

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KENDALL THRIFT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

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FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

JUL 5 2018

FOR THE NINTH CIRCUIT

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

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.

* 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.

FILED

UNITED STATES COURT OF APPEALS

AUG 29 2018

FOR THE NINTH CIRCUIT

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.

^{*} 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,

Plaintiff,

v.

KENDALL THRIFT,

Defendant.

No. 2:14-cr-00308-GEB

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

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.

* 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.]
During the search of Mr. Zahn's car three
11 large brown packages containing approximately
12 15 pounds of marijuana were found. The police
searched Mr. Zahn's home and found marijuana
and marijuana packaging. All of which is
detailed in the affidavit. Notably absent in
the affidavit is any connection between the
packages and [Defendant's] home.

13 The officers were watching [Defendant's
14 home] when Mr. Zahn was inside and observed
15 him get into his car and leave. However, the
16 affidavit does not include any information
17 about Mr. Zahn leaving the house with
packages. This silence speaks volumes. There
is no connection between the contraband found
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

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

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

. . . .

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

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

"The probable cause standard for a search warrant is whether, based on common sense considerations, there was 'a fair probability that contraband or evidence of a crime would be found in a particular place.'" United States v. Ruiz, 758 F.3d 1144, 1148, (9th Cir. 2014) (brackets omitted) (quoting United States 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
21 conditions, and located a . . . cellular
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
25 increments. [Based on his] training and
26 experience, [Detective Tedford stated this]
amount of marijuana, . . . packaged
separately in approximately one pound
increments, is for sales.

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

1 inside of a vehicle.

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

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

28 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
and may be in possession or have access to
firearms.

4

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

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

17 On 4/9/2014, at approximately 0930
hours, Detective Azevedo observed via the
18 online tracking system that the tracker
affixed to Zahn's vehicle was currently
19 stopped at [Defendant's home]. Detective
Azevedo and probation officer Cottengim
20 responded to the location and observed the
vehicle in the driveway until approximately
21 1545 hours when Zahn was observed entering
the vehicle and leaving the area in the
22 vehicle. Officers advised Citrus Heights
Police Department on-duty officers of its
23 location utilizing the online tracking system
at which time a traffic stop was conducted on
24 the vehicle at approximately 1600 hours.

25 A probation search of the vehicle and
Zahn's person yielded two sets of keys,
26 approximately \$831 in US currency, and three
large brown packages affixed with UPS labels
27 each going to different locations. A K-9
officer responded to the scene at which time
28 the K-9 alerted on the packages. Within one
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
9 substance which they recognized as
10 marijuana. . . . Within the garage of the
11 residence, officers located four (4) 1000
12 kilowatt bulbs and two (2) electronic
13 ballasts, along with several electronic
14 timers and wiring kits. . . .

15 Officers also located a small container
16 with a golden brown tacky substance which
17 they immediately recognized as cannabis hash
18 oil. Officers also located a ceramic plate
19 within the garage of the residence which also
20 had cannabis hash oil upon it.

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

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

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

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

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
 4 personal harm[;]

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
 10 houses["] . . . in which to stockpile or hide
 11 their illicit items of contraband or illegal
 12 activity from law enforcement[,]. . .
 13 especially . . . individuals who are
 14 currently under probation or have a
 15 searchable status.

16 [Detective Tedford opined] that Zahn's
 17 observed behavior and observed association
 18 with [Defendant's] residence, via the online
 19 tracking system related to the tracker
 20 affixed to his vehicle, is indicative of his
 21 familiar association [thereto]. The large
 22 quantities of time spent at this residence,
 23 several hours spent on numerous days,
 24 indicate a serious association and
 25 familiarity with the residence which, in
 26 [his] training and experience, extends
 27 [Zahn's] association further than that of a
 28 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 Supp. Search Warrant ("Tedford Aff.") 2-
 13 6, Virga Decl., Ex. A.)

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

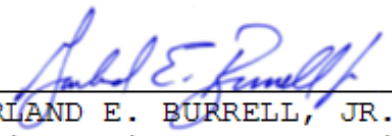
unnecessary. Id. ("Before embarking on the exercise of determining whether the affidavit supported probable cause, we may proceed directly to the issue of whether there was good faith reliance."). Zahn's cell phone contained several text messages relating to marijuana sales and photographs of "[a] large 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.'" (quoting Illinois v. Gates, 462 U.S. 213, 236 (1983))).

