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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 18-1335

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
PAUL HUSKISSON,
Defendant-Appellant.

Argued: Jan. 14, 2019
Decided: June 5, 2019

Before Wood, *Chief Judge*, and Brennan and St. Eve, *Circuit Judges*.

OPINION

BRENNAN, *Circuit Judge*. Paul Huskisson appeals his conviction for possession with intent to distribute methamphetamine. He argues government agents illegally obtained the drug evidence used to convict him when they raided his house without a warrant and saw drugs in his kitchen. The government concedes the illegal entry, but counters that a later-issued search warrant rendered the drug evidence admissible. We consider whether after the

illegal entry the exclusionary rule applies to the methamphetamine found in Huskisson's house.

I. Background

A. The Search and Seizure

On February 5, 2016, Drug Enforcement Administration (DEA) agents arrested Anthony Hardy on drug conspiracy charges and related offenses. Seeking to cut a deal, Hardy immediately admitted his role in the conspiracy, led DEA agents to his drugs and guns, and rolled over on two local drug dealers. One of those dealers was Paul Huskisson. Huskisson was previously unknown to the Indianapolis DEA task force, but Hardy provided plenty of intelligence on his dealings with Huskisson, including that:

- Hardy purchased varying quantities of methamphetamine from Huskisson six times over the preceding five months, for $8,000 per pound.
- Hardy bought methamphetamine both at Huskisson's house and at a car lot Huskisson owned.
- Huskisson told Hardy that Huskisson's source expected a shipment of ten to twelve pounds of methamphetamine the next day, February 6. Hardy believed he could buy some or all of that methamphetamine from Huskisson.

As further proof of Huskisson's involvement in the drug conspiracy, Hardy called Huskisson that day. DEA agents, including Special Agent Michael Cline, listened to and recorded that conversation with Hardy's consent. On the call, Huskisson agreed to

deliver ten to twelve pounds of methamphetamine to Hardy.[1]

The next day, Hardy and Huskisson arranged the details of the transaction through a series of telephone calls (again, recorded by the DEA with Hardy's consent). In all, Cline listened in on nine phone calls between the two. Huskisson and Hardy agreed the drug deal would occur at Huskisson's home that night. At that point, the DEA agents did not apply for a search warrant, believing they needed to corroborate that there was methamphetamine at Huskisson's residence before filing the application.

Hardy stayed with Cline until around 5:30 p.m., when Hardy left for Huskisson's house. Cline tailed Hardy's car until it arrived at Huskisson's house about ten minutes later. Cline waited in his car and watched Hardy enter the house, with an entry team on standby. This entry team comprised DEA agents and local law enforcement, including Indiana State Police detective Noel Kinney.

At 6:15 p.m., Cline saw a car pull into the house's driveway. Two men (later identified as Jezzar Terrazas-Zamarron and Fredi Aragon) got out of the car with a cooler, approached the house, and entered. Ten minutes later, Hardy walked outside and gave a

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[1] Hardy asked Huskisson, "You got any?" Huskisson replied, "I guarantee you it will be here tomorrow… I talked to the dude." Hardy then asked, "We doing the ten or the twelve?" and Huskisson replied, "It'll be either the ten or the twelve." Hardy later explained to the DEA agents that the "ten or the twelve" referred to ten or twelve pounds of methamphetamine arriving from Huskisson's source the next day.

prearranged signal to indicate he had seen methamphetamine in the house.

Once Hardy gave the signal, Cline ordered the entry team to enter Huskisson's house and secure the scene. At the time, no search warrant had been issued. The entry team entered the house and arrested Terrazas, Aragon, and Huskisson, who refused to consent to a search of his residence. Upon entry, officers saw in plain sight in the kitchen an open cooler with ten saran-wrapped packages of a substance which field tested positive for methamphetamine. The three men were taken into custody. Meanwhile, Cline remained outside, pretending to arrest Hardy to disguise his role as an informant. Cline then left with Hardy to prepare applications for search warrants for Huskisson's house and his workplace.

Later that night, DEA agents filed the warrant application for Huskisson's house. The application detailed Hardy's history of drug deals with Huskisson, as well as the many phone calls between Hardy and Huskisson in the last twenty-four hours. The application also included Hardy's description of what transpired while he was inside Huskisson's house: when Hardy arrived, Huskisson called his suppliers and told Hardy they would arrive shortly. Two minutes later, Terrazas came to the door and explained he had five pounds of methamphetamine, only half of what Huskisson had expected. After speaking with Huskisson, Terrazas placed a phone call and Aragon walked in with a cooler. Aragon took ten saran-wrapped packages out of the cooler that appeared to Hardy to be methamphetamine. Hardy then went outside to signal Cline.

In addition to this information, the warrant application contained the following two sentences that underlie this appeal: "The law enforcement officers observed an open cooler with ten saran wrapped packages that contained suspected methamphetamine. The suspected methamphetamine later field tested positive for the presence of methamphetamine." The magistrate judge issued a search warrant for Huskisson's house around 10:30 p.m. the night of Huskisson's arrest, about four hours after the initial entry.

B. District Court Proceedings

Huskisson was indicted for possessing with the intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Before trial, Huskisson moved to suppress the methamphetamine evidence, arguing it was found after the DEA entry team entered his house without a warrant and without any exigent circumstances, and that DEA agents had included tainted evidence from the illegal search in their warrant application. The district court held a suppression hearing. Cline was unavailable to testify, so Detective Kinney took the stand instead.

On the topic of the warrant application, Kinney testified inconsistently, contradicting himself and other government evidence. At first, he testified the task force's plan was to apply for a warrant if Huskisson refused consent to search, regardless of whether they saw any evidence of drug activity within the house:

> KINNEY: Depending on the conversation with Mr. Huskisson, if he granted consent to

> search, we would continue the search of the residence. If he didn't, we would secure the residence and obtain a search warrant.

But later Kinney suggested the plan was to apply for a warrant only if the entry team found methamphetamine in Huskisson's home and Huskisson refused consent to search:

> DEFENSE COUNSEL: And that after entering and securing that residence, you were going to ask for consent to search from Mr. Huskisson?
>
> KINNEY: Yes, should we find the methamphetamine, gather a consent to search. If it was not granted, obtain a search warrant.
>
> DEFENSE COUNSEL: Okay. So if you didn't get consent, you were going to start the process for obtaining a warrant?
>
> KINNEY: Yes.
>
> DEFENSE COUNSEL: So no part of the plan was to start the process for obtaining a warrant prior to entry into the [Huskisson] residence?
>
> KINNEY: That's correct, yes.

The district court denied Huskisson's motion to suppress, finding Kinney's first statement to be more accurate and more consistent with the other evidence presented by the government. The district court found Cline "planned to and would have sought a search warrant regardless of the discovery of the methamphetamine packages," and that the warrant application was sufficient to establish probable cause

"even without those references [to the methamphetamine seized after the illegal entry]." Order Den. Mot. to Suppress at 9-10, ECF No. 76.

The case went to a two-day jury trial, during which three DEA agents, including Cline, testified about their plan to apply for a search warrant. All three testified the entry was intended only to "secure the residence while the search warrants were getting prepared and approved," and that the entry team "waited for the search warrant to be signed" after entry. None of the other agents suggested they intended to apply for a warrant only if methamphetamine was found. The jury found Huskisson guilty and the district court imposed a twenty-year mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(A)(viii). This appeal followed.

II. Discussion

Huskisson challenges the denial of his motion to suppress on two grounds: that the warrantless entry violated the Fourth Amendment, and that the search warrant does not satisfy the independent source doctrine. There is no dispute that law enforcement entered Huskisson's house illegally: entering a home without a warrant is directly proscribed by the language of the Fourth Amendment, which guarantees "[t]he right of the people to be secure in their … houses … against unreasonable searches and seizures … ." Evidence from the ensuing search may still be admissible, however, if the independent source doctrine applies. On appeal, we review the district court's findings of fact for clear error and its legal rulings de novo. *United States v. Etchin*, 614 F.3d 726, 733 (7th Cir. 2010). We review de novo a district

court's determination that probable cause supported the issuance of a search warrant. *United States v. Mullins*, 803 F.3d 858, 861 (7th Cir. 2015).

