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### OPINIONS AND ORDERS



### REHEARING ORDER



### OTHER DOCUMENTS

**OPINION* OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT (APRIL 23, 2020)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

v.

ANTHONY VETRI,

*Appellant.*

No. 18-2372

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-15-cr-00157-002)
District Judge: Honorable Gerald J. Pappert

Before: SMITH, Chief Judge, HARDIMAN, and KRAUSE, Circuit Judges.

HARDIMAN, Circuit Judge.

Throughout the late 2000s, licensed pharmacist Mitesh Patel illegally supplied several men with oxycodone to sell on the streets. Two of those men included Patel's business partner, Gbolahan Olabode, and Appellant Anthony Vetri. This scheme began to

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

unravel in 2010 when Patel, faced with dwindling supply, distributed most of his pills to Olabode. Vetri responded by asking one of his customers, Michael Vandergrift, to murder Olabode in exchange for more oxycodone pills. Vandergrift and Michael Mangold gunned Olabode down in his driveway on January 4, 2012, while accomplice Allen Carter waited in the get-away car.

A jury convicted Vetri of murder in violation of 18 U.S.C. § 924(j)(1) and conspiracy to distribute oxycodone in violation of 21 U.S.C. § 846. The District Court sentenced Vetri to life in prison for the murder and a consecutive term of 240 months' imprisonment for the drug conspiracy. He filed this timely appeal raising five issues we will address in turn.

## I[1]

Vetri first claims the District Court erred when it admitted into evidence a video in which Vetri jokes with his three-year-old daughter about Olabode's murder. The Government found the video when, pursuant to a warrant, it searched Vetri's cell phone and found it embedded in a text Vetri sent to Vandergrift. Vetri claims the evidence was obtained in violation of his Fourth Amendment rights because the search warrant was overbroad. According to Vetri, the affidavit supporting the warrant did not establish probable

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[1] The District Court had subject matter jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. "In reviewing a motion to suppress, we review a district court's factual finding for clear error, and we exercise de novo review over its application of the law to those factual findings." *United States v. Goldstein*, 914 F.3d 200, 203 n.15 (3d Cir. 2019) (internal quotation marks and citation omitted).

cause to search his cell phones. He also claims that even if the warrant was valid, the Government had no right to view the video.

A

The body of the Government's affidavit of probable cause mentioned electronic devices but did not mention cell phones. However, "Attachment B" to the affidavit requested the seizure of "[c]ellular telephones (including searching the memory thereof)." App. 437. According to the affidavit, drug traffickers often use "electronic equipment such as computers, telex machines . . . and pagers to generate, transfer, count, record, and/or store" information. App. 462 ¶ 60(c) (emphasis added). The Government also requested authority to "seize evidence and instrumentalities of the schemes . . . whether maintained in paper, electronic or magnetic form and all computer systems required to retrieve such evidence and instrumentalities." *Id.* at ¶ 61. The Magistrate Judge incorporated part of this affidavit when issuing the search warrant, finding probable cause for the search and seizure of the items listed in "Attachment B." App. 433.

Vetri claims the affidavit's failure to specifically mention cell phones in its body precludes their seizure. He argues the affidavit supported probable cause that evidence of criminal activity might be found in "other kinds of electronic equipment" but "was less than 'bare bones' when it came to cell phones." Vetri Br. 19 (quoting *United States v. Leon*, 468 U.S. 897, 915, 923 n. 24 (1984)). Vetri also notes that none of the supporting confidential sources stated he owned or used cell phones. So, he concludes, the affidavit did not provide

probable cause to issue a search warrant to search his cell phones, and thus was overbroad.

We hold the warrant was not overbroad. Probable cause existed because the totality of the circumstances suggested "there [was] a fair probability that contraband or evidence of a crime [would] be found" in Vetri's cell phones. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). While it is perplexing that the body of the affidavit did not mention cell phones, the qualifier "such as" shows the list was merely illustrative of the kinds of electronic equipment drug traffickers might use. *See Bragdon v. Abbott*, 524 U.S. 624, 639 (1998). Cell phones are plainly among that broader category of electronic equipment. And Attachment B specifically mentioned them, so the warrant authorized the search and seizure of Vetri's cell phones.

B

Vetri next argues that even if the warrant authorized the seizure of his cell phones, the District Court still should have suppressed the video because it was not in plain view. The relevant precedent on this point is *United States v. Stabile*, 633 F.3d 219 (3d Cir. 2011). In that case, a magistrate judge issued a warrant to search computer hard drives for evidence of financial crimes and agents found child pornography. We held there was no Fourth Amendment violation because the "incriminating character of the" child pornography file names was "immediately apparent." *Id.* at 242. Vetri distinguishes *Stabile* by noting that here the video's thumbnail is an innocuous picture of his daughter. Therefore, Vetri argues, the agents were not permitted to play the video to learn of the incriminating content.

We are unpersuaded by this argument. As we have recognized, law enforcement can perform a cursory review of all electronic files because "criminals can easily alter file names and file extensions to conceal contraband." *Id.* at 239. Here, the agent played the video "to view its contents because a thorough . . . search requires a broad examination of files on the [phone] to ensure that file[s] . . . have not been manipulated to conceal their contents." *Id.* at 241. On Vetri's view, a criminal could insulate incriminating videos from search by presenting them as innocuous images. Here, the agent did not "unreasonably expand the scope of his search . . . viewing [the video's] contents." *Id.* The agent seeking evidence of financial and drug trafficking crimes had cause to believe Vetri conspired with Michael Vandergrift to distribute oxycodone. While performing a targeted search of Vetri and Vandergrift's conversations, the agent uncovered the video. Here, the video was sent between coconspirators, so there was "no practical substitute for actually looking in many (perhaps all) folders and sometimes at the documents contained within those folders. . . . " *Id.* at 239 (quoting *United States v. Burgess*, 576 F.3d 1078, 1094 (10th Cir. 2009)). Therefore, we hold the District Court did not err when it denied Vetri's motion to suppress evidence.

## II

Vetri next claims the evidence at trial was insufficient to support his conviction of murder under 18 U.S.C. § 924(j)(1). The District Court instructed the jury that both Vetri and Vandergrift could commit murder by personally committing the offense; by aiding and abetting another person in committing the

offense; or as co-conspirators under *Pinkerton v. United States*, 328 U.S. 640 (1946). To prove *Pinkerton* liability, the Government had to show Vandergrift's use of a firearm to commit murder was reasonably foreseeable to Vetri and within the scope and in furtherance of the drug conspiracy. *Id.* at 647-48 (1946); *United States v. Casiano*, 113 F.3d 420, 427 (3d Cir. 1996).

