

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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KENDALL THRIFT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**APPENDIX**

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**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
KENDALL THRIFT,  
Defendant-Appellant.

No. 17-10019  
D.C. No.  
2:14-cr-00308-GEB-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Garland E. Burrell, Jr., District Judge, Presiding

Argued and Submitted April 9, 2018  
San Francisco, California

Before: THOMAS, Chief Judge, FERNANDEZ, Circuit Judge, and EZRA, \*\*  
District Judge.

Appellant Kendall Thrift challenges the district court's denial of his motions to suppress evidence obtained through a search warrant, and the district court's denial of his request for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). We affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

**Motions to Suppress.** Thrift claims the district court erred in denying his motions to suppress because the affidavit that supported the warrant did not provide a substantial basis for the state court judge’s conclusion that there was probable cause to search Thrift’s residence. In this case, it is a close question whether the warrant was supported by probable cause. Although a close call, we need not resolve this issue because even if the warrant lacked probable cause, the good faith exception to the Fourth Amendment’s exclusionary rule applies in this case. *United States v. Hove*, 848 F.2d 137, 139 (9th Cir. 1988) (holding that the good faith exception applies when “the affidavit was sufficient to ‘create disagreement among thoughtful and competent judges as to the existence of probable cause’”) (quoting *United States v. Leon*, 468 U.S. 897, 926 (1984)). Since a reasonably well trained police officer could conclude, in good faith, that there was probable cause to search the residence, *Leon*, 468 U.S. 923 n.23, all the evidence seized at the residence was admissible against Thrift. We therefore affirm the district court’s orders denying Thrift’s motions to suppress. *See United States v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986) (noting that when reviewing a motion to suppress, the court “may affirm on any ground fairly supported by the record”).

**Request for a *Franks* Hearing.** Thrift contends that the district court erred in denying his request for a *Franks* hearing because the affidavit that

supported the warrant purportedly contained false or misleading statements or omissions. Thrift, however, did not provide any evidence—other than bare assertions—to support the contention that the false or misleading statements or omissions were reckless or intentionally misleading. *United States v. Perkins*, 850 F.3d 1109, 1116 (9th Cir. 2017) (explaining that a defendant prevails at a *Franks* hearing only if (1) the affiant intentionally or with reckless disregard for the truth, included a false or misleading statement or omission in the warrant application; and (2) without this information included in the warrant application, there is no longer probable cause). Bare assertions fall short of the preponderance of the evidence that *Franks* requires. *See United States v. Chavez-Miranda*, 306 F.3d 973, 979 (9th Cir. 2002) (“Given the assumption of validity underlying a supporting affidavit, a party moving for a *Franks* hearing must submit ‘allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.’” (quoting *Franks*, 438 U.S. at 154)); *see also United States v. Dozier*, 844 F.2d 701, 705–06 (9th Cir. 1988) (denying a *Franks* hearing when defendant failed to prove that omissions and false statements were intentional). Because Thrift “failed to offer proof that [the purported false or misleading statements and] omissions represented deliberate falsehood or a reckless disregard for the truth,” the district court properly denied Thrift’s motion for a *Franks* hearing. *Chavez-Miranda*, 306 F.3d at 979–80.

**AFFIRMED.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 29 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
KENDALL THRIFT,  
Defendant-Appellant.

No. 17-10019

D.C. No.  
2:14-cr-00308-GEB-1  
Eastern District of California,  
Sacramento

ORDER

Before: THOMAS, Chief Judge, FERNANDEZ, Circuit Judge, and EZRA,\* District Judge.

The panel has voted to deny Appellant's petition for panel rehearing and to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

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\* The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. 2:14-cr-00308-GEB

Plaintiff,

v.

KENDALL THRIFT,

**ORDER DENYING DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE\***

Defendant.

Defendant moves to suppress "all items found in the search of his residence" located at 773 Shoreline Point, El Dorado Hills, California ("Defendant's home") "on the ground that law enforcement unlawfully searched his [home] . . . and unlawfully seized evidence pursuant to a state search warrant." (Def.'s Not. Mot. Suppress 1:20-24, ECF No. 21.) Defendant argues in the motion:

Here, the [warrant for the search of Defendant's home] lacks probable cause because [the affidavit presented in support of the warrant] fails to show a link between [Jeremy] Zahn's criminal activity and [Defendant's] home. The affidavit fails in at least three ways. . . .

[First, t]he warrant and affidavit do not mention [Defendant]. Further, neither alludes to anyone other than Mr. Zahn. There are no allegations about Mr. Zahn being involved in an enterprise with anyone else.

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\* This matter is suitable for decision without oral argument.

1 [Second, t]he warrant and affidavit  
2 state that Mr. Zahn stayed for several hours  
3 at [Defendant's home]. However, there is no  
4 further information about the home. . . .  
[T]he affidavit does not mention any  
suspicious activity involving [Defendant's]  
home.

5 [It] is solely mentioned as a place that  
6 Mr. Zahn would visit. . . .  
7 . . . .

8 . . . [Third, the affidavit does not  
9 show any connection between the drugs found  
10 in Mr. Zahn's car and Defendant's home.]  
11 During the search of Mr. Zahn's car three  
12 large brown packages containing approximately  
13 15 pounds of marijuana were found. The police  
14 searched Mr. Zahn's home and found marijuana  
15 and marijuana packaging. All of which is  
16 detailed in the affidavit. Notably absent in  
17 the affidavit is any connection between the  
18 packages and [Defendant's] home.

19 The officers were watching [Defendant's]  
20 home] when Mr. Zahn was inside and observed  
21 him get into his car and leave. However, the  
22 affidavit does not include any information  
23 about Mr. Zahn leaving the house with  
24 packages. This silence speaks volumes. There  
25 is no connection between the contraband found  
26 and [Defendant's] home.

18  
19 (Def.'s Mem. P.&A. Supp. Mot. Suppress ("Def.'s Mot.") 3:11-17,  
20 ECF No. 21 (headings omitted) (internal quotation marks and  
21 citations omitted).)

22 Defendant further argues that the "good faith exception  
23 [to the probable cause requirement] is *per se* inapplicable" here,  
24 since the "affidavit does not allow even a colorable argument  
25 that probable cause existed when the warrant was executed." (Id.  
26 at 7:7-8, 7:16-18.)