As a general matter, the exclusionary rule prohibits introduction of evidence that the police obtained illegally. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). But this rule has exceptions. Relevant here is the independent source doctrine, which holds that illegally obtained evidence is admissible if the government also obtains that evidence via an independent legal source, like a warrant. *See Murray v. United States*, 487 U.S. 533, 542 (1988) (allowing the admission of evidence found in plain sight during an illegal entry that was later obtained legally); *Segura v. United States*, 468 U.S. 796, 814 (1984) (allowing the admission of evidence found in a home that was first entered illegally, but later entered based on a search warrant "wholly unconnected" to the initial, illegal entry). The independent source doctrine recognizes that the goal of the exclusionary rule is to put "the police in the same, not a worse, position than they would have been in if no police error had occurred." *Nix v. Williams*, 467 U.S. 431, 443 (1984); *see also Murray*, 487 U.S. at 537.

The government urges us to apply the independent source doctrine here, arguing that the warrant obtained after the illegal entry was an independent legal source of the methamphetamine evidence. Huskisson disagrees, arguing that the warrant application referenced the illegally obtained evidence, so it could not be a legal source.[2] Under

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[2] To this point, Huskisson also argues that the independent source doctrine should not apply at all in cases of flagrant police

Murray, to decide whether the warrant is an independent legal source, we ask two questions: first, did the illegally obtained evidence affect the magistrate's decision to issue the warrant? And second, did the illegally obtained evidence affect the government's decision to apply for the warrant? *Murray*, 487 U.S. at 542; *see also United States v. Markling*, 7 F.3d 1309, 1315-16 (7th Cir. 1993); *Etchin*, 614 F.3d at 736-38.

On the first question, we have addressed the effect of tainted evidence on warrant applications in two cases relevant here: *United States v. Markling* and *United States v. Etchin*. In *Markling*, while the defendant stayed at a motel, its management decided to move his belongings to another room. Police intercepted the motel staff in transit, illegally searched his briefcase in the motel hallway, found drug paraphernalia inside, and referenced that discovery in the warrant application to search his motel room. *Markling*, 7 F.3d at 1311.

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misconduct, such as entering a home without a warrant. *See United States v. Madrid*, 152 F.3d 1034, 1041 (8th Cir. 1998) (adding a narrow exception to the independent source doctrine when "police officers exploit their presence in the home"). But as we explain below, our circuit applies the independent source doctrine to all cases where the warrant passes the Supreme Court's test in *Murray*. Our precedent therefore bars us from applying the "flagrant misconduct standard" of *Madrid*, a standard that the Eighth Circuit itself has limited to narrow circumstances of egregious police misconduct. *See, e.g.*, *United States v. Swope*, 542 F.3d 609, 616-17 (8th Cir. 2008) (applying independent source doctrine even though the warrant application contained illegally obtained information).

We applied the independent source exception from *Murray* in *Markling*. To determine whether the magistrate judge's decision to issue the warrant was affected by the mention of the illegal evidence, we asked whether, "even without the [illegal evidence], [the] warrant application established probable cause to search Markling's hotel room." 7 F.3d at 1316. We based this approach on other circuits' precedent and the Supreme Court's reasoning in *Franks v. Delaware*, 438 U.S. 154 (1978). *Franks* held that when deliberately or recklessly false information is included in a warrant application, "the warrant is still valid if the other information in the application, standing alone, is sufficient to establish probable cause." *Markling*, 7 F.3d at 1316 (citing *Franks*, 438 U.S. at 171-72). We concluded that the same reasoning applied to cases where illegally obtained evidence is included in the warrant application:

> If we may uphold a warrant based on an application including knowingly false information if the other information in the application establishes probable cause, it is logical to conclude that we may uphold a warrant based on an application including illegally obtained information under the same circumstances.

Markling, 7 F.3d at 1316.

In the second relevant case, *Etchin*, police illegally entered the defendant's apartment, then applied for a search warrant and mentioned evidence obtained during the illegal entry in the warrant application. *Etchin*, 614 F.3d at 737. The tainted evidence referenced was largely immaterial: for

example, the warrant application included the layout of Etchin's apartment seen during the illegal entry, but did not mention the marijuana the officers saw in plain view during that entry. *Id.* at 737-38. Despite the intrusion upon the sanctity of the home, which "is sacred in Fourth Amendment terms," *Segura*, 468 U.S. at 810, we held the warrant was still an independent source, because the tainted evidence included "was not an essential factor in the probable cause analysis." *Etchin*, 614 F.3d at 737. Thus, "the link between the initial entry and the later-discovered evidence was 'sufficiently attenuated to dissipate the taint' of the illegal search … ." *Id.* at 738 (quoting *Segura*, 468 U.S. at 815). We did not comment in *Etchin* on what the outcome would have been had the warrant application mentioned the marijuana in plain view.

This case presents factual elements similar to those in *Markling* and *Etchin*. Here, the DEA entry team violated the sanctity of Huskisson's home by entering without a warrant, which "is a central concern of the Fourth Amendment." *Etchin*, 614 F.3d at 733. Then, as in *Markling*, the government included the methamphetamine evidence they found in the search warrant application, evidence that was highly probative of probable cause.

With *Murray* as our direction, we apply the *Franks*-style analysis adopted in *Markling*, because doing otherwise would put the government in a worse place than they would have been absent the illegal search. *See Murray*, 487 U.S. at 541 ("Invoking the exclusionary rule would put the police (and society) not in the *same* position they would have occupied if

no violation occurred, but in a *worse* one."). We thus agree with several other circuits that, to determine whether the inclusion of tainted evidence in the warrant application affected the magistrate's decision to issue a search warrant, we evaluate whether the warrant application contained sufficient evidence of probable cause without the references to tainted evidence, even when that tainted evidence was recovered from an illegal entry into a home. *See Markling*, 7 F.3d at 1316; *see also United States v. Dessesaure*, 429 F.3d 359 (1st Cir. 2005) (affirming the admissibility of drug evidence found during an illegal search of a home that was mentioned in the warrant application); *United States v. Jenkins*, 396 F.3d 751 (6th Cir. 2005) (affirming the admissibility of drug evidence found during an illegal search of a hotel room, even when it was orally mentioned to the magistrate judge at the warrant application hearing); *United States v. Herrold*, 962 F.2d 1131 (3d Cir. 1992) (affirming the admissibility of drug evidence found during an illegal search of defendant's mobile home that was included in the warrant application).

With this legal standard in mind, we return to the facts before us to evaluate probable cause. In the district court, Huskisson did not dispute the warrant application submitted to the magistrate judge contained enough information to establish probable cause "to believe that [the entry team] would discover evidence of a crime [inside] at the moment that they knocked on [his] door." *Etchin*, 614 F.3d at 735.[3] Even

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[3] Huskisson admitted probable cause at the suppression hearing. *See* Supp. Tr. at 66-67, ECF No. 207 ("There was probable cause, but I don't believe that justified the entry … .").

if he had, the search warrant application contained plenty of untainted evidence of probable cause. It detailed Hardy's initial admissions to agent Cline about his drug-dealing history with Huskisson, Hardy's nine phone calls with Huskisson, Hardy's signal to Cline, and Hardy's account of what he saw in Huskisson's house after he arrived. Presented with that amount and nature of evidence, the magistrate judge would have issued the search warrant even without the discussion of the field-tested methamphetamine. *Cf. Dessesaure*, 429 F.3d at 368-69.

That settled, we address the second question of *Murray*: did the DEA's illegal entry and field test affect the government's decision to apply for the warrant? On this point, Detective Kinney gave conflicting testimony. Initially, Kinney testified the DEA task force planned to apply for a warrant regardless of finding methamphetamine during the illegal entry; the only variable was whether Huskisson would give his consent to a search. Later, Kinney testified the plan was to apply for a warrant only if methamphetamine was found and Huskisson refused to give his consent to a search. If the latter is correct, the search warrant would fail under *Murray* because the illegally obtained evidence would have affected law enforcement's decision to apply for a warrant and the methamphetamine would be inadmissible. Huskisson urges us to reconsider the district court's resolution of this conflicting testimony and to credit Kinney's latter interpretation of events.