The Government adduced evidence showing Vetri knew Michael Mangold would be participating in the murder and would be using a gun. Vetri had warned Vandergrift that Olabode was a bodybuilder who carried a gun. Vetri also knew Vandergrift had access to guns because Vandergrift had bought guns during a trip to Kansas. And Vetri expressed no surprise that Vandergrift and Mangold had used firearms and asked the men what they had done with the guns the day after the murder. Viewing the evidence in the light most favorable to the Government, "we conclude that the jury's verdict did not 'fall below the threshold of bare rationality.'" *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 432-33 (3d Cir. 2013) (quoting *Coleman v. Johnson*, 566 U.S. 650, 656 (2012)). A reasonable juror considering these pieces of evidence in their totality could find that Vetri foresaw that Vandergrift would use a gun to murder Olabode.

## III

Vetri next argues the District Court abused its discretion when it allowed the Government to offer evidence of Vandergrift and Carter's straw purchase of firearms unrelated to the murder to establish knowledge and foreseeability. *See* Fed. R. Evid. 404(b).

Vetri argues that the straw purchase was not relevant, so its probative value was substantially outweighed by the risk of unfair prejudice. *Id.* "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. If Vetri knew Vandergrift had easy access to firearms, it is more probable that he would foresee Vandergrift using a firearm to carry out the murder. Here, Carter testified that he and Vandergrift purchased four firearms in Kansas, including a Baby Desert Eagle firearm specifically for Vetri. App. 1387. Eric Maratea, another Vetri acquaintance, testified that Vetri referred to Vandergrift, Mangold and Carter as "his guys and that they work for him. They . . . buy guns for him," specifically Baby Desert Eagles. App. 1651. This evidence tends to show that Vetri knew Vandergrift had access to firearms for the murder because Vandergrift was supplying Vetri with a specific type of firearm.

The probative value is high because this evidence was essential to prove the knowledge element of *Pinkerton* liability, because no witness testified that Vetri knew that Vandergrift would use a gun to murder Olabode. And while there is the risk of some prejudice, as the District Court found, "[t]he Kansas trip [did] not involve any violent acts that may [have] weigh[ed] heavily in the jurors' minds." App. 18. We therefore hold that the District Court's finding that the risk of prejudice did not substantially outweigh the probative value of the evidence is not "clearly contrary to reason." *United States v. Butch*, 256 F.3d 171, 175 (3d Cir. 2001).

## IV

Vetri next contends that the District Court should not have admitted Vandergrift's statements to a cellmate that implicated Vetri in the murder of Olabode. He claims Vandergrift's out-of-court statements that he had murdered Olabode for Vetri in exchange for pills were not admissible under Rule 804(b)(3) as statements against Vandergrift's penal interest because they were not self-inculpatory.

Our review of the record leads us to conclude that the District Court did not abuse its discretion when it admitted the statements because they inculpated both Vandergrift and Vetri. Vandergrift's statements to his cellmate did not try to "shift blame or curry favor," and the Government corroborated those statements through additional evidence and testimony. *Williamson v. United States*, 512 U.S. 594, 603, 605 (1994). Nor were the statements separate and severable, because they described Vetri's role in the murder plot, including Vandergrift's motive, how he located Olabode, and how he carried out the murder.

## V

Finally, Vetri argues that the District Court erred by treating the Sentencing Guidelines as presumptively reasonable. Because Vetri did not object in the District Court, we review this issue for plain error. *United States v. Flores-Mejia*, 759 F.3d 253, 254 (3d Cir. 2014) (en banc).

Vetri has failed to carry his high burden. We are unpersuaded that the Court clearly erred or that, "but for the error, the outcome of the proceeding would have been different." *United States v. Azcona-Polanco*,

865 F.3d 148, 151 (3d Cir. 2017) (internal quotation marks and citations omitted). While the Court used the words "presumptively reasonable" to describe the guidelines, App. 2137, the record shows that it considered the Guidelines to be only one factor in fashioning a reasonable sentence. After hearing argument from both parties, the Court considered: the serious nature of Vetri's crime, his history and characteristics, the need for a life sentence to promote respect for the law and to protect the public from Vetri, whether another sentence would be appropriate, and Vetri's utter lack of remorse. Only after considering "the law and the facts and the sentencing guidelines and the statutory [Section 3553(a)] factors" did the Court impose a sentence of life imprisonment plus 240 months. App. 2140. The District Court did not commit error, plain or otherwise, in sentencing Vetri.

* * *

For the reasons stated, we will affirm the District Court's judgment of sentence.

## MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (NOVEMBER 22, 2017)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

ANTHONY VETRI,
MICHAEL VANDERGRIFT,

*Defendants.*

Criminal No. 15-157

Before: Gerald J. PAPPERT, Judge.

PAPPERT, J.

Anthony Vetri and Michael Vandergrift have been charged in a Second Superseding Indictment with conspiracy to distribute Oxycodone and with using a firearm to commit murder in relation to the drug trafficking conspiracy. (ECF No. 82.) Trial begins on November 29 and Vetri filed a motion to suppress evidence obtained as a result of the search of his home pursuant to a warrant issued by Magistrate Judge Jacob P. Hart. (ECF No. 109.) The Court held oral argument on the motion on November 1 (ECF No. 131),

and conducted an evidentiary hearing and heard additional argument on November 15 (ECF No. 161). The Court denies Vetri's motion for the reasons that follow.

## I.

At the evidentiary hearing, both Special Agent Charles Doerrer of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Special Agent Matthew Yaeger of the Federal Bureau of Investigation (FBI) testified. (*See* Nov. 15, 2017, Hr'g Tr.) The Court found the testimony of both agents credible and the search warrant and affidavit of probable cause were admitted into evidence as Government Exhibit 1.

On June 3, 2013, Judge Hart issued the warrant to search Vetri's home at 403 Marsden Avenue, Essington, PA, 19029, based on the affidavit of probable cause submitted by Special Agent Doerrer. (Gov't Ex. 1, Search Warrant.) Special Agent Doerrer has been with ATF since 2003 and before that worked as a police officer for four and a half years. (Nov. 15, 2017, Hr'g Tr. at 9-10; Gov't Ex. 1, Search Warrant Affidavit ¶ 1.) Doerrer has been an affiant for approximately thirty federal search warrants, which have resulted in the seizure of contraband, and has conducted and participated in numerous investigations, which have resulted in the arrest and prosecution of individuals for violations of federal law, including drug trafficking and money laundering. (*Id.*)

At the time the warrant was issued, Special Agent Doerrer was assigned to the Violent Crimes group and, since April 2012, had been a member of a multi-agency task force comprised of ATF, FBI, Drug Enforcement Agency (DEA), and Internal Revenue Service

(IRS) agents. (Nov. 15, 2017, Hr'g Tr. at 9-10; Gov't Ex. 1, Search Warrant Affidavit at ¶ 4.) The task force was conducting a broad investigation into various individuals, including Vetri, for violations of numerous state and federal crimes, including conspiracy to distribute large amounts of Oxycodone, insurance fraud, wire fraud, mail fraud and tax fraud. (*Id.*)

The affidavit submitted in support of the search warrant was extensive, including detailed facts on a number of alleged crimes over a more than four-year period. It contained evidence of a continuous drug-trafficking conspiracy, lasting from approximately 2009 through at least 2012 (*id.* at 2-8), insurance fraud perpetrated by Vetri from approximately 2009 through 2013 (*id.* at 8-12), tax evasion for the years of 2009 through 2011 (*id.* at 12-14), and bank fraud for various loan applications submitted between 2009 and 2010 (*id.* at 14-16).