27 The government counters that "[t]he affidavit contains  
28 probable cause," arguing "[t]he defendant seeks to look at

1 individual facts while ignoring the totality of the  
2 circumstances." (Gov't Opp'n 8:10-13, ECF No. 22.) The government  
3 contends, *inter alia*:

4 [Defendant] seeks to isolate one fact - that  
5 Zahn spent time at [Defendant's home] - while  
ignoring the totality of the affidavit.  
6 Probable cause is based on the totality of  
the circumstances, not individual facts  
looked at in isolation. Here, probable cause  
7 is not based just on Zahn visiting  
[Defendant's home]. Rather it is the  
accumulation of evidence. . . . Zahn spent  
8 "large quantities of time" at the residence  
for "several hours on numerous days."  
9 Zahn['s] phone contained text messages  
10 related [to] a conspiracy to purchase,  
process, and sell marijuana. Zahn's phone  
11 included pictures of large amounts of cash  
and several firearms. Zahn's house was  
12 searched twice and no firearms were recovered  
13 and only a small amount of marijuana was  
recovered.

14 . . . .

15 . . . This is consistent with Detective  
16 Tedford's [opinion] that marijuana  
traffickers utilize stash houses to stockpile  
or hide their illicit items of contraband or  
17 illegal activity from law enforcement. Indeed  
18 Det. Tedord noted that employing stash houses  
was especially true with those individuals  
19 like Zahn who are currently under probation  
or have a searchable status. Accordingly, it  
20 was reasonable to seek . . . evidence of drug  
trafficking at [Defendant's home].

21 (Id. at 9:9-10:2, 13:11-18 (internal quotation marks, citations,  
22 and brackets omitted).)

23 "The probable cause standard for a search warrant is  
24 whether, based on common sense considerations, there was 'a fair  
25 probability that contraband or evidence of a crime would be found  
26 in a particular place.'" United States v. Ruiz, 758 F.3d 1144,  
27 1148, (9th Cir. 2014) (brackets omitted) (quoting United States  
28 v. DeLeon, 979 F.2d 761, 764 (9th Cir. 1992)). "For probable

1 cause, an affidavit must establish a reasonable nexus between the  
2 . . . evidence [sought] and the location to be searched." United  
3 States v. Crews, 502 F.3d 1130, 1136-37 (9th Cir. 2007). "The  
4 magistrate judge need not determine 'that the evidence is more  
5 likely than not to be found where the search takes place. The  
6 magistrate need only conclude that it would be reasonable to seek  
7 the evidence in the place indicated in the affidavit.'" Id.  
8 (quoting United States v. Ocampo, 937 F.2d 485, 490 (9th Cir.  
9 1991)) (ellipses omitted). "Direct evidence that contraband . . .  
10 is at a particular location is not essential to establish  
11 probable cause to search the location. A magistrate is entitled  
12 to draw reasonable inferences about where evidence is likely to  
13 be kept, based on the nature of the evidence and the type of  
14 offense." United States v. Anguelo-Lopez, 791 F.2d 1394, 1399  
15 (9th Cir. 1986) (citation omitted).

16 "If a warrant lacks probable cause, evidence obtained  
17 during its execution should generally be suppressed under the  
18 exclusionary rule." United States v. Underwood, 725 F.3d 1076,  
19 1084 (9th Cir. 2013). "However, in United States v. Leon, the  
20 Supreme Court set out an exception to the exclusionary rule for a  
21 search conducted in good faith reliance upon an objectively  
22 reasonable search warrant." United States v. Crews, 502 F.3d  
23 1130, 1135-36 (citing United States v. Leon, 468 U.S. 897, 925  
24 (1984)). "For the good faith reliance exception to apply, the  
25 officers must have relied on the search warrant in an objectively  
26 reasonable manner." Id. at 1136. "The affidavit 'must establish  
27 at least a colorable argument for probable cause' for the  
28 exception to apply." Id. (quoting United States v. Luong, 470

1 F.3d 898, 903 (9th Cir. 2006)). "The burden of demonstrating good  
2 faith rests with the government." Underwood, 725 F.3d at 1085.

3 The applicable search warrant authorized the search of  
4 Defendant's home for, *inter alia*, "[a]ny firearms[,] . . .  
5 [m]arijuana[, and] paraphernalia commonly associated with the  
6 possession, packaging, and/or sale of marijuana." (Search Warrant  
7 2, Decl. John Virga Supp. Def.'s Mot. ("Virga Decl."), Ex. A, ECF  
8 No. 21-2.) Detective Kyle Tedford authored the affidavit  
9 presented in support of the search warrant. That affidavit  
10 contains, in relevant part, the following information:

11 On 3/17/2014, [Citrus Heights Police  
12 Officer Herman] conducted a traffic stop on a  
13 silver 2000 Lexus (CA license plate 6BTB799),  
14 for a vehicle code violation. Officer Herman  
15 identified the driver as Jeremy Zahn by his  
16 valid California Driver's license. Officer  
Herman conducted a records check of Zahn, and  
he was on active California Post Release  
Community Supervision (PRCS) probation  
through October 2015, and is a convicted  
felon.

17 Officer Herman smelled a strong odor of  
18 marijuana . . . emitting from inside of the  
19 vehicle. Officer Herman searched the interior  
20 of the vehicle, pursuant to Zahn's probation  
conditions, and located a . . . cellular  
21 phone . . . Officer Herman searched the  
phone and located several photographs  
contained within Zahn's phone[, including the  
following images:] . . .

22 A large amount of what appears to be  
23 marijuana, totaling at least twenty five  
24 pounds, packaged in approximately one pound  
increments. [Based on his] training and  
experience, [Detective Tedford stated this]  
25 amount of marijuana, . . . packaged  
separately in approximately one pound  
increments, is for sales.

26 A large amount of US currency, of six  
27 stacks of bills with \$100 bills on the top.  
28 There was another photograph of 22, \$100  
bills spread out on an unknown persons lap

inside of a vehicle.

. . . [A]n AK-47 style long rifle (Attacklunent D), two AR-15 type of long rifles, a Glock semi-automatic hand gun with Zahn's right hand on the gun, identified by Zahn's right hand tattoos; And an unknown make semi-automatic/or automatic style hand gun with a large magazine. Officer Herman noticed the subject holding the Glock semi-automatic handgun was Zahn, as evidence[d] by the tattoos Herman observed on Zahn's arm at the time of the stop be[ing] the same as the tattoo seen in the photograph.

Based on [Detective Tedford's] training and experience as well as conversations [he] ha[s] had with other experienced detectives, [Detective Tedford states] that marijuana/narcotics dealers often are in possession of firearms to protect themselves from subjects they are going to sell marijuana/narcotics to[]. A CII records check on Zahn revealed he is a convicted felon, and cannot possess any firearms . . . . Furthermore, Zahn's probation conditions state that he cannot possess firearms, nor be in the presence of anyone in possession of any dangerous weapons.