We disturb a district court's factual determinations only for clear error. *United States v.*

Terry, 915 F.3d 1141, 1144 (7th Cir. 2019). The threshold is high: factual findings are "clearly erroneous only if, after considering all the evidence, we cannot avoid or ignore a definite and firm conviction that a mistake has been made." *United States v. Burnside*, 588 F.3d 511, 517 (7th Cir. 2009) (internal citations and quotation marks omitted); *see also United States v. Thurman*, 889 F.3d 356, 366 (7th Cir. 2018) (noting that we defer to district courts for credibility determinations "because, unlike our review of transcripts, the district court had the opportunity to listen to testimony and observe the demeanor of witnesses at the suppression hearing") (internal citations and quotation marks omitted).

Huskisson's protests do not clear that bar. The district court faithfully applied the standards we laid out in *Markling* and *Etchin* to determine the government's motives in filing the search warrant application. The court carefully weighed the evidence from both sides; when faced with two inconsistent statements from the same witness, the court credited one based on the totality of the evidence. In so doing, the district court concluded that an errant statement by Detective Kinney did not outweigh the other evidence of the government's plan to request a search warrant, regardless of what they found in the house. This was not a "one-off," ill-considered decision by the district court. Rather, before, during, and after the jury trial, the court closely tracked the issue with its superior vantage point hearing and seeing the witnesses and presiding over the presentation of all

the evidence.[4] This decision was well-reasoned and well-supported, so we do not reverse it.

III. Conclusion

All agree: the DEA entry team entered Huskisson's house unlawfully. We do not condone this illegal behavior by law enforcement; the better practice is to obtain a warrant before entering a home. Ordinarily, the evidence found here would be excluded. But because the government had so much other evidence of probable cause, and had already planned to apply for a warrant before the illegal entry, the evidence is admissible. Though the government should not profit from its bad behavior, neither should it be placed in a worse position than it would otherwise have occupied. *See Murray*, 487 U.S. at 542. Accordingly, we AFFIRM the district court.

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[4] *See* Order Den. Mot. to Suppress at 9-10, ECF No. 76; Order Den. Pretrial Mot. at 6, ECF No. 165 (denying defendant's motion to reconsider denial of suppression motion); Trial Tr. vol. 2 at 298-99, ECF No. 211 (post-trial order again denying motion to suppress). Additionally, as noted above, at trial three DEA agents testified the plan was always to seek a warrant once Hardy had confirmed there were drugs in Huskisson's home.

Appendix B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 16-cr-00048-SEB-DKL

UNITED STATES OF AMERICA,
Plaintiff,
v.
PAUL HUSKISSON,
Defendant.

September 12, 2017

ORAL ORDER

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* * *

The motion to suppress, when it was filed initially, resulted in briefing, and the Court's setting an evidentiary hearing at which I heard evidence, much of which I've heard again today and yesterday in the course of the trial.

In fact, I can think of no new facts that the defendant has extracted in the course of cross-examination of these witnesses that are inconsistent with or in derogation of the facts that underlay the Court's decision on denying the motion to suppress.

I found initially in response to that evidence that while the Government didn't address specifically

whether there were exigent circumstances in this case that warranted the entry and the seizure, I went on to find basically that the motion to suppress was not well taken.

The ruling generated a motion to reconsider by the defendant. The Government responded again, and the Court reviewed it again. I suppose you could say this is the final review of that particular motion because I have been listening to see if any of the Court's factual findings or underpinnings for that ruling, or the assumptions that were made in evaluating those theories needed to be reconsidered, and the short answer to that is they don't. The order denying the motion to suppress will stand.

There was probable cause, based on the evidence that's been presented during the trial, for the agents to enter. They had the information from the confidential informant who was inside the house who was transmitting information to the agents, both by audio and video, and came from the house and gave the prearranged signal that he had found, or there was present, I should say, methamphetamine in the house.

According to the scheme that was laid out by the agents with the confidential informant, that was the basis for the agents deciding to enter when they had the unmistakable information from the confidential informant who was inside the house, and able to attest to that highly critical fact.

The investigative agents, buttressed by some other law enforcement officials apparently, were in position to make an immediate entry. There were good reasons to make an immediate entry because the information coming out from the confidential

informant was that there was methamphetamine present. They had reason to anticipate that it would be present based on the telephone communications that have gone back and forth when people were supposed to be delivering to the defendant at his home methamphetamine that Mr. Hardy and Mr. Huskisson were going to deliver or distribute to other customers.

So, when the agents entered, they knew that the drugs were there. They perceived immediately that there were three people present. They handcuffed them in order to secure the situation. They secured the scene. They detailed Mr. Cline, or he detailed himself because he was the agent in charge of the investigation, to prepare an application for a search warrant, which was presented to a magistrate judge and issued later.

The testimony is that during that period of time, the three suspects, including this defendant, were restrained, kept under careful control and surveillance at the scene, as was the stockpile of methamphetamine that was found in the kitchen in close proximity to the cooler that had also been part of the information that was known to the officers because they saw a person arrive at the scene after their undercover—after their confidential informant was inside the premises.

So basically all of the evidence was consistent with the expectations of the agents, and they entered with probable cause to secure the drugs and to detain the defendant and place them under arrest, and wait a reasonable period of time until the search warrant was obtained.

After the search warrant was obtained, the searches were undertaken. The drugs were seized and further made safe in an evidentiary sense so that they could be retained and available for trial as they were introduced here. There seems to be no interruption of the chain of custody so that the methamphetamine that came into evidence today seems clearly tied to that that was found at the house.

The methamphetamine was indeed in plain view. There was enough of it that it was, you could say, really plain view because it was there in the kitchen where all three of the suspects were found, and it was in packages that appeared to law enforcement investigators to be characteristically packaged as methamphetamine often is in ten sub-packages. Therefore it gave the appearance of being incriminating to investigative agents, and that gave them further probable cause to seize the methamphetamine that they found there, or they thought to be methamphetamine. They were pretty sure when they saw it what it was.

So it was seen in plain view, and that allowed the agents to seize it as well. Mr. Holbrook, who was the agent in charge of the search, was lawfully present when he came upon the three suspects and the plain view substances that later were confirmed to be methamphetamine.

So there is no basis for the Court to recover the motion—the order on the motion to suppress, nor is there a basis for the Court to withdraw this matter from the jury's consideration. The Government has presented enough evidence that a reasonable jury could conclude that the defendant's guilty beyond a

reasonable doubt if it chooses to do so. There is sufficient evidence to support such a verdict.

So that completes the Court's ruling at this juncture. Can you tell me now, Mr. Edgar, what to expect?

* * *

Appendix C

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 16-cr-00048-SEB-DKL

UNITED STATES OF AMERICA,
Plaintiff,

v.

PAUL HUSKISSON,
Defendant.

Filed: July 25, 2017

ORDER

Before the Court is a series of pretrial motions filed by the Defendant appearing *pro se*. After careful review, the Court issues the following rulings:

1. Defendant's Motion for Evidentiary Hearing Pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). [Docket No. 124]:

The Motion is DENIED. None of the grounds cited by Defendant in his motion constitutes a material misstatement or omission justifying a *Franks* hearing. He has failed to make the required "substantial preliminary showing that a false statement" by Affiant was "knowingly or intentionally, or with reckless disregard for the truth" made and included in

the warrant affidavit. *Franks*, 438 U.S. at 155-56; *see also, United States v. Currie*, 739 F.3d 960, 963 (7th Cir. 2014). Defendant has failed to establish that any of the alleged errors or omissions in the affidavit affected (or would have affected) the magistrate judge's finding that probable cause existed to support the search warrants at issue in this case.