A.

Information on the alleged drug conspiracy was provided by two informants who sold Oxycodone pills for Vetri—Vandergrift and Anthony Perone—and one informant who received pills from Vetri—Louis Santoleri.[1] (Gov't Ex. 1, Search Warrant Affidavit at 3-8.) Specifically, the affidavit provided that, at least as early as 2009, Vetri began illegally selling large amounts of Oxycodone he received from a pharmacist named

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[1] The affidavit submitted in support of the search warrant application lists the informants as CS2, CS3 and CS4. A supplemental document submitted by Special Agent Doerrer, the Double-Blind Affidavit for Search Warrant, makes clear that CS2 is Angelo Perone, CS3 is Michael Vandergrift, and CS4 is Louis Santoleri.

Mitesh Patel.[2] (*Id.* at ¶ 6.) Perone, who had known Vetri for approximately ten years, said that Vetri approached him in early or mid-2009 and asked him to sell Percocet and Oxycodone pills. (*Id.* at ¶ 7.) Perone agreed and shortly thereafter enlisted Vandergrift's help selling the drugs. (*Id.* at ¶ 8.) Vandergrift sold pills for Perone from that time until approximately early to mid-2011, excluding a period of time Vandergrift was in prison. (*Id.* at ¶¶ 9, 17, 18.)

Perone provided the agents with specific information on the nature and extent of the group's drug sales. He told the agents approximately how many pills he sold for Vetri (*id.* at ¶¶ 9, 11), how much Vetri charged him for the pills (*id.* at ¶ 9), how many pills Vetri was receiving from his supplier Patel (*id.* at ¶ 10), that Vetri's supply was not always consistent (*id.* at ¶¶ 9, 11), that he would pick up the pills from Vetri's house (*id,* at ¶ 12), that Vetri would regularly empty a manufacturer's bottle of pills into a plastic bag before giving them to Perone (*id.*), and that the pills bore the score marks of "M" and "V" (*id.* at ¶ 13). DEA Diversion Investigator Scott Davis confirmed that the ordering patterns from Patel's pharmacies indicated that he received Oxycodone pills with "M" and "V" score marks. (*Id.*) Further, Vetri told Perone that Patel had a business partner at Dava Pharmacy named Gbolahan Olabode and that Patel was also providing Olabode with pills, which Vetri believed was

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[2] Patel was charged in the Second Superseding Indictment as a co-conspirator in the drug trafficking conspiracy and in four additional counts for money laundering and tax evasion. (ECF No. 82.) On November 15, 2017, Patel pleaded guilty to all counts. (ECF Nos. 164, 166.)

the reason he could not get more pills from Patel. (*Id.* at ¶ 14.)

Perone stopped selling for Vetri in early 2011. Because Vetri's supply was sporadic, Perone developed another source of pills in Florida in late 2009 or early 2010. (Gov't Ex. 1, Search Warrant Affidavit ¶ 11.) On a trip to Florida to purchase pills in February 2011, Perone, Vandergrift and another co-conspirator were stopped by DEA agents. (*Id.* at ¶ 15.) Perone believes that Vetri then cut off his supply out of fear that he was cooperating with the DEA. (*Id.*) Perone purchased pills from Vetri on only one or two occasions following the stop and knew that Vandergrift began going directly to Vetri for pills. (*Id.*)

Vandergrift's information corroborated Perone's. Vandergrift told agents that he began selling Oxycodone for Perone sometime after he was released from prison in 2008 and continued until he went back to jail in July 2009. (*Id.* at ¶¶ 17, 18.) During that time, Vetri was Perone's pill supplier and Vandergrift received pills directly from Vetri on at least one occasion, paying him with money Perone had provided. (*Id.* at ¶ 17.) Vandergrift resumed selling Oxycodone for Perone when he was released from prison in 2010 and continued until they were stopped by DEA agents in Florida in 2011. (*Id.* at ¶ 18.)

After the stop, Vandergrift stopped speaking to Perone and began obtaining pills directly from Vetri. (*Id.* at ¶¶ 18, 19.) Vandergrift told agents that Patel was Vetri's supplier, that Vetri's supply was inconsistent and that he received 1,000 pills from Vetri in manufacturer's bottles on at least two occasions. (*Id.* at ¶19). When Vandergrift sought to obtain pills from Vetri on a regular basis, Vetri told him that his supply

from Patel was limited because Patel was also selling pills to a man named "Bo," who agents knew to be Gbolahan Olabode. (*Id.*) Vetri told Vandergrift that Bo was paying "rock bottom" for the pills and that Vetri could make Patel more money if Patel sold more of his supply to Vetri instead of Bo. (*Id.*) Vandergrift last obtained pills from Vetri prior to January of 2012, when he was again taken into custody. (*Id.*)

Santoleri provided further corroboration of the drug conspiracy. Santoleri is the former husband of Ann Marie Park, Verti's girlfriend at the time the warrant was issued. (Gov't Ex. 1, Double-Blind Affidavit for Search Warrant at 2.) Vetri was Santoleri's Percocet supplier. On a number of occasions while at Vetri's house, Santoleri saw Perone drop off "a lot" of money and Patel deliver prescriptions. (Gov't Ex. 1, Search Warrant Affidavit ¶ 20.) On two or three occasions, Vetri gave Santoleri Percocets in pharmaceutical bottles immediately after Patel left Vetri's house. (*Id.* at ¶ 22.) Further, on at least one occasion, Vetri supplied Santoleri with a bottle of Percocets bearing a "Good Neighbor Pharmacy" sticker, which Santoleri knew to be from Patel's Dava Pharmacy. (*Id.* at 21.) Santoleri also told the agents that Vetri had "a safe hidden in the wall behind a picture in his [house]." (*Id.* at 20.)