Officer Herman searched text messages located in Zahn's phone. Officer Herman located several text messages relating to the sales of marijuana. . . .

Officer Herman and other CHPD Officers went to Zahn's residence . . . to conduct a probation search . . . . Officer Herman located a gallon size plastic zip lock bag that was approximately 2/3 full of processed marijuana (approximately 6-8 ounces). Officers searched the garage and located several large grow lamps and inverters, which were not hooked up at that time. . . .

Based on [Detective Tedford's] training and experience[, he stated that] subjects who possess large grow lamps and inverters, often use[] . . . lamps and inverters to grow marijuana.

Based on [his] training and experience, and with speaking with other experienced Detectives, [Detective Tedford opined] from the text messages, photographs of the

1 firearms, the marijuana, and the large lamps,  
2 that Zahn is currently involved with  
3 selling/purchasing/manufacturing marijuana  
4 and may be in possession or have access to  
5 firearms.

6 . . . .

7 During the month of March, 2014,  
8 Detective A. Azevedo drove to [Zahn's  
9 residence], and observed a silver Lexus  
10 parked in the driveway . . . registered to  
11 Zahn.

12 Based on Zahn's probation status,  
13 detective Azevedo and probation officer C.  
14 Cottengim affixed a tracking device to the  
15 silver Lexus [in] which Zahn had been  
16 previously stopped. A tracking device [was]  
17 affixed to the vehicle . . . for  
18 approximately 16 days, [when] it [was]  
19 repeatedly observed, via its Internet  
20 tracking system by Detective Azevedo, as  
21 stopping for long periods of time, several  
22 hours at [Defendant's home]. During the  
23 course of the approximately 16 days in which  
24 the tracking device was affixed to the  
25 vehicle, probation officer Cottengim  
26 physically observed the silver Lexus . . . in  
27 the driveway of [Defendant's home].

28 On 4/9/2014, at approximately 0930  
hours, Detective Azevedo observed via the  
online tracking system that the tracker  
affixed to Zahn's vehicle was currently  
stopped at [Defendant's home]. Detective  
Azevedo and probation officer Cottengim  
responded to the location and observed the  
vehicle in the driveway until approximately  
1545 hours when Zahn was observed entering  
the vehicle and leaving the area in the  
vehicle. Officers advised Citrus Heights  
Police Department on-duty officers of its  
location utilizing the online tracking system  
at which time a traffic stop was conducted on  
the vehicle at approximately 1600 hours.

29 A probation search of the vehicle and  
30 Zahn's person yielded two sets of keys,  
31 approximately \$831 in US currency, and three  
32 large brown packages affixed with UPS labels  
33 each going to different locations. A K-9  
34 officer responded to the scene at which time  
35 the K-9 alerted on the packages. Within one  
36 of the packages, officers located . . .

1 approximately 15.6 (total net weight) pounds  
2 of a green leafy substance which they  
3 immediately recognized as processed  
4 marijuana. . . .

5 Officers conducted a probation search at  
6 [Zahn's residence], and located several items  
7 of marijuana packaging indicia[, including]  
8 several zip top bags containing a green leafy  
substance which they recognized as  
marijuana. . . . Within the garage of the  
residence, officers located four (4) 1000  
kilowatt bulbs and two (2) electronic  
ballasts, along with several electronic  
timers and wiring kits. . . .

9 Officers also located a small container  
10 with a golden brown tacky substance which  
11 they immediately recognized as cannabis hash  
oil. Officers also located a ceramic plate  
12 within the garage of the residence which also  
had cannabis hash oil upon it.

13 Based on the above listed events, the  
14 items located in the possession of Jeremy  
15 Zahn as well as the items located at his  
16 place of residence, it [wa]s the [stated]  
belief of [Detective Tedford] that officers  
w[ould] locate additional evidence of  
marijuana sales and marijuana cultivation at  
[Defendant's home].

17 Based on [Detective Tedford's] training,  
18 experience and/or conversations that [he has]  
had with other Law Enforcement Officers  
19 and/or reports that [he has] read:

20 [Detective Tedford stated that he]  
21 know[s] . . . the trafficking of large  
22 quantities of marijuana requires the  
cooperation and association of numerous  
23 individuals. As a result, persons who traffic  
in marijuana will often possess documents  
that will identify other members of the  
organization . . . .

24 [Detective Tedford further stated:] that  
25 persons engaged in a conspiracy to commit  
26 felony crimes often communicate with each  
27 other and coordinate their drug trafficking  
activities by telephone and /or cellular  
phone[;] . . . .

28 that persons engaged in the possession of  
marijuana for sales, and the transportation

1 of marijuana for sales, and the cultivation  
2 of marijuana, will often arm themselves with  
3 a firearm for protection against robbery or  
personal harm[;]  
4

5 . . . that individuals engaged in the  
6 legal sales, possession, and transportation  
7 of marijuana/narcotics will often keep  
8 additional locations and/or storage  
9 containers, commonly referred to as ["]stash  
houses["] . . . in which to stockpile or hide  
their illicit items of contraband or illegal  
activity from law enforcement[,] . . .  
especially . . . individuals who are  
currently under probation or have a  
searchable status.

10 [Detective Tedford opined] that Zahn's  
11 observed behavior and observed association  
12 with [Defendant's] residence, via the online  
13 tracking system related to the tracker  
14 affixed to his vehicle, is indicative of his  
15 familiar association [thereto]. The large  
quantities of time spent at this residence,  
several hours spent on numerous days,  
indicate a serious association and  
familiarity with the residence which, in  
[his] training and experience, extends  
[Zahn's] association further than that of a  
quick drop off or casual visit.

16 . . . [Detective Tedford stated that  
17 he] believe[s] . . . the occupants residing  
18 at the location listed on th[e] Search  
19 Warrant, have committed, and are engaged in  
20 an ongoing conspiracy to commit, the felony  
21 crime of possession for sales of marijuana,  
sales of marijuana, transportation of  
marijuana, unlawful possession of firearms  
and ammunition, and that evidence of these  
22 crimes will be found at the [location] listed  
on th[e] Search Warrant.

23 (Aff. Det. Kyle Tedford Supp. Search Warrant ("Tedford Aff.") 2-  
24 6, Virga Decl., Ex. A.)