The "omissions" cited by Defendant reference information as to the informant's background and status as a first-time informant. Defendant objects to the omission of the informant's prior arrest on a drug conspiracy charge, and the potential mandatory minimum sentence the informant might have faced had he been convicted of the offense for which he was arrested. This information, even assuming it is all truthful and accurate, is not material when, as here, other information in the affidavit sufficiently corroborates the truthfulness of the informant's statements. *United States v. Taylor*, 471 F.3d 832, 840 (7th Cir. 2006). The affidavit (¶ 6) clearly states that the informant whose assistance was relied upon by law enforcement in this case had cooperated only after his arrest for conspiracy to distribute methamphetamine and related offenses. Ongoing surveillance activities and monitoring by law enforcement officers occurring simultaneously with the confidential informant's actions and statements throughout the investigation corroborate the informant's statements as referenced in the Affidavit. This information sufficed to alert the magistrate judge to the informant's reason(s) and motives for cooperating with federal agents.

Similarly, information concerning the informant's possible or likely motive for providing information was not material in light of the other information set out in the affidavit which sufficiently corroborated the informant's statement(s). *Id*. at 840.

Defendant's challenges to statements allegedly made by and about himself as well as the informant relating to previous drug dealings, though controverted by Defendant, have not been supported by an offer of proof by sworn affidavits or other reliable witness statements. Thus, there is no basis on which the Court could rule that statements by an agent which have been disputed by Defendant reflect a deliberate falsehood or constitute reckless statements made by him in disregard of the truth in the Affidavit.

To the extent there are factual inconsistencies/disparities between the assertions in the affidavit and subsequently proffered government evidence, these discrepancies, at most, involve trivial matters. They are minor, insignificant differences that do not rise to the level of undermining the reliability of the affidavit. They fall well short of establishing intentional or reckless falsehoods by the agent. It is likely that any factual disparities are the result of the circumstances in which the affidavit was prepared by the agent, who was at the time overseeing a fast-paced investigation in which the acquisition of a search warrant was necessary on an accelerated basis to ensure that evidence was not lost due to any delay on the part of law enforcement. Haste of this sort, when it occurs, can not only explain minor factual discrepancies, it undermines arguments accusing the

agent of intentional or reckless falsehoods in drafting his affidavit.

As noted, Defendant has failed to provide the necessary preliminary showing that any of the factual statements made in the search warrant affidavit or any of the alleged omissions from the affidavit amounted to either a deliberate falsehood or reckless indifference to the truth. Further, defendant has failed to establish that any of the alleged errors or omission had the potential to affect the magistrate judge's determination as to probable cause in support of the requested search warrants that ultimately were issued in this case. Defendant, therefore, is neither entitled to a *Franks* hearing nor to any other relief (i.e., suppression of evidence) based on the arguments advanced in this motion. Accordingly, it is DENIED.

2. Defendant's Motion for Evidentiary Hearing on Defective/Invalid Search Warrant, pursuant to Federal Rule of Criminal Procedure 41(d)(2)(C). [Docket No. 140]:

This Motion is DENIED. Defendant seeks the suppression of evidence that was obtained from the execution of federal search warrants at Defendant's residence and business on February 6, 2016. The relief sought is based on three alleged violations of Rule 41—§§ (d)(2)(C), (f)(1)(A), and (b)(6)(B) and (C). (Section (d)(2)(C) is not the Rule cited by Defendant as the basis for this motion, but, after examining his contentions, we conclude that this Rule is the likely basis for his motion. The Rule he cited (Rule 41(2)(A)(c)) does not actually exist.)

Rule 41 (d)(2)(C) requires that testimony received by the Court that has been proffered as support for a

search warrant in the application be recorded by a court reporter or recording device and that the judge file a transcript or recording with the clerk of court. This provision applies when the warrant has been requested in the presence of a judge. The government indicates here that the search warrant application and attached affidavit were submitted to the magistrate judge and no witness testimony was elicited or provided relating to the issuance of the warrant. Thus, this requirement of a recording and the filing of a transcript does not apply to Defendant's case.

Rule 41 (f)(1)(A) requires that the officer executing the warrant must enter on it the exact date and time it was executed. The date of the execution of the warrant was properly entered by the officer, to wit, February 6, 2016, the same date on which the warrant was issued by the magistrate judge. The exact time of the execution of the warrant, however, was omitted from the Return. This is, indeed, a violation of this rule, but it is a technical, minor violation about which well-established case law affords no relief. The requirement that the time of the execution of the warrant be placed on the warrant upon its return is a ministerial act, the violation of which neither voids the search warrant nor provides grounds for suppressing the evidence seized during the execution of the search warrant. *United States v. Kelly*, 14 F.3d 1169, 1173 (7th Cir. 1994).

Rule 41 (d)(2)(C) applies to warrants sought by telephone or other electronic means. The warrant request at issue here was not submitted in this fashion. Thus, this rule affords to basis for the relief which Defendant seeks.

The grounds for relief cited by Defendant in this motion seeking a hearing based on a defective/invalid search warrant are without merit. No hearing is therefore necessary or appropriate. The Motion is accordingly DENIED.

3. Defendant's Motion for Reconsideration. [Docket No. 135]:

This Motion is DENIED. Defendant's motion for reconsideration of our order denying his motion to suppress [Docket No. 76] seeks only to relitigate two factual conclusions reached in that order: (1) that the illegally obtained information did not affect the judicial officer's decision to issue the warrant, and (2) that the officers' decision to seek a warrant was not prompted by anything discovered during the illegal entry.

Defendant has offered no newly discovered evidence or governing legal authority in his motion to reconsider. Instead, he advances only a recitation of our prior order along with brief summaries of the cases on which we relied in reaching our conclusions. While the Federal Rules of Criminal Procedure do not provide for motions to reconsider, courts generally treat them the same as motions to alter or amend judgment would be treated in the civil context under Fed. R. Civ. P. 59(e), which motions are granted only "to correct manifest errors of law or to present newly discovered evidence." *See e.g., Indiana v. Helman*, 2008 WL 2557246, at *1-2 (N.D. Ind. June 23, 2008) (quoting *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997).

Because Defendants' motion to reconsider merely rehashes the arguments presented in his original

motion to suppress, it is hereby DENIED. In addition, as Defendant's motion at Docket No. 157 is, in essence, simply a request for a rehearing on the motion to suppress, it is also DENIED.

4. **Motion for Disclosure of Jencks Act Material and *Brady/Giglio* Material, pursuant to Federal Rule of Criminal Procedure 16. [Docket No. 139]:**

This Motion is DENIED as moot. The Government reports that it has made the required disclosures to Defendant's standby counsel, following Defendant's refusal to accept delivery of the material on April 7, 2017. The Government understands that it is under a continuing obligation to provide discovery information as well as any exculpatory evidence that may come into its possession or knowledge following these initial disclosures. Jencks Act statements are disclosable following the testimony at trial of the witness on direct examination. 18 U.S.C. § 3500.

5. **Motion for Request of Motion Deadline Order, pursuant to Federal Rule of Criminal Procedure 12(c). [Docket No. 141]:**

This motion is confusing as submitted. Defendant's verbatim request is that the Government "produce any formal filing of statements and or documents and or order made by the courts on a document 30 day deadline under Rule 12(c)" and "allow pretrial motions."

The Government's response cites the March 10, 2016 Scheduling Order [Docket No. 51] at page 10. Section VIII of that Order addresses Pretrial Motions and Evidentiary Hearings and applies both to the Defendant and the Government. The times for filing

such motions are specified there. Thus, Rule 12(c) has been fully complied with by the Scheduling Order. No other ruling is required on this matter at least at this time.

6. Motion to Challenge 21 U.S.C. § 851(a)(1). [Docket No. 152]:

This Motion is DENIED. This motion challenges the Government's filing of the § 851 Information [Docket No. 130], which has the effect of notifying the Defendant (and the Court) of Defendant's prior drug-related state felony conviction (entered on June 5, 2009) and the Government's intention to seek an enhanced sentence, if Defendant is convicted on the pending charge(s). The statute expressly requires the Government to file this notice and serve a copy on the Defendant before trial or before entry of a plea of guilty by Defendant. The Government's filing of this Information complies with these statutory requirements.

To the extent that Defendant believes that the Government must obtain a superseding indictment of some sort before it can file a § 851 Information, he is mistaken. The § 851 Information is a separate document that is filed in conjunction with the pending Superseding Indictment against Defendant, which is the means by which the Government formally states its intention to seek an enhanced penalty following Defendant's conviction, should such occur. Defendant's motion is therefore DENIED.