**B.**

The affidavit of probable cause also contained detailed evidence of mail and wire fraud related to Vetri's filing of false insurance claims for properties he owned. Between 2009 and 2012, Vetri filed insurance claims for vandalism and arson on three separate properties. In January 2009, Vetri's rental property at

1359 Adair Road, Brookhaven, Pennsylvania, was reportedly vandalized. (Gov't Ex, 1, Search Warrant Affidavit ¶ 29.) He filed an insurance claim based on the reported damage and received a check for approximately $40,000 from his insurance company. (*Id.* at ¶ 30.) Vetri hired Santoleri to repair the property for about half that amount. (*Id,* at ¶ 31.) Santoleri was immediately suspicious about the cause of the damage because he had never seen a property destroyed that severely. (*Id.*) Santoleri asked if Vetri was behind the vandalism—Vetri laughed and did not deny involvement. (*Id.*) Santoleri's suspicions were later confirmed when he overheard Vetri tell someone that he hired two Hispanic men to vandalize the property. (*Id.*)

In December 2011, Vetri's residence at 2703 Bethel Road, Chester, Pennsylvania, was destroyed by arson. (*Id.* at ¶ 34.) Vetri filed an insurance claim and received checks in the mail totaling approximately $67,000. (*Id.* at ¶ 35.) Vandergrift said that he burned down the property at Vetri's direction for $2,000. (*Id.* at ¶ 32.) Vetri asked Vandergrift to burn the house so that he could file an insurance claim and "get even with" his insurance company. (*Id.*) As part of the scheme, Vetri had Vandergrift sign a fictitious lease so that he could claim loss of rental income in addition to physical damage. (*Id.*) Vandergrift committed the arson by pouring gasoline in each bedroom and in the hallway down the stairs and then throwing a burning stick into the house. (*Id.* at ¶ 33.) Special Agent Doerrer reviewed pictures of the fire and observed obvious gasoline pour patterns that were consistent with Vandergrift's description of how he committed the crime. (*Id.*)

In January 2012, another of Vetri's rental properties, 204 Walnut Street in Darby, Pennsylvania, was destroyed by fire. (*Id.* at ¶ 37.) The cause of the fire was classified as "undetermined" because the officers could not complete their investigation, but Special Agent Doerrer stated that he believed arson to be the cause based on information provided by Vandergrift. (*Id.*) At some point after Vandergrift started the fire at the Chester, Pennsylvania, property, Vetri asked him to burn down the Walnut Street house. (*Id.* at ¶ 36.) Vetri told Vandergrift that he had put too much money into the property, was unable to rent it out, and intended to burn it down for the insurance proceeds. (*Id.*) Vandergrift had previously met Vetri at the property to purchase pills and saw that the residence had been "fixed up." (*Id.*) Shortly after the request, Vandergrift was arrested. When Vandergrift told the agents about Vetri's request, he was unaware that the property had ultimately burned down. (*Id.* at ¶ 36 n.10.) Vetri again submitted an insurance claim for the property, including for lost income, and on April 3, 2013, the Erie Insurance Company mailed Vetri two checks totaling approximately $121,000 in partial payment for structural damage and for lost rent for the year of 2013. (*Id.* at ¶¶ 38-39.)

C.

The affidavit further contained an analysis of Vetri's tax records for 2009 through 2011,[3] which lead the agents to believe that Vetri was committing tax

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[3] Agents did not analyze Vetri's tax records for 2012 because they had not been filed at the time of the search warrant application. Vetri had requested and received an extension to file until October 15, 2013. (Gov't Ex. 1, Search Warrant Affidavit ¶ 47.)

fraud. IRS Special Agent Jeffrey Brown reviewed the records, (Gov't Ex. 1, Search Warrant Affidavit ¶ 40.) In all three years, Vetri reported rental and interest income. In 2010 only, Vetri reported income from A&J Electrical and, in 2010 and 2011, Vetri reported nominal amounts of "Other Income." Vetri did not report any income derived from his suspected illegal activities, namely drug sales and insurance fraud. (*Id.* at ¶ 42.)

In 2009, Vetri's deductions exceeded his total income, indicating that he spent more money than he earned. These expenditures did not account for everyday living expenses, such as food, clothing, and transportation. (*Id.* at ¶ 44.) In 2010, Vetri's income exceeded his losses by only $21,591, providing Vetri with only a modest amount of money to live on. (*Id.* at ¶ 46.) However, Vetri's reported interest income in 2010 suggests that he deposited a substantial amount of money into his savings account that year. Agent Brown determined a savings increase of $23,200 to $46,200 dollars, higher than Vetri's purported net earnings for that year. (*Id.* at ¶ 45 n.13.) The disparity further suggested to Special Agent Doerrer that Vetri had unreported illegal sources of income.

Other financial records provided additional evidence that Vetri was committing bank fraud. In various car loan applications submitted in 2009 and 2010, Vetri reported total annual income of $200,000 and approximately $170,000, respectively, significantly greater than the amounts reported on his tax returns. (*Id.* at ¶¶ 50, 51.) Further, in 2010, Vetri paid down a car loan by approximately $21,648 in spite of reporting to the IRS net earnings of only $21,591. (*Id.* at ¶ 52.)

D.

Based on this information, as well as additional information provided by Special Agent Doerrer in the affidavit, the agents believed there was probable cause that evidence of Vetri's fraudulent activities would be located in his home. Doerrer stated that based on his training and experience, as well as the training and experience of other agents with whom he works, Vetri's federal income tax returns would need to be reconstructed to determine his true tax liability and the scope of his fraud. (Gov't Ex. 1, Search Warrant Affidavit ¶ 57.) Doerrer further stated that "[i]t is common for individuals who commit tax and other frauds to maintain books, records . . . receipts relating to the underreported income and . . . proceeds of fraudulent schemes and that such documents are maintained where these individuals have ready access to them, including their businesses or [homes]." (*Id.* at ¶ 60a.) Public records as well as Vetri's bank statements confirmed that Vetri resided in and conducted his businesses from his home at 403 Marsden Avenue. (*Id.* at ¶¶ 54, 55, 58.)

The warrant application and affidavit sought permission to search Vetri's home and seize the items "described with particularity in Attachment B." (*Id.* at ¶ 5; *see also* Gov't Ex. 1, Search Warrant Application.) The items to be seized relate almost exclusively to documentary evidence of financial crimes. For example, Attachment B calls for the seizure of "books, records, invoices, receipts, records of real estate transactions, loans, mortgages, bank statements and related records" evidencing drug trafficking, malicious use of explosive materials, mail fraud, wire fraud, bank fraud, and tax evasion; "photographs, records and

documents . . . containing information evidencing" drug trafficking, malicious use of explosive materials, mail fraud, wire fraud, bank fraud, and tax evasion; evidence of all income; evidence of all expenditures; Federal tax forms; records of insurance claims; and financial records for several of Vetri's businesses. (Gov't Ex. 1, Search Warrant Application, Attachment B, at 1-4.) Further, the application requested permission to seize and search "any and all computers that may contain records requested in this Attachment" and "cell phones (including searching the memory thereof)." (*Id.* at ¶¶ 3, 20.) The items listed were said to be instrumentalities, evidence, or fruits of tax evasion, mail fraud, wire fraud, bank fraud, and money laundering. (Gov't Ex. 1, Search Warrant Application.)

Special Agent Doerrer presented the affidavit to Assistant United States Attorney Ashley Lunkenheimer for approval before bringing the warrant application and affidavit to Judge Hart. (Nov. 15, 2017, Hr'g Tr. at 13.) After reviewing the application and affidavit, Judge Hart approved the search warrant for Vetri's home. (*Id.*)

E.