25 Here, Detective Tedford's "affidavit was not so lacking  
26 in indicia of probable cause as to render reliance upon it  
27 objectionably unreasonable." Crews, 502 F.3d at 1136. Therefore,  
28 decision on whether the affidavit provided probable cause is

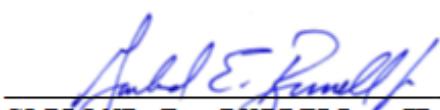
unnecessary. Id. ("Before embarking on the exercise of determining whether the affidavit supported probable cause, we may proceed directly to the issue of whether there was good faith reliance."). Zahn's cell phone contained several text messages relating to marijuana sales and photographs of "[a] large amount of marijuana," "[a] large amount of US currency," and multiple firearms, one of which was being held in the photograph by Zahn. (Tedford Aff. 3.) However, two searches of Zahn's residence recovered only a small amount of marijuana and no firearms. Further, use of a tracking device and surveillance evinced Zahn spent "large quantities of time" at Defendant's residence; "several hours on numerous days." (Id. at 6.) And, Detective Tedford stated based upon his experience and training that "individuals engaged in the . . . sales, possession, and transportation of marijuana[] will often keep additional locations . . . commonly referred to as 'stash houses[,]' in which to stockpile or hide their illicit items . . . from law enforcement[,]" especially "those individuals who . . . currently . . . have a searchable status" like Zahn. (Id. at 5; see United States v. Parks, 285 F.3d 1133, 1142 (9th Cir. 2002) (stating "in determining whether probable cause exists," "the court issuing the warrant is entitled to rely on the training and experience of police officers." (quoting United States v. Gil, 58 F.3d 1414, 1418 (9th Cir. 1995))). This information showed "indicia of . . . a reasonable nexus between [the property identified in the search warrant] and [Defendant's home] . . . such that an officer could have reasonably relied upon it in good faith." Crews, at 137; see generally, United States v. Christian, 554 F. App'x 188, 190 (4th

1 Cir. 2013) (indicating evidence that the defendant "regularly  
2 spent time" at a location and a police officer's assertions based  
3 on his experience that the defendant would "likely store his  
4 drugs and related items . . . at a residence or business which is  
5 used as a 'stash house'" supported probable cause for a warrant  
6 to search the apartment); United States v. Davidson, 936 F.2d  
7 856, 859 (6th Cir. 1995) (stating "Davidson correctly points out  
8 that the affidavit does not state that officers observed drugs or  
9 evidence going into or out of his residence[; h]owever, 'probable  
10 cause requires only a probability or substantial chance of  
11 criminal activity, not an actual showing of such activity.'"  
12 (quoting Illinois v. Gates, 462 U.S. 213, 236 (1983))).

13 For the stated reasons, Defendant's suppression motion  
14 is denied.<sup>1</sup>

15 Further, the hearing scheduled on August 7, 2015, for  
16 argument on Defendant's suppression motion is converted to a  
17 status hearing.

18 Dated: August 4, 2015

20  
21   
22 GARLAND E. BURRELL, JR.  
23 Senior United States District Judge  
24  
25  
26

27 <sup>1</sup> In light of this ruling, the Court "do[es] not reach the government's  
28 argument that [Defendant] lacked standing to challenge the search." United  
States v. Garcia-Gillalba, 585 F.3d 1223, 1234 n.6 (9th Cir. 2009).

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. 2:14-cr-00308-GB

Plaintiff,

V.

KENDALL THRIFF,

ORDER DENYING DEFENDANT'S SECOND  
MOTION TO SUPPRESS EVIDENCE AND  
REQUEST FOR A FRANKS HEARING \*

Defendant.

Defendant Kendall Thrift moves "to suppress the fruits of [the warranted] search" of his home at 773 Shoreline Point, El Dorado Hills, California, and requests an evidentiary hearing under Franks v. Delaware, 438 U.S. 154 (1978), arguing: "the supporting affidavit of Detective Kyle Tedford contains material misrepresentations and omissions of fact[] critical to the determination of probable cause." (Def.'s Mot. to Suppress<sup>1</sup> ("Def.'s Mot.") ii, 1:20-26, ECF No. 35.) Defendant contends the misrepresentations and omissions undermine "the perceived

\* The hearing for oral argument on this motion scheduled for January 22, 2016, is vacated since this matter is suitable for decision without oral argument. The January 22, 2016 status conference remains on calendar.

<sup>1</sup> This is Defendant's second suppression motion. Defendant filed an earlier suppression motion on May 4, 2015, arguing the affidavit presented in support of the search warrant authorizing the search of his home did not provide probable cause for the search. (ECF No. 21.) That motion was denied in an order filed on August 5, 2015. (ECF No. 30.)

1 relationship between Jeremy Zahn and [his] home," which "was the  
2 crux of probable cause." (Id. at 1:27-28, 4:8-10.)

3 The government opposes the motion to suppress and  
4 request for a Franks hearing.

5 **FACTUAL BACKGROUND**

6 **A. The Charged Offenses**

7 Defendant is charged with conspiracy to distribute and  
8 to possess with intent to distribute marijuana in violation of 21  
9 U.S.C. § 846, 841(a)(1), possession with intent to distribute  
10 marijuana in violation of 21 U.S.C. § 841(a)(1), and possession  
11 of a firearm by a prohibited person in violation of 18 U.S.C. §  
12 922(g)(9). (Indictment, ECF No. 8.)

13 **B. The Search Warrant**

14 The applicable search warrant authorized the search of  
15 773 Shoreline Point for, *inter alia*, "[a]ny firearms[,] . . .  
16 [m]arijuana[, and] paraphernalia commonly associated with the  
17 possession, packaging, and/or sale of marijuana." (Search Warrant  
18 at THRIFT 0058,<sup>2</sup> Decl. John Virga ISO Def.'s Mot. ("Virga Decl.")  
19 Ex. A, ECF No. 35-2.) Detective Kyle Tedford authored the  
20 affidavit presented in support of the search warrant. That  
21 affidavit contains, in relevant part, the following information:

22 On 3/17/2014, [Citrus Heights Police  
23 Officer Herman] conducted a traffic stop on a  
24 silver 2000 Lexus (CA license plate 6BTB799),  
25 for a vehicle code violation. Officer Herman  
identified the driver as Jeremy Zahn by his  
valid California Driver's license. Officer  
Herman conducted a records check of Zahn, and  
[determined] he was on active California Post  
Release Community Supervision (PRCS)  
probation through October 2015, and is a

28 

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<sup>2</sup> For ease of reference, certain documents are referred to by their Bates  
number, which is located at the bottom, right-hand corner of the document.

convicted felon.

Officer Herman smelled a strong odor of marijuana . . . emitting from inside of the vehicle. Officer Herman searched the interior of the vehicle, pursuant to Zahn's probation conditions, and located a . . . cellular phone . . . Officer Herman searched the phone and located several photographs contained within Zahn's phone[, including the following images:] . . .