7. Motion for Hearing Dates on Defendant's Pretrial Motions. [Document 155]:

This motion is DENIED. The Court has now ruled on Defendant's pretrial motions and finds them

unavailing as a matter of law. No purpose would be served by scheduling a hearing to further consider these matters.

IT IS SO ORDERED.

Date: 7/25/2017 [handwritten: signature]

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Appendix D

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 16-cv-00048-SEB-DKL

UNITED STATES OF AMERICA,
Plaintiff,

v.

PAUL HUSKISSON,
Defendant.

Filed: July 15, 2016

ORDER

This matter comes before the Court on Defendant Paul Huskisson's Motion to Suppress Evidence [Dkt. No. 65], filed on May 6, 2016, in which Defendant alleges violations of his rights under the Fourth Amendment of the United States Constitution. The Motion has been fully briefed by the parties and an evidentiary hearing was conducted on June 7, 2016, at which testimony was received from one witness on behalf of the government; oral argument was also heard. For the following reasons, we DENY Defendant's Motion to Suppress.

Factual and Procedural Background

On February 5, 2016, the DEA arrested an individual on conspiracy drug charges and related offenses. [Dkt. 67-1 (Aff. in Supp. of Search Warrant Appl.) at 3.] The individual admitted to his/her participation in the drug conspiracy and subsequently agreed to assist the Government as a confidential informant ("CI").[1] [*Id.*] The CI identified Paul Huskisson (Defendant) as a methamphetamine source, and admitted that he/she had purchased methamphetamine from Defendant approximately six times during the preceding four to five months. [*Id.*] The CI told the DEA that the transactions with Defendant either occurred at Defendant's residence or place of business, and that he/she was expecting to purchase approximately ten or twelve pounds of methamphetamine from Defendant on February 6, 2016. [*Id.*]

On February 5, 2016, at approximately 12:19 p.m., the CI placed a consensually recorded telephone call to Defendant. [*Id.* at 4.] During the ensuing conversation, the CI agreed to purchase ten or twelve pounds of methamphetamine the next day. [*Id.*] On February 6, 2016, the CI and Defendant agreed over telephone to meet at Defendant's residence at 612 Laclede Street, Indianapolis, Indiana, at 5:00 p.m. to conduct the purchase. [*Id.*]

At approximately 5:33 p.m., DEA Special Agent Michael Cline ("Cline") followed the CI's vehicle to Defendant's residence. [*Id.*] Cline observed the CI

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[1] On the record before us, we identify the informant only as "CI."

enter the residence at approximately 5:43 p.m. [*Id.* at 5.] At approximately 6:15 p.m., Cline observed a white sedan park in Defendant's driveway. [*Id.*] A male exited the vehicle and entered the residence, and then, about three minutes later, a second man exited the vehicle, carrying a cooler, and entered the residence. [*Id.*] These two men whose identities were unknown to Cline at the time were later identified as Fredi Abel Aragon-Corrales and Jazzar Terrazas-Zamarron. [*Id.*]

At approximately 6:25 p.m., the CI exited the residence and gave a prearranged signal to awaiting law enforcement officers that there was methamphetamine inside the residence. [*Id.*] A DEA entry team then "entered the residence to secure the residence," although the officers had not yet obtained a search warrant. [*Id.*] Defendant, Aragon-Corrales, and Terraszas-Zamarron were all taken into custody. [*Id.*] The DEA asked Defendant for his permission to search the residence, but he denied their request. The law enforcement officers observed in the kitchen area in plain view an open cooler with ten saran wrapped packages and subsequently field-tested the packages for methamphetamine, which tested positive. [*Id.*]

After the defendants were taken into custody, the CI informed Cline of the events that had occurred inside the residence during the transaction. [*Id.*] The CI confirmed that Aragon-Corrales and Terraszas-Zamarron were Defendant's suppliers, and explained how Aragon-Corrales dismantled the cooler to remove the wrapped packages hidden inside. [*Id.* at 6.] Cline and Special Agent Noel Kinney ("Kinney") submitted affidavits in support of a search warrant application shortly thereafter. In his affidavit, Cline referenced

the field-tested methamphetamine packages as well as the conversation he had with the CI after the agents entered the residence. [*Id.* at 5.] The search warrant was thereafter sought and obtained from the Magistrate Judge.

On May 6, 2016, Defendant filed this Motion to Suppress Evidence alleging that his Fourth Amendment rights had been violated. [Dkt. No. 65.]

Analysis

The Fourth Amendment protects against unreasonable searches and seizures, and "it is a cardinal principle" that searches and seizures conducted without prior approval by a judge or magistrate are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (citations omitted). One of those exceptions to the warrant requirement is the existence of exigent circumstances. In such a case, "warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). Here, Defendant argues that no exigent circumstances existed to justify the DEA agents' warrantless entry of his residence and therefore that all evidence obtained as a result of the warrantless entry of 612 Laclede Street and the warrantless arrests and seizures made after the illegal entry must be suppressed.

The Government does not address whether in this case exigent circumstances existed at the time of the agents' warrantless entry into Defendant's residence, apparently conceding that no such exigency existed.

We agree that there is no evidence before us that would establish the emergency circumstances required to justify the warrantless entry into Defendant's home under the exigent circumstances exception to the warrant requirement. Accordingly, for purposes of Defendant's motion to suppress, we assume that the agents' warrantless entry in this case was unlawful. However, "[t]he fact that police behaved illegally does not mean that the remedy of excluding evidence is necessarily appropriate." *United States v. Etchin*, 614 F.3d 726, 734 (7th Cir. 2010). Upon careful review of the parties' submissions, the testimony and oral argument presented at the suppression hearing, and the relevant case law, we find that, despite the illegal entry, all evidence discovered during the warrantless seizure as well as the search performed after the warrant was secured is admissible.

In *United States v. Etchin*, 614 F.3d 726 (7th Cir. 2010), the Seventh Circuit examined the Supreme Court's holding in *Segura v. United States*, 468 U.S. 796 (1984), where the Court found that even if an initial warrantless entry into a residence is unlawful, "officers who enter and seize a home to preserve the status quo while waiting for a search warrant do not commit an independently sanctionable violation of the Fourth Amendment as long as they had probable cause at the moment of entry and the seizure is not unreasonably long." *Etchin*, 614 F.3d at 734. In reaching this conclusion, the *Segura* Court reasoned that "the home is sacred in Fourth Amendment terms not primarily because of the occupants' possessory interests in the premises, but because of their privacy interests in the activities that take place within." *Segura*, 468 U.S. at 810. The Court noted that society's

interest in discovering evidence, and protecting it from removal or destruction, "can supersede, at least for a limited period, a person's *possessory* interest in property ...." *Id.* at 808 (emphasis added). As a result, "[s]ecuring a dwelling, on the basis of probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents." *Id.* at 810 (finding that agents' decision to illegally enter apartment, take suspects into custody, and ultimately occupy the premises for nineteen hours while awaiting a search warrant was not an unreasonable seizure, since agents had probable cause to suspect the property was associated with criminal activity and that evidence therein was capable of being destroyed).

In this case, there is no issue regarding the reasonableness of the duration of the seizure of the premises as the seizure here—which lasted approximately four hours—was much shorter than the one upheld in *Segura*. Accordingly, in determining whether the seizure in the case at bar violated the Fourth Amendment, we address only whether probable cause to support a warrant to search Defendant's residence existed at the moment DEA agents entered to secure the premises. *See Etchin*, 614 F.3d at 734-35 (reiterating that the probable cause inquiry in *Segura* focused on "whether there was probable cause to support a warrant to search the premises; it was not concerned with the question whether there was probable cause to support a finding of exigent circumstances").