The warrant was executed on June 4, 2013. (*Id.*) During the search, agents seized seven cell phones and two iPads, (*Id.* at 23.) Doerrer turned the cell phones and iPads over to Special Agent Matthew Yaeger of the FBI. (*Id,* at 13.) Special Agent Yaeger is a lawyer and has been a member of the FBI for approximately 12 years. (*Id.* at 17.) He is a member of the Violent Crimes Squad and the Evidence Response team, a group of agents and support staff who are trained to process crime scenes and collect evidence.

(*Id.* at 17-18.) Special Agent Yaeger testified that two of the seven phones were "older-model" Samsung phones, the kind you could buy off the rack at Target (not modern touchscreen smartphones), and the other five were iPhones. (*Id.* at 23-24.) He described the iPhones as having larger data storage capacity and more functions than the Samsung phones. (*Id.* at 24.) All data, with the exclusion of music files, was extracted from the phones and placed onto disks for review.[4] (*Id.* at 29.)

Special Agent Yaeger, along with others, reviewed the data extracted from the cell phones. (*See* Nov. 15, 2017, Hr'g Tr, 33; Gov't Supp. Resp. in Opp'n at 4, ECF No. 143.) He testified that for each phone, he received a report file along with the phone's data files. (Nov. 15, 2017, Hr'g Tr. at 34.) He began his search of each phone by reviewing the report file which is usually organized by category, such as address book, note files, SMS messages, MMS messages and web history. (*Id.*) Yeager testified that he went "category by category and look[ed] at the files to see if anything was covered by the warrant." (*Id.*) The search included a search of and for text messages, an address book, photographs, and videos, all of which were specified in the warrant as items to be seized as evidence of the commission of the enumerated crimes. (*See* Gov't Supp. Resp. at 4.)

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[4] With respect to the data on two of Vetri's phones, Yaeger reviewed redacted data. The agents had reason to believe that Vetri was frequently communicating with a lawyer and arranged for a separate taint team to review all of the cell phone data for privileged communications prior to the investigatory search. (Nov. 15, 2017, Hr'g Tr. at 30-33.)

Agents found various items on Vetri's cell phones which he now seeks to suppress, including a photo of a package addressed to Patel's pharmacy, text messages between Vetri and Vandergrift and between Vetri and Patel relating to the drug trafficking conspiracy, and information arguably pertaining to the murder of one of the alleged co-conspirators, Olabode. (*See id.* at 5.) Further, during review of the text messages between Vetri and Vandergrift, agents recovered a video Vetri sent to Vandergrift shortly after Olabode's murder in January 2012. In the video, a voice asks "What did the gangsters do to Bo?" Vetri's two year old daughter says, "Boom, boom, boom, boom." This is then repeated, to which the voice says, "You're funny." The video concludes with the voice saying, "Say, 'Bye Mike,' and Vetri's daughter repeating the phrase. (*Id.* at 4-5.) On a separate phone, agents found a copy of Olabode's driver's license. (*Id.* at 5.)

## II.

Under the Fourth Amendment, subject to certain exceptions, search and seizures must be effectuated pursuant to a warrant based on probable cause. *See, e.g., United States v. Golson*, 743 F.3d 44, 50-51 (3d Cir. 2014) (citing *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002)). To issue a warrant based on probable cause, an impartial judicial officer, in this case the magistrate judge, must determine that, in light of the totality of the circumstances, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *see also Riley v. California*, 134 S. Ct. 2473, 2482 (2014) ("[A] warrant ensures that the inferences to support a search are 'drawn by

a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'"); *United States v. Conley*, 4 F.3d 1200, 1205 (3d Cir. 1993).

Affidavits of probable cause are to be assessed "in [their] entirety and in a common sense and non-technical manner." *Conley*, 4 F.3d at 1206 (citing *Gates*, 462 U.S. at 230-31). Probable cause can be and often will be "inferred by 'considering the type of crime, the nature of the items sought, the suspect's opportunity for concealment and normal inferences about where a criminal might hide [the property].'" *United States v. Williams*, 124 F.3d 411, 420 (3d Cir. 1997) (quoting *Conley*, 4 F.3d at 1207). The issuing judge may rely on the experience of the officer and give "'considerable weight'" to the officer's conclusions "'regarding where evidence of a crime is likely to be found.'" *United States v. Whitner*, 219 F.3d 289, 296 (3d Cir. 2000) (quoting *United States v. Caicedo*, 85 F.3d 1184, 1192 (6th Cir. 1996)).

A magistrate judge's determination of probable cause should be paid "great deference." *Conley*, 4 F.3d at 1205 (emphasis in original) (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)). Thus, reviewing courts are not to conduct *de novo* reviews for probable cause; rather, their duty to is "'to ensure that the magistrate had a substantial basis for . . . concluding that probable cause existed.' *Golson*, 743 F.3d at 53 (modifications in original) (quoting *Conley*, 4 F.3d at 1205); *see also Gates*, 462 U.S. at 236. Courts are confined "'to the facts that were before the magistrate judge . . . and [do] not consider information from other portions of the record." *United States v. Hodge*, 246 F.3d 301, 305 (3d Cir. 2001) (quoting *United States v.*

*Jones*, 994 F.2d 1051, 1055 (3d Cr. 1993)). To prevail, the defendant bears the burden of establishing that his or her Fourth Amendment rights were violated. *United States v. Acosta*, 965 F.2d 1248, 1257 n.9 (3d Cir. 1992) (citing *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978)).

## III.

Vetri's motion seeks to suppress all information recovered from the search of his house, including the search of his cell phones; he does not specify any particular information or evidence. The Government, however, provided the Court with a description of several relevant items recovered from the phones. At the November 15 hearing, Vetri's counsel confirmed that he was seeking to suppress all of the evidence identified by the Government, including, but not limited to, the video of Vetri's daughter and the picture of Olabode's driver's license. (Nov. 15, 2017, Hr'g Tr. at 4-6.)

### A.

Vetri first argues that, for several reasons, there was no probable cause to search his home. He contends, focusing on the evidence of drug trafficking, that the information in the affidavit was both stale and uncorroborated. He further claims that the search, which was predicated on financial crimes, was pretextual and that the agents were really looking for evidence of drug trafficking. Lastly, Vetri appears to argue that, even if there was probable cause to search for evidence of financial crimes, the affidavit lacked the required nexus between the facts and Vetri's home such that it was unreasonable to believe that evidence

of the financial crimes would be found there. None of these arguments succeed. The affidavit of probable cause clearly provided a substantial basis for Judge Hart to conclude that evidence of the financial crimes described would be found in Vetri's home.