A large amount of what appears to be marijuana, totaling at least twenty five pounds, packaged in approximately one pound increments. [Based on his] training and experience, [Detective Tedford stated this] amount of marijuana, . . . . packaged separately in approximately one pound increments, is for sales.

A large amount of US currency[:] . . . six stacks of bills with \$100 bills on the top. There was another photograph of 22[] \$100 bills spread out on an unknown person['s] lap inside of a vehicle.

. . . [A]n AK-47 style long rifle . . . , two AR-15 type of long rifles, a Glock semi-automatic hand gun with Zahn's right hand on the gun, identified by Zahn's right hand tattoos; And an unknown make semi-automatic/or automatic style hand gun with a large magazine. Officer Herman noticed the subject holding the Glock semi-automatic handgun was Zahn, as evidence[d] by the tattoos Herman observed on Zahn's arm at the time of the stop be[ing] the same as the tattoo seen in the photograph.

Based on [Detective Tedford's] training and experience[,] as well as conversations [he] ha[s] had with other experienced detectives, [Detective Tedford states] that marijuana/narcotics dealers often are in possession of firearms to protect themselves from subjects they are going to sell marijuana/narcotics to[]. A CII records check on Zahn revealed he is a convicted felon[] and cannot possess any firearms . . . . Furthermore, Zahn's probation conditions state that he cannot possess firearms, nor be in the presence of anyone in possession of any dangerous weapons.

1                   Officer Herman [also] searched text  
2 messages located in Zahn's phone. Officer  
3 Herman located several text messages relating  
4 to the sales of marijuana. . . .

5                   Officer Herman and other CHPD Officers  
6 went to Zahn's residence . . . to conduct a  
7 probation search . . . . Officer Herman  
8 located a gallon size plastic zip lock bag  
9 that was approximately 2/3 full of processed  
10 marijuana (approximately 6-8 ounces).  
11 Officers searched the garage and located  
12 several large grow lamps and inverters, which  
13 were not hooked up at that time. . . .

14                  Based on [Detective Tedford's] training  
15 and experience[, he stated that] subjects who  
16 possess large grow lamps and inverters[]  
17 often use[] the lamps and inverters to grow  
18 marijuana.

19                  Based on [his] training and experience,  
20 and [by] speaking with other experienced  
21 Detectives, [Detective Tedford opined] from  
22 the text messages, photographs of the  
23 firearms, the marijuana, and the large lamps,  
24 that Zahn is currently involved with  
25 selling/purchasing/manufacturing marijuana  
26 and may be in possession [of] or have access  
27 to firearms.

28                  . . . .

29                  During the month of March[] 2014,  
30 Detective A. Azevedo drove to [Zahn's  
31 residence], and observed a silver Lexus  
32 parked in the driveway . . . registered to  
33 Zahn.

34                  Based on Zahn's probation status,  
35 detective Azevedo and probation officer C.  
36 Cottengim affixed a tracking device to the  
37 silver Lexus [in] which Zahn had been  
38 previously stopped. A tracking device [was]  
39 affixed to the vehicle . . . for  
40 approximately 1[5] days, [when] it [was]  
41 repeatedly observed, via its Internet  
42 tracking system by Detective Azevedo, as  
43 stopping for long periods of time, several  
44 hours at [Defendant's home]. During the  
45 course of the approximately 1[5] days in  
46 which the tracking device was affixed to the  
47 vehicle, probation officer Cottengim  
48 physically observed the silver Lexus . . . in  
49 the driveway of [Defendant's home].

1                   On 4/9/2014, at approximately 0930  
2 hours, Detective Azevedo observed via the  
3 online tracking system that the tracker  
4 affixed to Zahn's vehicle was currently  
5 stopped at [Defendant's home]. Detective  
6 Azevedo and probation officer Cottengim  
7 responded to the location and observed the  
8 vehicle in the driveway until approximately  
1545 hours when Zahn was observed entering  
the vehicle and leaving the area in the  
vehicle. Officers advised Citrus Heights  
Police Department on-duty officers of its  
location utilizing the online tracking system  
at which time a traffic stop was conducted on  
the vehicle at approximately 1600 hours.

9                   A probation search of the vehicle and  
10 Zahn's person yielded two sets of keys,  
11 approximately \$831 in US currency, and three  
12 large brown packages affixed with UPS labels  
13 each going to different locations. A K-9  
14 officer responded to the scene at which time  
the K-9 alerted on the packages. Within one  
of the packages, officers located . . .  
approximately 15.6 (total net weight) pounds  
of a green leafy substance which they  
immediately recognized as processed  
marijuana. . . .

15                   Officers conducted a probation search at  
16 [Zahn's residence], and located several items  
17 of marijuana packaging indicia[, including]  
several zip top bags containing a green leafy  
substance which they recognized as  
marijuana. . . . Within the garage of the  
residence, officers located four (4) 1000  
kilowatt bulbs and two (2) electronic  
ballasts, along with several electronic  
timers and wiring kits. . . .

21                   Officers also located a small container  
22 with a golden brown tacky substance which  
23 they immediately recognized as cannabis hash  
oil. Officers also located a ceramic plate  
within the garage of the residence which also  
had cannabis hash oil upon it.

24                   Based on the above listed events, the  
25 items located in the possession of Jeremy  
26 Zahn as well as the items located at his  
place of residence, it [was] the [stated]  
27 belief of [Detective Tedford] that officers  
28 w[ould] locate additional evidence of  
marijuana sales and marijuana cultivation at  
[Defendant's home].

1                   Based on [Detective Tedford's] training,  
2 experience and/or conversations that [he has]  
3 had with other Law Enforcement Officers  
4 and/or reports that [he has] read:

5                   [Detective Tedford stated that he]  
6 know[s] . . . the trafficking of large  
7 quantities of marijuana requires the  
8 cooperation and association of numerous  
9 individuals. As a result, persons who traffic  
10 in marijuana will often possess documents  
11 that will identify other members of the  
12 organization . . . .

13                   [Detective Tedford further stated:] that  
14 persons engaged in a conspiracy to commit  
15 felony crimes often communicate with each  
16 other and coordinate their drug trafficking  
17 activities by telephone and /or cellular  
18 phone[;] . . . .

19                   . . . that persons engaged in the  
20 possession of marijuana for sales, and the  
21 transportation of marijuana for sales, and  
22 the cultivation of marijuana, will often arm  
23 themselves with a firearm for protection  
24 against robbery or personal harm[;]

25                   . . . that individuals engaged in the  
26 . . . sales, possession, and transportation  
27 of marijuana/narcotics will often keep  
additional locations and/or storage  
containers, commonly referred to as ["]stash  
houses["] . . . in which to stockpile or hide  
their illicit items of contraband or illegal  
activity from law enforcement[,] . . . .  
especially . . . individuals who are  
currently under probation or have a  
searchable status.