There is no dispute here that when the CI exited Defendant's residence and gave the prearranged signal to the DEA agents that methamphetamine was inside, probable cause to support a search warrant existed. The facts and circumstances known to the agents at that time, including the information gleaned from the CI's prior statements, the recorded telephone conversations between the CI and Defendant, and the events witnessed by the agents at Defendant's residence on February 6 up until the point of entry that corroborated the CI's statements and recorded telephone calls, clearly would have led a reasonable person to believe that criminal activity was being conducted within the residence.[2] *See id.* at 735 ("Probable cause to search a place exists when, based on all of the circumstances, a reasonably prudent person would be persuaded that evidence of a crime will be found there."). Accordingly, the seizure of Defendant's residence was not violative of the Fourth Amendment.

Having found the seizure at issue here to have been compliant with the Fourth Amendment requirements, we turn next to the question of whether the evidence discovered in plain sight during the agents' protective sweep of the residence during the seizure as well as the evidence discovered when the agents subsequently executed the search warrant must be suppressed "as illegal 'fruit' of their initial unlawful entry." *Etchin*, 614 F.3d at 736. The exclusionary rule, which "prohibits introduction into

[2] During the evidentiary hearing, defense counsel conceded that the DEA agents had probable cause to obtain a search warrant after the CI gave the prearranged signal.

evidence of tangible materials seized during an unlawful search," applies not only to evidence obtained as a direct result of an unlawful search, but also to evidence "otherwise acquired as an indirect result of the unlawful search ...." *Murray v. United States*, 487 U.S. 533, 536-37 (1988). But evidence is not to be excluded "if police had an 'independent source' for discovery of the evidence ...." *Segura*, 468 U.S. at 805.

"[W]hen a later-arriving warrant is based on information 'wholly unconnected' to the illegal entry, evidence discovered during the search is admissible because its discovery is based on an independent source." *Etchin*, 614 F.3d at 736 (citing *Segura*, 468 U.S. at 813-16). Because the exclusionary rule is often "at odds with society's interest in prosecuting and punishing crime," *United States v. Markling*, 7 F.3d 1309, 1315 (7th Cir. 1993), "the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred." *Nix v. Williams*, 467 U.S. 431, 443 (1984). "So long as a later, lawful seizure is genuinely independent of an earlier, tainted one … there is no reason why the independent source doctrine should not apply." *Murray*, 487 U.S. at 542 (finding that, despite prior warrantless entry into warehouse, wherein officers observed marijuana, the police's second, legal entry was "genuinely independent" of the illegal entry).

In deciding whether a later, lawful search or seizure was an independent source of the evidence found, a court must ask, first, "whether any illegally obtained information affected the judicial officer's decision to issue a warrant," and, second, "whether the police officers' decision to seek a warrant was prompted by anything that was discovered during the illegal entry." *Etchin*, 614 F.3d at 737. If the magistrate judge would have issued the warrant regardless of the illegal search or seizure and law enforcement would have pursued a warrant regardless of what they searched or seized illegally, the discovered evidence is admissible. *See id.* at 737-38.

Determining whether the warrant would have issued here even in the absence of information gathered from the entry into Defendant's residence is complicated by the fact that the affidavit filed in support of the search warrant improperly contained references both to the methamphetamine seized following the illegal entry as well as to a conversation Cline held with the CI after securing the residence during which the CI recounted the events that had transpired in the residence before the DEA's entry. However, even in such cases as this, where law enforcement officers reference information garnered from the illegal entry, the ultimate question remains the same, to wit, "whether the illegally obtained evidence affected the magistrate's decision to issue the search warrant." *Markling*, 7 F.3d at 1315-1316.

As discussed above, Defendant concedes and we agree that probable cause to search the residence indisputably existed at the moment the CI exited

Defendant's residence and gave the prearranged signal that methamphetamine was present inside. Accordingly, we find that the information that was obtained in the illegal entry and referenced in the probable cause affidavit was not necessary to the magistrate judge's determination that probable cause supported the warrant. In other words, the magistrate judge would ultimately have issued the search warrant even without reference to the evidence seized and information obtained following the illegal entry because, even without those references, the warrant application was still sufficient to establish probable cause. *See id.* at 1316-17.

Finally, we address whether the DEA agents' decision to seek a search warrant for Defendant's residence "was prompted by anything that was discovered during the illegal entry." *Etchin*, 614 F.3d at 737. On the facts before us, we conclude that it was not. At the evidentiary hearing, Kinney testified that he believed he needed corroboration of the information that had been gleaned from the CI's prior statements and his conversations with Defendant regarding the planned buy on February 6 before seeking a search warrant and that once the CI gave the prearranged signal that there was methamphetamine in the residence, he concluded there was probable cause for a search warrant at that point. Kinney further testified that before entering Defendant's residence on February 6, the agents had planned to seek a search warrant in the event that Defendant would not give consent to search. Given this testimony and the fact that all the events that transpired on February 6 leading up to the agents' entry into Defendant's residence corroborated the other information already

known by the agents regarding the CI's prior dealings with Defendant and the plan for the CI to purchase a significant amount of methamphetamine from Defendant on that date at that location, there is no indication that the discovery of the methamphetamine packets seized by the agents following the illegal entry was necessary to confirm the agents' belief that criminal activity was then occurring such that that discovery prompted the decision to seek a search warrant. To the contrary, the evidence establishes that the agents planned to and would have sought a search warrant regardless of the discovery of the methamphetamine packages. The fact that the agents attempted to get Defendant's consent before securing the search warrant is insufficient to establish otherwise.

For these reasons, we hold that the evidence discovered during the search of Defendant's residence following issuance of the warrant is admissible under the independent source doctrine. As was ruled in *Etchin*, it follows from this conclusion that the methamphetamine seized following the illegal entry is also admissible.[3] 614 F.3d at 738 (citing *Murray*, 487

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[3] Defendant argues that while the Court in *Segura* held that the evidence discovered in that case as a result of the later lawful search was admissible, it held that the evidence found in plain sight during the seizure directly following the illegal entry had to be suppressed as fruit of the illegal entry, and therefore, that the methamphetamine seized here must be suppressed even if the additional evidence discovered during the lawful search is admissible. However, the Court in *Segura* made clear that "the only issue" before it was "whether drugs and the other items *not* observed during the initial entry and first discovered by the agents the day after the entry, under an admittedly valid search warrant, should have been suppressed." 468 U.S. at 796

U.S. at 537-41; *United States v. Salgado*, 807 F.2d 603, 608 (7th Cir. 1986)). Accordingly, Defendant's Motion to Suppress is DENIED.

IT IS SO ORDERED.

Date: 7/15/2016 [handwritten: signature]

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

(emphasis added). That is not the situation before us in this matter.

Appendix E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 16-mj-0105

IN THE MATTER OF THE SEARCH OF 612 LACLEDE STREET, INDIANAPOLIS, INDIANA

Feb. 6, 2016

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*: 612 Laclede Street, Indianapolis, Indiana, a photograph of which is marked as Exhibit "A," attached, and incorporated by reference

located in the [handwritten: Southern] District of [handwritten: Indiana], there is now concealed (*identify the person or describe the property to be seized*): See Exhibit "B," which is attached and incorporated by reference

The basis for the search under Fed. R. Crim. P. 41(c) is (*check one or more*):

☒ evidence of a crime;

☒ contraband, fruits of crime. or other items illegally possessed;

☒ property designed for use, intended for use, or used in committing a crime;

☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Sections	*Offense Description*
21 U.S.C. §§ 841(a)(1) and 846	Conspiracy to distribute controlled substances and possession of controlled substances with intent to distribute

The application is based on these facts:

See attached affidavit

☐ Continued on the attached sheet.

☐ Delayed notice of __ days (give exact ending date if more than 30 days: ____) is required under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[handwritten: signature]
Applicant's signature

[handwritten: name & title]
Printed name and title

Sworn to before me and signed in my presence.

Date: [handwritten: 2/6/2016]	[handwritten: signature] *Judge's signature*
City and state: [handwritten: Indianapolis, IN]	[handwritten: Debra M. Lynch USMJ] *Printed name and title*

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT APPLICATION

I, Michael D. Cline, a Special Agent with the Drug Enforcement Administration ("DEA"), being duly sworn, state as follows:

1. I am an "investigative or law enforcement officer" within the meaning of Section 2510(7) of Title 18, United States Code, that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Section 2516 of Title 18, United States Code.