The affidavit described at length various types of criminal conduct, focusing mainly on financial crimes. Consistent with the nature of the crimes described, the affidavit sought permission to search for financial records showing Vetri's income or expenses—evidence that would enable the officers to understand the extent of these crimes. The affidavit contained evidence that Vetri used, and was presently using, his home address for receipt of business and financial records, including bank statements for at least eight different bank accounts. (Gov't Ex. 1, Search Warrant Affidavit ¶ 54.) Based on his training and experience, Special Agent Doerrer represented that it is common for individuals who commit tax evasion and other frauds to keep records at their homes and businesses. (*Id.* at ¶ 60a.) Considering the affidavit in its entirety and in a common sense manner, Judge Hart had a substantial basis for concluding that financial records or other evidence of Vetri's financial crimes could be found in his home.

**B.**

Vetri's argument that the information contained in the affidavit was "too stale" focuses mainly on the evidence of drug trafficking. He claims that "this is a pill case" and that the tax evasion described in the warrant was *de minimus* and ultimately not charged. (Mot. at 7-8.) Vetri argues that the last evidence of drug trafficking occurred, at the latest, in January

2012, a full year before Special Agent Doerrer applied for the warrant. (*See* Nov. 15, 2016, Hr'g Tr. at 60.) He further questions the relevance of the receipt of the fraudulent insurance proceeds through the mail at his home. (Mot. at 15 ("[W]hy would it matter if a claim check was mailed to his residence.").) This argument ignores the continuous nature of the financial crimes, which served as the basis for the warrant. Further, his argument that the warrant was pretextual fails to view the warrant in its entirety, in a common sense manner, and in light of what Judge Hart knew at the time the warrant was issued.

The age of information supporting a warrant application is relevant to the probable cause assessment. "If information is too old, it may have little value in showing that contraband or evidence is still likely to be found in the place for which the warrant is sought." *Williams*, 124 F.3d at 420 (citing *United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir. 1993)). However, staleness is not determined solely by counting up months and is of "less concern" when the criminal activity is continuous. *See id.* (finding staleness of information "less important in the probable cause analysis" where gambling operation spanned nearly thirty years); *see also United States v. Harris*, 482 F.2d 1115, 1119 (3d Cir. 1973) ("Protracted and continuous activity is inherent in a large-scale narcotics operation."). As the Third Circuit Court of Appeals has explained, because probable cause is based "on a number of variables, such as the nature of the crime, of the criminal, of the thing to be seized, and of the place to be searched," the passage of time is less significant when the "activity is of a protracted and continuous nature." *Williams*, 124 F.3d at 420; *see also United*

*States v. Shields*, 458 F.3d 269, 281 n.7 (3d Cir. 2006) (noting that information supporting the warrant was not stale after a nine month gap because evidence shows that individuals tend to keep child pornography images and "information suggesting a 'continuing offence' is more durable than information of discrete offenses").

In light of the nature of the financial crimes described and the evidence sought, Judge Hart had a substantial basis for concluding that the information contained in the affidavit was not stale. As in *Williams*, "the primary evidence sought was records, which are generally created for the very purpose of preservation." 124 F.3d at 421. Special Agent Doerrer stated that in order to determine the true scope of the fraud and tax evasion, agents would need to "identify all sources and all amounts of any unreported income and proceeds of fraudulent schemes . . . [and] reconstruct Vetri's federal income tax returns for the relevant years." (Gov't Ex. 1, Search Warrant Affidavit ¶ 57.) Further, the agents had information that Vetri had a safe in his house, indicative of prolonged storage. (*Id.* at 20.)

Although the evidence of drug trafficking may have been dated when viewed in isolation, the full breadth of the criminal activity described in the warrant was continuous and on-going, spanning over four years and leading up to the execution of the warrant. The affidavit described continuous drug trafficking, mail and wire fraud predicated on false insurance claims, as well as tax evasion, bank fraud and potential money laundering. The agents had current information that the mail and wire fraud was ongoing. Approximately two months before the warrant was executed, Vetri received the proceeds of an allegedly fraudulent

insurance claim via U.S. mail, in part for lost rental income for 2013. (*Id.* at 39.) As the central objective of the fraud, receipt of the proceeds at his home is relevant to the probable cause analysis which looks to the totality of the circumstances. Further, Vetri received an extension of time to file his 2012 federal tax return, suggesting that financial records to support his 2012 tax return could presently be located in his home. (*Id.* at 47.) This current information, as well as the continuous nature of the suspected financial crimes, provided a substantial basis for concluding that financial records and evidence required to reconstruct Vetri's true tax liability for the relevant years would be found in his house.

The warrant application made no attempt to "disguise" or conceal the fact that the agents were interested in Vetri's drug trafficking activity. In fact, one of the bases for the agents' belief that Vetri was committing tax evasion and other financial crimes, such as money laundering, was the evidence of Vetri's illegal drug sale income. The agents had a basis to believe that Vetri made, at minimum, $126,500 in illegal drug sales between 2009 and 2012 and that Vetri did not to include this income in his federal tax returns, yet relied on this income when applying for loans. Evidence of drug trafficking, which is a "specified unlawful activity" that can support a money laundering charge, was therefore an appropriate target of the warrant. (*See* Nov. 15, 2016, Hr'g Tr. at 38.)

Further, Vetri's argument that tax evasion is uncharged is legally irrelevant, as he acknowledges. (Mot. at 15 ("[A] hindsight view is not relevant to the finding of probable cause . . . ").) Warrants are assessed on the basis of the information available to law enforcement

at the time the warrant was issued, not on the basis of the subsequent charges. *See Hodge*, 246 F.3d at 305. Although the Government did not ultimately charge Vetri with tax evasion or other financial crimes, the information available to Special Agent Doerrer when he applied for the search warrant provided a substantial basis for Judge Hart to issue the warrant authorizing a search for evidence of such crimes.

C.

Vetri's argument that the confidential informants' information was uncorroborated and unreliable is plainly contradicted by the affidavit of probable cause. "A magistrate may issue a warrant relying primarily or in part upon the statements of a confidential informant, so long as the totality of the circumstances gives rise to probable cause." *United States v. Stearn*, 597 F.3d 540, 555 (3d Cir. 2010). While the informant's veracity and basis for knowledge are both relevant to the probable cause assessment, "'these elements should [not] be understood as entirely separate and independent requirements to be rigidly exacted in every case.'" *Id.* (modifications in original) (quoting *Gates*, 462 U.S. 230).

Judge Hart had a substantial basis for crediting the testimony of the confidential informants when assessing probable cause. Three confidential informants provided the agents with information on Vetri's criminal behavior. The information provided by Peron regarding Vetri's drug trafficking conduct was consistent with and largely corroborated by Vandergrift's information. Each informant had a basis of knowledge as a co-conspirator and provided consistent information about their selling patterns, Vetri's supplier, his inconsistent

supply and his belief that Olabode was interfering with that supply. The information provided by Vandergrift regarding Vetri's attempts to defraud his insurance company by committing arson was consistent with Santoleri's belief that Vetri commissioned the vandalism at his rental property in order to recover insurance proceeds. Although the predicate acts are different, both informants' information suggested that Vetri was committing insurance fraud. Further, Vandergrift informed agents that Vetri had approached him about setting fire to the Darby, Pennsylvania property, which burned down shortly thereafter.