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

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

19
20 
21 _____
22 GARIAND E. BURRELL, JR.
23 Senior United States District Judge
24
25
26

27 ¹ 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,

Plaintiff,

v.

KENDALL THRIFT,

Defendant.

No. 2:14-cr-00308-GEB

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

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 Suppress¹ ("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.

¹ 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 0058,² 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
26 identified the driver as Jeremy Zahn by his
27 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 ² 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.

1 convicted felon.

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

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

11 A large amount of US currency[:]
12 . . . six stacks of bills with \$100 bills on
the top. There was another photograph of 22[]
13 \$100 bills spread out on an unknown
person['s] lap inside of a vehicle.

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

21 Based on [Detective Tedford's] training
and experience[, as well as conversations
22 [he] ha[s] had with other experienced
detectives, [Detective Tedford states] that
23 marijuana/narcotics dealers often are in
possession of firearms to protect themselves
24 from subjects they are going to sell
marijuana/narcotics to[.]. A CII records check
25 on Zahn revealed he is a convicted felon[]
and cannot possess any firearms
26 Furthermore, Zahn's probation conditions
state that he cannot possess firearms, nor be
27 in the presence of anyone in possession of
any dangerous weapons.
28

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
9 1545 hours when Zahn was observed entering
10 the vehicle and leaving the area in the
11 vehicle. Officers advised Citrus Heights
12 Police Department on-duty officers of its
13 location utilizing the online tracking system
14 at which time a traffic stop was conducted on
15 the vehicle at approximately 1600 hours.

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

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

38 Officers also located a small container
39 with a golden brown tacky substance which
40 they immediately recognized as cannabis hash
41 oil. Officers also located a ceramic plate
42 within the garage of the residence which also
43 had cannabis hash oil upon it.

44 Based on the above listed events, the
45 items located in the possession of Jeremy
46 Zahn as well as the items located at his
47 place of residence, it [wa]s the [stated]
48 belief of [Detective Tedford] that officers
49 w[ould] locate additional evidence of
50 marijuana sales and marijuana cultivation at
51 [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
28 additional locations and/or storage
29 containers, commonly referred to as ["]stash
30 houses["] . . . in which to stockpile or hide
31 their illicit items of contraband or illegal
32 activity from law enforcement[,]. . . .
33 especially . . . individuals who are
34 currently under probation or have a
35 searchable status.

36 [Detective Tedford opined] that Zahn's
37 observed behavior and observed association
38 with [Defendant's] residence, via the online
39 tracking system related to the tracker
40 affixed to his vehicle, is indicative of his
41 familiar association [thereto]. The large
42 quantities of time spent at this residence,
43 several hours spent on numerous days,
44 indicate a serious association and
45 familiarity with the residence which, in
46 [his] training and experience, extends
47 [Zahn's] association further than that of a
48 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,
sales of marijuana, transportation of
marijuana, unlawful possession of firearms
and ammunition, and that evidence of these
crimes will be found at the [location] listed
on th[e] Search Warrant.

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

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

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

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

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

22 Based on the information that Zahn was
23 stopped driving the silver Lexus on 3/17/14,
he drives the silver Lexus to his probation
appointments, and that he lives with
24 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
Lexus with the license plate 6BTB799[] parked
27 in the driveway on two separate occasions.
28

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

14 On 3/30/14, at 1515 hours, the tracker
15 indicated the vehicle traveled to the area of
16 765 Shoreline Pointe, El Dorado Hills, Ca.
The vehicle was parked at that location for 6
hours and 14 minutes.

17 On 4/3/14, at 1833 hours, the tracker
18 indicated the vehicle traveled to the area of
19 765 Shoreline Pointe, El Dorado Hills, Ca.
The vehicle was parked at that location for 3
hours and 29 minutes.

20 On 4/4/14, at 1223 hours, the tracker
21 indicated the vehicle traveled to the area of
22 775 Shoreline Pointe, El Dorado Hills, Ca.
The vehicle was parked at that location for 1
hour and 32 minutes.