28                   [Detective Tedford opined] that Zahn's  
29 observed behavior and observed association  
30 with [Defendant's] residence, via the online  
31 tracking system related to the tracker  
32 affixed to his vehicle, is indicative of his  
33 familiar association [thereto]. The large  
34 quantities of time spent at this residence,  
35 several hours spent on numerous days,  
36 indicate a serious association and  
37 familiarity with the residence which, in  
38 [his] training and experience, extends  
39 [Zahn's] association further than that of a  
40 quick drop off or casual visit.

1                   . . . [Detective Tedford stated that  
2                   he] believe[s] . . . the occupants residing  
3                   at the location listed on th[e] Search  
4                   Warrant, have committed, and are engaged in  
5                   an ongoing conspiracy to commit, the felony  
6                   crime of possession for sales of marijuana,  
7                   sales of marijuana, transportation of  
8                   marijuana, unlawful possession of firearms  
9                   and ammunition, and that evidence of these  
10                  crimes will be found at the [location] listed  
11                  on th[e] Search Warrant.

12                  (Aff. Det. Kyle Tedford ISO Search Warrant ("Tedford Aff.") at  
13                  THRIFT 0061-66, Virga Decl. Ex. A, ECF No. 35-2.)

14                  **C. Additional Information Concerning the Lexus**

15                  Citrus Heights Police Department Detective A. Azevedo  
16                  prepared a narrative concerning his participation in Jeremy  
17                  Zahn's investigation. His narrative states in relevant part:

18                  I ran a records check of [the silver  
19                  Lexus's] California license plate: 6BTB799,  
20                  and the registered owner of the vehicle was  
21                  Alexis Cardenas . . . Officer Herman had  
22                  told me that Cardenas is the current  
23                  girlfriend of Zahn, they currently live  
24                  together, and have a child in common. From my  
25                  training and experience, subjects who are on  
26                  probation or parole, often drive vehicles  
27                  that are not registered to them to avoid  
28                  being stopped by law enforcement.

19                  Probation Officer Cottengim, also  
20                  received information from Zahn's probation  
21                  officer that she had seen Zahn drive the  
22                  silver Lexus several times to his probation  
23                  classes.

24                  Based on the information that Zahn was  
25                  stopped driving the silver Lexus on 3/17/14,  
26                  he drives the silver Lexus to his probation  
27                  appointments, and that he lives with  
28                  Cardenas, . . . Zahn has full access to the  
                        silver Lexus.

25                  On 3/20/14 and 3/21/14, I drove by [Zahn  
26                  and Cardenas's residence] and saw the silver  
27                  Lexus with the license plate 6BTB799[] parked  
28                  in the driveway on two separate occasions.

1                   On 03/25/14, at approximately 2130  
2 hours, Probation Officer Cottengim and I,  
3 placed a GPS tracker on the silver Lexus (CA  
4 license plate 6BTB799), which was located in  
5 the driveway of [Zahn and Cardenas's  
6 residence]. I had access to the tracker  
information through the internet . . . . One  
location that the vehicle traveled to[]  
several times, and [in which] the vehicle was  
parked for several hours, was in the area of  
Shoreline Pointe, El Dorado Hills, Ca.

7                   The stops in the area of Shoreline  
8 Pointe, El Dorado Hills, Ca are as follows:  
9

10                  On 3/26/14, at 1237 hours, the tracke[r]  
11 indicated the vehicle traveled to the area of  
12 776 Shoreline Pointe, El Dorado Hills, Ca.  
13 The vehicle was parked at that location for 4  
14 hours and 33 minutes. Probation Officer  
15 Cottengim had driven up . . . Shoreline  
16 Pointe, and saw the silver Lexus (CA license  
17 plate 6BTB799), in the driveway of 773  
18 Shoreline Pointe.

19                  On 3/30/14, at 1515 hours, the tracker  
20 indicated the vehicle traveled to the area of  
21 765 Shoreline Pointe, El Dorado Hills, Ca.  
22 The vehicle was parked at that location for 6  
23 hours and 14 minutes.

24                  On 4/3/14, at 1833 hours, the tracker  
25 indicated the vehicle traveled to the area of  
26 765 Shoreline Pointe, El Dorado Hills, Ca.  
27 The vehicle was parked at that location for 3  
28 hours and 29 minutes.

29                  On 4/4/14, at 1223 hours, the tracker  
30 indicated the vehicle traveled to the area of  
31 775 Shoreline Pointe, El Dorado Hills, Ca.  
32 The vehicle was parked at that location for 1  
33 hour and 32 minutes.

34                  On 4/7/14, at 1603 hours, the tracker  
35 indicated the vehicle traveled to the area of  
36 765 Shoreline Pointe, El Dorado Hills, Ca.  
37 The vehicle was parked at that location for 4  
38 hours and 40 minutes.

39                  On 4/8/14, at 0923 hours, the tracker  
40 indicated the vehicle traveled to the area of  
41 776 Shoreline Pointe, El Dorado Hills, Ca.  
42 The vehicle was parked at that location for 3  
43 hours and 46 minutes.

1                   On 4/9/14, at 0936 hours, the tracker  
2 indicated the vehicle traveled to the area of  
3 Shoreline Pointe, El Dorado Hills, Ca. The  
4 vehicle was parked at that location for 6  
5 hours and 5 minutes.

6                   . . . .

7                   On 4/8/14, at approximately 1605 hours,  
8 Probation Officer Cottengim and I[] were  
9 driving in Probation Officer Cottengim's  
10 unmarked Sacramento County vehicle. We  
11 traveled to the area o[f] San Juan Ave and  
12 Greenback Ln, where the tracker indicated  
. . . the vehicle was located. We arrived in  
the parking lot of 6145 San Juan Ave  
(Burlington Coat Factory). We saw the silver  
Lexus parked in the parking lot. We later  
identified Zahn[] leaving Burlington Coat  
Factory and get[ting] into the silver Lexus.  
Zahn drove the vehicle out of the parking lot  
and we followed the vehicle. Zahn drove back  
to his residence . . . .

13                  On 4/9/14, at approximately 1200 hours,  
14 I looked at the tracker information on the  
15 internet and the tracker showed the vehicle  
16 was parked in the area of Shoreline Pointe,  
El Dorado Hills, Ca. The tracker indicated  
that the vehicle was parked at that location  
since 0936 hours.