Agents were also able to corroborate various other details of the informants' information. For example, Perone's description of the score marks on the Oxycodone pills was consistent with the records of pills ordered by Patel's pharmacies and Special Agent Doerrer was able to confirm Vandergrift's account of arson at the Chester, Pennsylvania property by examining the gasoline pour patterns evident in photographs of the property.

At the hearing, Vetri's counsel argued that independent law enforcement corroboration or surveillance was required. (Nov. 15, 2016, Hr'g Tr. at 57.) First, the agents did in fact conduct an independent investigation that corroborated certain aspects of the informants' information. However, to the extent that Vetri contends that some independent basis of law enforcement corroboration is <u>always</u> required, imposing such a requirement would place a burden on law enforcement greater than that required by the Fourth Amendment. While in *Gates* the Supreme Court endorsed independent police corroboration as an important method of establishing reliability, such corroboration is not always required

under a totality of the circumstances analysis. *See Stearn*, 597 F.3d at 555.

**D.**

Lastly, with respect to his argument that the warrant was not supported by probable cause, Vetri argues that there was not enough information contained in the warrant indicating that evidence of the described crimes would be found in his house. Here, Vetri contends that the agents made a number of impermissible inferences based on common knowledge. However, as in *United States v. Rankin*, 442 F. Supp. 225 (E.D. Pa. 2006), the affidavit sufficiently tied the evidence to Vetri's home, Based on both bank records and public documents related to Vetri's many companies, the agents were able to identify 403 Marsden Avenue as not only Vetri's home, but the address where he receives financial and business records. These facts, together with the agents' conclusion (to which Judge Hart was entitled to give great weight) that evidence of financial crimes is often stored in a suspect's home or business, provided probable cause to search Vetri's home. *See Rankin*, 442 F. Supp. at 230 (upholding warrant to search defendant's home for evidence of tax evasion and other frauds where supported by officer's expert conclusions that people in defendant's position store records in their homes and particular facts showing the defendant received records in his home),

**IV.**

Vetri further argues that the warrant was overbroad to the extent that it permitted the seizure of cell phones found in his home, "including searching the

memory thereof." Vetri's overbreadth argument was made in two sentences in his initial motion. "The 'items to be seized' was also overly broad in that it requested defendant's electronic devises and particularly his cellphone. There is no way a warrant could have been obtained simply for his phone." (Mot. at 17.) During the November 1 oral argument, counsel did not address this argument, though the Government did, arguing that in modern times, a cell phone "is not really much more than a filing cabinet for digital information," and thus the agents were permitted to search the cell phone for records as if it were simply a filing cabinet in Vetri's home. (Nov. 1, 2017, Hr'g Tr. at 38.) The Government further pointed to nine "communications" referenced in the affidavit that "would at least imply that there had been telephone calls or some communications of some sort from Mr. Vetri to other people." (*Id.*)

The Court ordered supplemental briefing on this issue. (ECF No. 137.) In his supplemental brief and at oral argument, Vetri argued that the warrant was facially invalid with respect to paragraph three of Attachment B, which permits the search and seizure of cell phones, emphasizing the evolving case law on cell phones searches, including the Supreme Court's decision in *Riley v. California*, 134 S. Ct. 2473 (2014). Counsel contended that in Attachment B of the search warrant, which lists the items to be seized, the paragraphs with respect to what the agents can seize are specific and detailed, including information regarding which crimes are being investigated. However, when it came to permitting the seizure and search of Vetri's cell phones, the warrant merely stated that cell phones could be seized, "including searching the

memory thereof," with no additional limits imposed. (Nov. 15, 2017, Hr'g Tr. at 66, 69; *see also* Gov't Ex, 1, Search Warrant, Attachment B ¶ 3.) Vetri claims that the warrant should have included information about the numbers assigned to certain phones or the time period during which the phones were used, (Nov. 15, 2017, Hr'g Tr. at 67.) He therefore appears to be arguing both that (1) inclusion of cell phones in the warrant was not supported by probable cause and that (2) even if the agents had a basis to search Vetri's cell phones, the warrant is overbroad on its face because it did not place any restrictions on the agents' search of the phones.

A.

In *Riley*, the Supreme Court confirmed what by that point had become common knowledge, stating that modern cell phones are a "pervasive and insistent part of daily life" and "a significant majority of American adults now own such phones." 134 S. Ct, at 2484. Modern cell phones are "in fact minicomputers" that have "immense storage capacity" and place "vast quantities of personal information literally in the hands of individuals." *Id.* at 2489. "Even the most basic phones that sell for less than $20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book, and so on." *Id.*[5]

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[5] Special Agent Yaeger testified that the text message conversation between Vetri and Vandergrift was recovered from an iPhone 5. (Nov. 15, 2017, Hr'g Tr. at 38-39.) "The storage capacity of the popular Apple iPhone 5 ranges from 16GB to 64GB, which is the equivalent of many millions of pages of text and similar to the typical storage capacity of a home computer sold in 2004. Plus,

The facts contained in the affidavit, together with common sense and the agent's reasonable inferences about where the sought after records would be stored, provided Judge Hart with a substantial basis for including cell phones in the search warrant. Probable cause "does not require absolute certainty that evidence of criminal activity will be found at a particular place, but rather that it is reasonable to assume that a search will uncover such evidence." *United States v. Yasuf*, 461 F.3d 374, 390 (3d Cir. 2006); *see also United States v. Hawkins*, No. 1:11CR61, 2014 WL 7335638, at *8 (W.D. Pa. Dec. 19, 2014) ("When analyzing the existence of probable cause, the focus must be on 'factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'") (quoting *Gates*, 462 U.S. at 231). Special Agent Doerrer stated that, based on his extensive experience and training, defendants who engage in the described crimes "often utilize . . . electronic equipment such as computers, . . . telephone answering machines and pagers to generate, transfer, count, record and/or store the information described above." (Gov't Ex. 1, Search Warrant Affidavit ¶ 60c.) Giving due deference to Doerrer's conclusion, and considering it together with the factual allegations contained in the affidavit, the types of records and documents which the agents sought, and common knowledge about the functions and abilities of modern

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the capacity and speed of cell phones is not fixed. Every year witnesses the introduction of new models with more speed, more capacity, and better features." Orin S. Kerr, *Foreword: Accounting for Technological Change*, 36 Harv. J.L. & Pub. Pol'y 403, 404-05 (2013).

day cell phones, Judge Hart had a substantial basis for including cell phones in the warrant.[6]

B.