23 On 4/7/14, at 1603 hours, the tracker
24 indicated the vehicle traveled to the area of
25 765 Shoreline Pointe, El Dorado Hills, Ca.
The vehicle was parked at that location for 4
hours and 40 minutes.

26 On 4/8/14, at 0923 hours, the tracker
27 indicated the vehicle traveled to the area of
28 776 Shoreline Pointe, El Dorado Hills, Ca.
The vehicle was parked at that location for 3
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
13 . . . the vehicle was located. We arrived in
14 the parking lot of 6145 San Juan Ave
15 (Burlington Coat Factory). We saw the silver
16 Lexus parked in the parking lot. We later
17 identified Zahn[] leaving Burlington Coat
18 Factory and get[ting] into the silver Lexus.
19 Zahn drove the vehicle out of the parking lot
20 and we followed the vehicle. Zahn drove back
21 to his residence

22 On 4/9/14, at approximately 1200 hours,
23 I looked at the tracker information on the
24 internet and the tracker showed the vehicle
25 was parked in the area of Shoreline Pointe,
26 El Dorado Hills, Ca. The tracker indicated
27 that the vehicle was parked at that location
28 since 0936 hours.

29 At approximately 1400 hours, Probation
30 Officer Cottengim and I[] traveled to the
31 area of Shoreline Pointe, El Dorado Hills,
32 Ca. We were driving Probation Officer
33 Cottengim's unmarked Sacramento County
34 Probation vehicle. We arrived in the area of
35 Shoreline Pointe at approximately 1430 hours.

36 We drove up Shoreline Pointe, and I saw
37 the silver Lexus parked in the driveway of
38 773 Shoreline Pointe, El Dorado Hills. . . .

39 Probation Officer Cottengim and I stayed
40 in the area of Shoreline Pointe and Lakehills
41 Dr. At approximately 1540 hours, Probation
42 Officer Cottengim and I saw the silver Lexus
43 leave the address of 773 Shoreline Pointe,
44 and travel[] southbound on Lakehills Dr.
45 Probation Officer Cottengim and I followed
46 the silver Lexus and confirmed the license
47 plate of 6BTB799. We followed the vehicle[]
48 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
5 driving back to Citrus Heights. Sergeant
6 Wheaton advised motorcycle unit Officer D.
7 Jones to attempt to stop the silver Lexus.

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

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

19 Sacramento County Probation Department Deputy Probation
20 Officer C. Cottengim also wrote a report concerning his
21 involvement in Jeremy Zahn's investigation. His report states in
22 relevant part:

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

29 According to Probation records, on
30 9/9/13 Zahn arrived at the Probation Office
driving the Lexus. . . .

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

DISCUSSION

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

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

. . . .

The affidavit also stated that the Lexus "had been repeatedly observed, via its Internet tracking system by Detective Azevedo, as stopping for long periods of time, several hours **at 773 Shoreline Point.**" [Id.] This also was incorrect. Detective 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.**

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

(Def.'s Mot. 4:8-28 (emphasis added).) Defendant also faults Tedford for omitting "reference [in his affidavit] to what time 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
 the facts known to law enforcement, the
 affidavit misrepresented and omitted facts to
 assert that Mr. Zahn's regular presence at
 773 Shoreline Point was an established fact.

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

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

24 "To [obtain] a hearing on whether a warrant is invalid
 25 under Franks, a defendant must make 'a substantial preliminary
 26 showing' that the affiant knowingly or recklessly included a
 27 false statement in the warrant affidavit and that the allegedly
 28 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

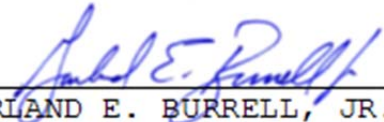
1 vicinity of Defendant's home³ for a total of more than 30 hours
2 over a fifteen-day period at various times of day, for example,
3 9:23 a.m., 12:23 p.m., 3:15 p.m., and 6:30 p.m. (Azevedo
4 Narrative at THRIFT 0010-11.) Also, the Lexus was observed in the
5 driveway of Defendant's home on two of those 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 ³ 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.⁴

3 Dated: January 19, 2016

4
5 
6 GARIAND E. BURRELL, JR.
7 Senior United States District Judge
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27 ⁴ 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).