17                  At approximately 1400 hours, Probation  
18 Officer Cottengim and I[] traveled to the  
19 area of Shoreline Pointe, El Dorado Hills,  
Ca. We were driving Probation Officer  
20 Cottengim's unmarked Sacramento County  
Probation vehicle. We arrived in the area of  
Shoreline Pointe at approximately 1430 hours.

21                  We drove up Shoreline Pointe, and I saw  
22 the silver Lexus parked in the driveway of  
773 Shoreline Pointe, El Dorado Hills. . . .

23                  Probation Officer Cottengim and I stayed  
24 in the area of Shoreline Pointe and Lakehills  
25 Dr. At approximately 1540 hours, Probation  
26 Officer Cottengim and I saw the silver Lexus  
27 leave the address of 773 Shoreline Pointe,  
and travel[] southbound on Lakehills Dr.  
Probation Officer Cottengim and I followed  
the silver Lexus and confirmed the license  
28 plate of 6BTB799. We followed the vehicle[]  
the entire route, and we watched the vehicle  
the entire route. . . .

1 . . . .

2 I contacted our Special Investigations  
3 Sergeant Wheaton, and explained to Sergeant  
4 Wheaton that we believed that Zahn was  
driving back to Citrus Heights. Sergeant  
5 Wheaton advised motorcycle unit Officer D.  
Jones to attempt to stop the silver Lexus.

6 Officer D. Jones made a traffic stop on  
7 the silver Lexus for a CVC violation[]  
8 . . . in Citrus Heights. Officer D. Jones  
9 made contact with the driver Zahn, who  
identified himself by his California Driver's  
license. At no time did Zahn stop at any  
addresses or any shopping centers after  
leaving the 773 Shoreline Pointe address to  
where he was stopped by Officer D. Jones.

10

11 (Det. A. Azevedo Narrative at THRIFT 0010-12, Virga Decl. Ex. B,  
12 ECF No. 35-3 (internal citations omitted).)

13 Sacramento County Probation Department Deputy Probation  
14 Officer C. Cottengim also wrote a report concerning his  
15 involvement in Jeremy Zahn's investigation. His report states in  
16 relevant part:

17 I conducted a records check on Jeremy  
18 Zahn . . . and found him to be on active  
[Post Release Community Supervision] . . . .  
19 I conducted a records check and found the  
Lexus to be registered to Alexis Cardenas  
20 . . . . I searched the Probation database  
(PIP) and found his assigned Probation  
Officer to be Senior Probation Officer B.  
21 Curry. I reviewed Officer Curry's probation  
notes and then telephoned her to gather more  
22 intelligence. I contacted Officer Curry and  
advised her of Officer Herman's findings.  
23 She stated that Cardenas and Zahn were in a  
dating relationship, had a child together[,]  
24 and lived together [in] . . . Citrus Heights  
25 . . . . She informed me that she had seen  
Zahn driving the Lexus on occasions and that  
26 Zahn usually reported to the Probation Office  
driving the Lexus. . . .

27 According to Probation records, on  
28 9/9/13 Zahn arrived at the Probation Office  
driving the Lexus. . . .

1 (Deputy C. Cottengim Report at THRIFT 0046, Virga Decl. Ex. B,  
2 ECF No. 35-3.)

3 **DISCUSSION**

4 Defendant argues: "The only link in [Tedford's]  
5 affidavit between illicit activity and 773 Shoreline Point is  
6 Jeremy Zahn. Because Mr. Zahn was only seen at the property one  
7 time, the connection between Zahn and the property is made almost  
8 entirely through the Lexus that was being tracked." (Def.'s Mot.  
9 5:26-28.) Defendant continues:

10 In order to enhance the appearance of  
11 [Zahn's] familiarity with the property, the  
12 affidavit states that Detective Azevedo ran a  
check and saw the Lexus was "**registered to**  
**Zahn.**" [Tedford Aff. at THRIFT 0064]. . . .  
13 [T]he Affidavit omits all mention of the  
14 Lexus' true owner, Alexis Cardenas, and only  
refers to the car as "**Zahn's.**" The author of  
the affidavit knew that these statements were  
15 false and misleading.

16 . . . .

17 The affidavit also stated that the Lexus  
18 "had been repeatedly observed, via its  
Internet tracking system by Detective  
19 Azevedo, as stopping for long periods of  
time, several hours **at 773 Shoreline Point.**"  
20 [Id.] This also was incorrect. Detective  
21 Azevedo, in his report, never stated that the  
GPS tracker showed the Lexus to be **at** 773  
Shoreline Point. Instead, he summarized times  
the car was in the Shoreline Point **area.**

22 The affidavit states that the GPS  
23 tracker reflected Zahn's whereabouts. In  
24 doing so, the affidavit glosses over the  
logical leap that is required. The Lexus'  
location is not one and the same with Zahn's  
25 own location.

26 (Def.'s Mot. 4:8-28 (emphasis added).) Defendant also faults  
27 Tedford for omitting "reference [in his affidavit] to what time  
28 of day the Lexus was purportedly at the Shoreline Point location,

1 how long [and at what time of day] the Lexus was at other  
2 locations," the fact "that none of Mr. Zahn's keys or garage door  
3 openers worked at 773 Shoreline Point[,]" "reference to cars that  
4 Zahn owned or how often he drove those cars[,]" and "information  
5 about how often Alexis Cardenas drove the Lexus (that she  
6 owned)." (Id. at 5:8-16.) Defendant argues:

7 These omissions prevented the magistrate from  
8 having a frame of reference for how strong  
9 the connection was between the Lexus and Zahn  
10 and, in turn, from having an accurate picture  
11 of the connection between Zahn and 773  
12 Shoreline Point. Instead of presenting all  
13 the facts known to law enforcement, the  
14 affidavit misrepresented and omitted facts to  
15 assert that Mr. Zahn's regular presence at  
16 773 Shoreline Point was an established fact.

17 (Id. at 5:16-21.)

18 The government rejoins, *inter alia*, that "the Court  
19 should deny the motion . . . because the defendant has failed to  
20 make a substantial preliminary showing that the affidavit  
21 contained any material[] false statements or omissions." (Gov't  
22 Opp'n 1:26-2:4, ECF No. 36.) The government argues: "The test of  
23 materiality is whether the affidavit, when corrected, no longer  
24 supports a probable cause finding. . . . [Here, even if the  
25 [referenced alleged misstatements and omissions were corrected],  
26 the finding of probable cause is undisturbed." (Id. at 8:25-9:2,  
27 15:15-17.)