Further, the warrant was not invalid on its face because, viewed in its entirety, it placed limits on the parameters of the agents' search of the phone. A warrant which authorizes the "general exploratory rummaging in a person's belongings" is overbroad and unconstitutional. *United States v. Christine*, 687 F.2d 749, 754 (3d Cir. 1982) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971)). "A warrant is not unconstitutionally general 'unless it can be said to vest the executing officer with unbridled discretion to conduct an exploratory rummaging . . . in search of criminal evidence.'" *United States v. Karrer*, 460 Fed. Appx. 157, 161 (3d Cir. 2012) (quoting *United States v. Leveto*, 540 F.3d 200, 211 (3d Cir. 2008)). To avoid such searches, warrants must specify with particularity the places to be searches and the items to be seized. U.S. Const. amend. IV; Fed. R. Crim. P. 41(e)(2) ("[T]he warrant must identify the . . . property to be searched" and "identify any . . . property to be seized.").

Vetri's concern appears to be that paragraph three of Attachment B, standing alone, does not limit the parameters of the agents' search or specify with particularity the items for which the agents were per-

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6 Unlike cases in which the search of a cell phone is contested as being outside the scope of a validly issued warrant that did not directly permit a search of the phone's content, the warrant in this case specifically included authorization to search cell phones even before *Riley*.

mitted to search. The warrant in this case did not permit the agents to go "rummaging through" the cell phones with "unbridled discretion" looking for all evidence of criminality. While paragraph three provides for the seizure of "[c]ellular telephones (including searching the memory thereof)," other paragraphs of Attachment B described with particularity the documents and records that the agents were authorized to search for and seize. Interpreting the warrant in the requisite common sense and nontechnical manner, it was not invalid on its face just because paragraph three did not repeat the specific search parameters contained in the adjoining paragraphs.

## V.

Even if Judge Hart lacked a substantial basis for finding probable cause, or the Court were to find that more specificity was required, the evidence obtained in the search of Vetri's home is admissible under the good faith exception to the exclusionary rule. *See United States v. Leon*, 468 U.S. 897 (1984). "The test for whether the good faith exception applies is 'whether a reasonably well trained officer would have known that the search was illegal despite the [issuing judge's] authorization.'" *Hodge*, 246 F.3d at 307 (quoting *United States v. Loy*, 191 F.3d 360, 367 (3d Cir. 1999)). "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." *United States v. Franz*, 772 F.3d 134, 145 (3d Cir. 2014) (quoting *Herring v. United States*, 555 U.S. 135, 144 (2009)). Thus, the exclusionary rule does not apply to "evidence obtained during a search 'when an

officer acting with objective good faith [ ] obtained a search warrant from a judge or magistrate and acted within its scope.'" *United States v. Tracey*, 597 F.3d 140, 150 (3d Cir. 2010) (quoting *Leon*, 468 U.S. at 919-20).

"Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner, or in 'objective good faith.'" *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012) (quoting *Leon*, 468 U.S. at 922-23). The Third Circuit has identified four narrow situations where reliance on a warrant is unreasonable and the good faith exception does not apply:

> (1) [when] the magistrate [judge] issued the warrant in reliance on a deliberately or recklessly false affidavit;
>
> (2) [when] the magistrate [judge] abandoned his judicial role and failed to perform his neutral and detached function;
>
> (3) [when] the warrant was based on an affidavit "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'"; or
>
> (4) [when] the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

*Hodge*, 246 F.3d at 308 (quoting *United States v. Williams*, 3 F.3d 69, 74 n.4 (3d Cir. 1993)); *see also Stearn*, 597 F.3d at 561 ("In 'narrow circumstances,' . . . the good faith doctrine is not sufficient to override the

warrant's lack of probable cause."). Further, in *Herring*, the Supreme Court held that "[i]f the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified . . . should such misconduct cause a Fourth Amendment violation." 555 U.S. 135, 146 (2009).

Vetri contends that the good faith exception should not apply because "law enforcement knew that the warrant was dated, not corroborated, and overbroad to make a 'colorable showing' of probable cause to search the residence." (Mot. at 19.) This argument implicates the third, and potentially the fourth, situation above but falls far short of bringing this case within any of the narrow exceptions. As in *Stearn*, the affidavit in this case was a far cry from "bare bones" for the reasons articulated above. 597 F.3d at 562. Even if the Court were to find a substantial basis lacking, the detailed affidavit which described a myriad of criminal conduct spanning more than four years is not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable" and to require the suppression of the evidence found during the search. *Hodge*, 246 F.3d at 308.

Further, the warrant did not fail to particularize the place to be searched or the things to be seized such that it was clearly "facially deficient." This is apparent from Special Agent Yaeger's testimony at the evidentiary hearing that the agents searched Vetri's phone for the financial records described in the warrant, and understood their search to be so limited, Agent Yeager testified that he "rel[ies] on the warrant

as it's stated. In this case . . . Attachment B would be my primary guidance. . . . what's listed on the warrant face sheet and in the attachment about what you can search for." (Nov. 15, 2017, Hr'g Tr. at 44.) Further, on cross-examination, he stated that when reviewing the files, he looked to *see* whether it "relate[d] to one of the enumerated crimes" or whether it was "one of the specifically enumerated file types." (*Id.* at 47.)

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert
Judge

## ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (NOVEMBER 8, 2017)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

MITESH PATEL, ANTHONY VETRI, MICHAEL VANDERGRIFT,

*Defendants.*

Criminal Action No. 15-157

Before: Gerald J. PAPPERT, Judge.

AND NOW, this 8th day of November 2017, upon consideration of Defendant Vetri's Motion to Suppress Evidence (ECF No. 109), the Government's Response (ECF No. 123), and oral argument on the Motion (ECF No. 131), it is hereby ORDERED that:

1. An evidentiary hearing will be held on November 15, 2017, at 2:00 p.m., in a courtroom to be determined, on the issue of whether the search of Vetri's cell phone was impermissibly broad in light of the scope of the warrant and the evidence authorized to be seized.

2. On or before November 13, 2017, the parties are to submit supplemental briefing on the issue of whether the search of Vetri's cell phone was overbroad, including:

a. The parameters of the search conducted of the cell phone and evidence seized as a result thereof; and,

b. Identification of the specific evidence Vetri is seeking to suppress.

BY THE COURT:

/s/ Gerald J. Pappert
Judge

**ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING PETITION FOR REHEARING (JUNE 11, 2020)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

v.

ANTHONY VETRI,

*Appellant.*

No. 18-2372

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-15-cr-00157-002)
District Judge: Honorable Gerald J. Pappert

Before: SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the

circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ Thomas M. Hardiman
Circuit Judge

Dated: June 11, 2020

CJG/cc: Bernadette A. McKeon, Esq.
Jonathan B. Ortiz, Esq.
David E. Troyer, Esq.
Peter Goldberger, Esq.

Additional material from this filing is available in the Clerk's Office.