2. I have been employed by the Drug Enforcement Administration (DEA) since May, 1996. I am currently assigned to the DEA Indianapolis District Office, Indianapolis, Indiana, and have been so assigned since 2001. Prior to my assignment at the Indianapolis District Office, I was assigned with the DEA New York Field Division Office from 1996 to 2001. In connection with my official DEA duties, I investigate criminal violations of state and federal narcotics laws, including, but not limited to, Title 21, United States Code, Sections 841, 843, 846 and 848. I have received special training in the enforcement of laws concerning controlled substances as found in Title 21 of the United States Code. During the course of those investigations, I have participated in over a hundred searches pursuant to federal and state search warrants that have resulted in the seizure of controlled substances or the records, books, and proceeds derived from this illegal activity.

3. I have personally conducted and/or assisted in numerous criminal investigations involving

controlled substances and money laundering. I have testified in State judicial proceedings and prosecutions for violations of controlled substance laws. I have participated in the debriefing and interviews of defendants, witnesses, informants (confidential sources), and others who have knowledge both of the distribution and transportation of controlled substances and also of the laundering and concealing of proceeds from drug trafficking. I have reviewed numerous investigative reports and interviews related to the possession, manufacture, and delivery of, including possession with intent to deliver, controlled substances. I am familiar with the ways in which drug traffickers conduct their business, including, but not limited to, their methods of importing and distributing controlled substances and their use of telephones and code language to conduct their transactions. I am familiar with and have participated in all of the normal methods of investigation, including, but not limited to visual surveillance, the general questioning of witnesses, the use of informants, the use of pen registers, and undercover operations. I have had conversations with drug traffickers concerning their methods of operation in the course of investigative interviews and have participated in the execution of numerous search warrants relating to illegal drug trafficking. My experience and training enables me to recognize methods and means used for the distribution of controlled substances and for the organization and operation of drug conspiracies, including the means employed to avoid detection.

4. The information contained in this Affidavit is based upon my personal participation in the

investigation described herein, upon information provided by other law enforcement officers involved in this investigation, and upon information from other individuals who have knowledge of the events and circumstances as described herein.

5. I make this affidavit in support of a search warrant for the following locations:

a. 612 Laclede Street, Indianapolis, Indiana, the residence of Paul Huskisson and

b. No Limit Motors, located at 5344 West Washington Street in Indianapolis, a business premises maintained by Paul Huskisson.

6. On February 5, 2016, DEA arrested a cooperating individual ("Individual #1") for conspiracy to distribute methamphetamine and related offenses. Individual #1 admitted to his/her participation in the charged conspiracy and let DEA agents to various locations where Individual #1 had stored methamphetamine and firearms. Individual #1 turned the methamphetamine and firearms over to DEA.

7. This affiant interviewed Individual #1 after his/her arrest. Individual #1 identified Paul Huskisson as one of his/her methamphetamine sources. Individual #1 indicated that he/she had obtained methamphetamine from Huskisson for the past four to five months. Individual #1 stated that he/she obtained methamphetamine from Huskisson approximately six times during these four to five months. Individual #1 stated that he/she obtained approximately two pounds of methamphetamine for $8,000 per pound during the first four transactions. During the past two transactions, Individual #1 obtained larger amounts of methamphetamine for

$8,000 per pound. Individual #1 stated that he/she received the methamphetamine from Huskisson at either Huskisson's car lot, No Limit Motors, located at 5344 West Washington Street in Indianapolis, or at Huskisson's residence, which was located near the car lot. Individual #1 stated that he/she had last obtained methamphetamine from Husldsson at No Limit Motors approximately two weeks ago. During that transaction, Individual #1 observed a yellow envelope containing money that was approximately eight inches thick. The money did not come from Individual #1.

8. Individual #1 told Special Agent Cline that Huskisson's methamphetamine source expected to receive an incoming shipment of approximately ten or twelve pounds of methamphetamine on February 6, 2016 and that Individual #1 could obtain some or all of this methamphetamine from Huskisson.

9. On February 5, 2016, at approximately 12:19 p.m., Individual #1 placed a consensually recorded telephone call to telephone number (317) 938-5077 **("Target Phone").** During the ensuing conversation, Individual #1 asked Huskisson, "You got any?" Huskisson replied, "I guarantee you it will be here tomorrow .... I talked to the dude." Individual #1 asked, "We doing the ten or the twelve?" Huskisson replied, "It'll be either the ten or the twelve." Individual #1 stated that this conversation involves him/her asking Huskisson if Huskisson had methamphetamine available for distribution ("You got any?"). Huskisson replied that he had spoken with his methamphetamine source ("I talked to the dude") and that the methamphetamine would arrive on February

6 ("I guarantee you it will be here tomorrow"). Individual #1 asked if he/she could receive ten or twelve pounds of methamphetamine ("We doing the ten or the twelve?"). Huskisson replied that he would receive either ten or twelve pounds of methamphetamine from his source ("It'll be either the ten or the twelve").

10. On February 6, 2016, from approximately 2:22 p.m. to 4:46 p.m., Individual #1 engaged in a series of consensually recorded telephone calls with Paul Huskisson. During these telephone calls, Individual #1 and Huskisson set up a methamphetamine transaction that would occur at Huskisson's residence, located at 612 Laclede Street, Indianapolis. Individual #1 and Huskisson scheduled the methamphetamine transaction for approximately 5:00 p.m.

11. On February 6, 2016, at approximately 3:00 p.m., this affiant searched Individual #1's person. Individual #1 remained in this affiant's presence until approximately 5:33 p.m. This affiant searched Individual #1's vehicle at approximately 4:55 p.m. This affiant did not find any controlled substances or contraband during the search of Individual #1's person or vehicle.

12. On February 6, 2015, at approximately 5:33 p.m., this affiant followed Individual #1 as Individual #1 drove from the meet location to the residence located at 612 Laclede Street. This affiant followed Individual #1 for the entire duration of the drive to 612 Laclede Street. Individual #1 did not make any stops or detours or meet with any other individuals during this drive.

13. On February 6, 2015, at approximately 5:43 p.m., this affiant observed Individual #1 park his/her vehicle outside of the residence located at 612 Laclede Street. This affiant observed Individual #1 exit his/her vehicle, approach the residence, and enter through the front door. Individual #1 remained inside of the residence until approximately 6:25 p.m.

14. On February 6, 2015, at approximately 6:15 p.m., this affiant observed a white 2014 Mazda sedan park in the driveway of the residence located at 612 Laclede Street. This affiant observed a male exit the vehicle, approach the residence, and enter the front door of the residence. Approximately three minutes later, this affiant observed another male exit the vehicle carrying a cooler, approach the residence, and enter the front door of the residence.

15. On February 6, 2015, at approximately 6:25 p.m., this affiant observed Individual #1 exit the residence and give a prearranged signal indicating that he/she had observed methamphetamine inside of the residence. At that time, the DEA entry team entered the residence to secure the residence. DEA agents and law enforcement officers took Paul Huskisson, Fredi Aragon, and and Jezzar Terrazas-Zamarron into custody. The law enforcement officers observed an open cooler with ten saran wrapped packages that contained suspected methamphetamine. The suspected methamphetamine later field tested positive for the presence of methamphetamine.

16. Shortly after the transaction, this affiant met with Individual #1. Individual #1 stated that he/she met with Paul Huskisson after entering the residence

located at 612 Laclede Street. During the next half hour, Huskisson placed two calls to individuals whom Huskisson identified as his methamphetamine suppliers. After these telephone conversations, Huskisson told Individual #1 that his methamphetamine suppliers would arrive shortly with the methamphetamine. After approximately two minutes, a Hispanic male (later identified as Jezzar Terrazas-Zamarron) entered the front door of the residence. Terrazas told Individual #1 that he only had five pounds of methamphetamine. Huskisson asked Terrazas why he only brought five pounds of methamphetamine. Terrazas explained that the remainder of the load got intercepted by the police. Terrazas then placed an outgoing telephone call. Individual #1 did not understand the conversation because it occurred in Spanish. Shortly after the conversation, a second Hispanic male (later identified as Fredi Aragon) entered the residence through the front door carrying a cooler. Individual #1, Huskisson, Terrazas, and Aragon met in the kitchen of the residence. Aragon opened the cooler, which initially appeared to be empty. Aragon proceeded to dismantle the cooler and removed ten saran wrapped packages. Huskisson cut one of the packages open with a knife and the package appeared to contain methamphetamine. Individual #1 told Huskisson that he needed to return to his/her vehicle to retrieve the money. Individual #1 exited the residence and gave a prearranged signal to DEA agents indicating that he/she had observed methamphetamine inside of the residence.