28 "To [obtain] a hearing on whether a warrant is invalid  
29 under Franks, a defendant must make 'a substantial preliminary  
30 showing' that the affiant knowingly or recklessly included a  
31 false statement in the warrant affidavit and that the allegedly  
32 false statement was 'necessary to the finding of probable

1 cause.'" United States v. Christensen, --- F. App'x ----, 2015 WL  
 2 5011989, at \*1 (9th Cir. 2015) (quoting Franks, 438 U.S. at 155-  
 3 56); accord United States v. Ruiz, 758 F.3d 1144, 1148 (9th Cir.  
 4 2014). "A similar standard applies to omissions in a warrant  
 5 affidavit." Christensen, 2015 WL 5011989, at \*1 (citing United  
 6 States v. Stanert, 762 F.2d 775, 781 (9th Cir. 1985)). "Knowing  
 7 or reckless falsehoods or omissions are immaterial when the  
 8 affidavit would still support probable cause after the purported  
 9 falsehoods are removed and omissions included." Id. (citing  
 10 United States v. Garcia-Cruz, 978 F.2d 537, 541 (9th Cir. 1992)).

11 "Assessing whether probable cause exists is a 'common  
 12 sense determination.'" Ruiz, 758 F.3d at 1148 (quoting United  
 13 States v. Hall, 113 F.3d 157, 159 (9th Cir. 1997)). "The probable  
 14 cause standard for a search warrant is whether . . . there was 'a  
 15 fair probability that contraband or evidence of a crime would be  
 16 found in a particular place.'" Id. (brackets omitted) (quoting  
 17 United States v. DeLeon, 979 F.2d 761, 764 (9th Cir. 1992)). "For  
 18 probable cause, an affidavit must establish a reasonable nexus  
 19 between the . . . evidence [sought] and the location to be  
 20 searched." United States v. Crews, 502 F.3d 1130, 1136-37 (9th  
 21 Cir. 2007). "The . . . judge need not determine 'that the  
 22 evidence is more likely than not to be found where the search  
 23 takes place. The [judge] need only conclude that it would be  
 24 reasonable to seek the evidence in the place indicated in the  
 25 affidavit.'" Ruiz, 758 F.3d at 1148 (ellipses omitted) (quoting  
 26 United States v. Ocampo, 937 F.2d 485, 490 (9th Cir. 1991)).

27 "Direct evidence that contraband or evidence is at a  
 28 particular location is not essential to establish probable cause

1 to search the location. [The judge] is entitled to draw  
2 reasonable inferences about where evidence is likely to be kept,  
3 based on the nature of the evidence and the type of offense."  
4 United States v. Anguelo-Lopez, 791 F.2d 1394, 1399 (9th Cir.  
5 1986) (internal citation omitted). "Under the totality of the  
6 circumstances . . . , otherwise innocent behavior may be  
7 indicative of criminality when viewed in context." United States  
8 v. Chavez-Miranda, 306 F.3d 973, 978 (9th Cir. 2002).  
9 "Additionally, . . . judges may rely on the training and  
10 experience of affiant police officers." Id.

11 Here, Defendant has not shown that Detective Tedford's  
12 misstatement concerning the Lexus's registration or inclusion of  
13 the detailed tracking information concerning the Lexus's location  
14 is material, i.e., that "an affidavit containing the [corrected  
15 and] omitted [information] would [not] . . . provide[] a basis  
16 for a finding of probable cause." Chavez-Miranda, 306 F.3d at  
17 979. Even though Zahn was not the Lexus's registered owner, the  
18 record establishes Zahn often drove it. The Lexus was registered  
19 to his girlfriend, with whom he lived and had a child; Zahn's  
20 assigned probation officer stated "Zahn usually reported to the  
21 Probation Office driving the Lexus"; Zahn was stopped while  
22 driving the Lexus on March 17, 2014; Zahn was observed driving  
23 the Lexus after leaving a Burlington Coat Factory store on April  
24 8, 2014; and Zahn was again stopped while driving the Lexus on  
25 April 9, 2014, the day the search warrant was issued. (Azevedo  
26 Narrative at THRIFT 0010-11; Cottengim Report at THRIFT 0046.)

27 Further, the GPS tracking data referenced in Detective  
28 Azevedo's Narrative evinces the Lexus was in the immediate

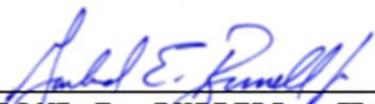
1 vicinity of Defendant's home<sup>3</sup> for a total of more than 30 hours  
2 over a fifteen-day period at various times of day, for example,  
3 9:23 a.m., 12:23 p.m., 3:15 p.m., and 6:30 p.m. (Azevedo  
4 Narrative at THRIFT 0010-11.) Also, the Lexus was observed in the  
5 driveway of Defendant's home on two of those days. (Id. at THRIFT  
6 0010-12.)

7 Nor has Defendant shown that the remaining referenced  
8 omissions are material, i.e., information concerning how often  
9 Ms. Cardenas drove the Lexus, where and for how long the Lexus  
10 was at other locations, if Zahn owned and/or drove another  
11 vehicle(s), and whether Zahn possessed a key or garage door  
12 opener that worked at Defendant's home. Regardless of the answers  
13 to those inquiries, it would "be reasonable to seek the evidence"  
14 in Defendant's home. Crews, 502 F.3d at 1137. As corrected and  
15 supplemented, Tedford's affidavit sufficiently connected Zahn to  
16 Defendant's residence such that a "reasonable nexus [existed]  
17 between the . . . evidence [sought] and the location to be  
18 searched." Id. at 1136-37; see, e.g., United States v. Christian,  
19 554 F. App'x 188, 190 (4th Cir. 2013) (indicating evidence that  
20 the defendant "regularly spent time" at a location and a police  
21 officer's assertions based on his experience that the defendant  
22 would "likely store his drugs and related items . . . at a  
23 residence or business which is used as a 'stash house'" supported  
24 probable cause for a warrant to search the apartment).

25  
26  
27 <sup>3</sup> Defendant's house number was 773 Shoreline Point; the GPS tracking data  
28 "indicated the vehicle traveled to the area of" 765, 775, and 776 Shoreline  
Point.

1                   For the stated reasons, Defendant's suppression motion  
2 and request for a Franks hearing are DENIED.<sup>4</sup>

3 Dated: January 19, 2016

4  
5                     
6 GARIAND E. BURRELL, JR.  
7 Senior United States District Judge

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<sup>4</sup>                   In light of this ruling, the Court "do[es] not reach the government's  
28 argument that [Defendant] lacked standing to challenge the search." United  
States v. Garcia-Gillalba, 585 F.3d 1223, 1234 n.6 (9th Cir. 2009).