfeiture filed March 28, 2017 (ECF No. 284) to the United States.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.