17. In a substantial number of searches of residences and businesses executed in connection with

the drug investigations in which I have participated, the following kind of drug-related evidence have typically been recovered:

a. Paraphernalia for packaging, weighing, and distributing controlled substances, such as scales, and plastic bags;

b. Books, records, and papers reflecting names, addresses, telephone numbers, and other contact or identification date relating to the distribution of controlled substances;

c. Personal books and papers reflecting names, addresses, telephone numbers, and other contact or identification date relating to the distribution of controlled substances;

d. Cash, currency, and records relating to controlled substances income and expenditures of money and wealth, for example, money orders, wire transfers, cashier's checks and receipts, bank statements, passbooks, checkbooks, and check registers, precious metals such as gold and silver, precious gems such as diamonds, and safe deposit box information, documents, and keys;

e. Documents indicating travel in interstate and foreign commerce such as travel itineraries, plane tickets, boarding passes, motel and hotel receipts, passports and visas, credit card receipts, and telephone bills;

f. Photographs of drug trafficking, their associates, their property, proceeds, and controlled substances;

g. Cellular telephones and all telephone numbers stored within the memory of the cellular telephones; and

h. Firearms and other dangerous weapons.

18. In addition, during the course of such residential searches, and other agents and I have also found items of personal property that tend to identify the person(s) in residence, occupancy, control, and ownership of the subject premises. This identification evidence consists of articles that people commonly maintain in their residences, such as canceled mail, deeds, leases, rental agreements, photographs, personal telephone books, diaries, utility and telephone bills, statements, identification documents, and keys.

19. Based upon my training and experience, I am aware that drug traffickers generally store their drug-related paraphernalia in their residences or the curtilage of their residences. Further, drug traffickers generally maintain records relating to their drug trafficking activities in their residences or business places. Because drug traffickers often "front" (that is, sell on consignment) controlled substances to their customers, or alternatively, will be "fronted" controlled substances from their suppliers, such record keeping becomes necessary to keep track of amounts paid and owed, and drug traffickers typically maintain these records close at hand to readily ascertain current balances. Often, drug traffickers keep "pay and owe" records to show balances due for drug payments in the past ("pay") and for payments expected ("owe") to and from the trafficker's supplier and the trafficker's dealers. Additionally, drug

traffickers typically maintain telephone and address listings of customers and suppliers and keep them immediately available so that they can efficiently conduct their drug trafficking business.

20. It is also a common practice for traffickers to conceal large sums of money, either the proceeds from drug sales or monies to be used to purchase controlled substances, at their residences and business places. In this connection, drug traffickers typically use wire transfers, cashier's checks, and money orders to pay for controlled substances. Drug traffickers also typically maintain evidence of such financial transactions and records relating to income and expenditure of money at their residences, business places, or the curtilage of these locations.

21. Typically, drug traffickers possess firearms and other dangerous weapons at their residences and business places to protect their profits, supply of drugs, and themselves from others who might attempt to forcibly take the trafficker's profits or supply of drugs.

22. Large quantities of methamphetamine are typically manufactured in Mexico, imported through Mexico at the southwestern border, and transported to Indiana from the southwestern border or other source cities in the United States. Consequently, methamphetamine traffickers often travel (or pay and arrange for others to travel on their behalf) to and from other locations to acquire the methamphetamine. Such travel generally results in the generation of various travel documents for the traveler, which are also typically kept in residences.

23. This affiant knows that cellular telephones may be important to a criminal investigation because cellular telephones may be evidence or instrumentalities of crime, and/or may be used as storage devices that contain evidence of crime in the form of electronic data. In this case, the warrant application requests permission to search and seize records relating to the trafficking of the substances identified in this investigation by the indicted defendants in this case. These records constitute evidence of crime. This affidavit also requests permission to seize the cellular telephones that may contain these records and search the memory of the cellular telephones within the fourteen (14) days during which this search warrant remains valid. This affiant believes that, in this case, cellular telephones are a container for evidence and instrumentalities of the crimes under investigation.

24. My awareness of these drug trafficking practices, as well as my knowledge of drug use and distribution techniques as set forth in this Affidavit, arises from the following:

a. My involvement in prior drug investigations and searches during my career as a law enforcement officer, as previously described;

b. My involvement on a number of accessions in debriefing confidential informants and cooperating individuals in prior drug investigations, as well as what other agents have advised me when relating the substance of their similar debriefings and the results of their own drug investigations; and

c. Other intelligence information provided through law enforcement channels.

25. In a number of residential searches in prior investigations that I have been involved in, the types of evidence identified in Exhibit "B" have typically been recovered from the main residence and from other structures and areas on the properties being searched, for example, other storage lockers/areas, detached closets, containers, and yard areas associated with the main residence and used in connection with or within the curtilage of said residence.

26. The government requests the Court to maintain this Affidavit under seal until further Order of Court. This Affidavit refers to an ongoing DEA investigation and disclosure of this affidavit would jeopardize the ongoing investigation. As a result, the targets may flee the jurisdiction and destroy evidence that DEA might otherwise obtain during the course of the ongoing investigation.

27. This affiant does not expect that this search warrant will be signed before 10:00 p.m. Because Huskisson's residence and business premises may contain controlled substances, and such evidence may disappear during the evening, a nighttime search is requested.

WHEREFORE, based upon the information contained in this Affidavit, probable cause exists to believe that the articles identified on Exhibit "B" are present at the premises to be searched. In addition, the government requests the Court to maintain this Affidavit under seal until further Order of Court.

[handwritten: signature]
Michael D. Cline, Special Agent

Drug Enforcement Administration

Sworn to and subscribed to before me this 6th day of February, 2016.

[handwritten: signature]
Debra McVicker Lynch
United States Magistrate Judge
United States District Court
Southern District of Indiana

Appendix F

RELEVANT STATUTORY PROVISIONS

21 U.S.C. § 841(a)-(b) (2010)

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of

ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such

a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there

was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a

prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term

of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Penalties for Distribution.—

(A) In General.—Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18 (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18.

(B) Definition.—For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate

unwillingness to participate in conduct is administered to the individual.

First Step Act of 2018,
Pub. L. No. 115-391, § 401

Sec. 401. Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies.

(a) CONTROLLED SUBSTANCES ACT AMENDMENTS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102 (21 U.S.C. 802), by adding at the end the following:

"(57) The term 'serious drug felony' means an offense described in section 924(e)(2) of title 18, United States Code, for which—

"(A) the offender served a term of imprisonment of more than 12 months; and

"(B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.

"(58) The term 'serious violent felony' means—

"(A) an offense described in section 3559(c)(2) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months; and

"(B) any offense that would be a felony violation of section 113 of title 18, United States Code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months."; and

(2) in section 401(b)(1) (21 U.S.C. 841(b)(1))—

(A) in subparagraph (A), in the matter following clause (viii)—

(i) by striking "If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years" and inserting the following: "If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years"; and

(ii) by striking "after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release" and inserting the following: "after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years"; and

(B) in subparagraph (B), in the matter following clause (viii), by striking "If any person commits such a violation after a prior conviction for a felony drug offense has become final" and inserting the following: "If any person commits such a violation after a

prior conviction for a serious drug felony or serious violent felony has become final".

(b) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT AMEND- MENTS.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1), in the matter following subparagraph (H), by striking "If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 20 years" and inserting "If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years"; and

(2) in paragraph (2), in the matter following subparagraph (H), by striking "felony drug offense" and inserting "serious drug felony or serious violent felony".

(c) APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of the enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.