No. _____

IN THE

Supreme Court of the United States

KYLE S. MATTHEWS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITIONER'S APPENDIX TO PETITION FOR CERTIORARI

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12 F.4th 647
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Kyle S. MATTHEWS, Defendant-Appellant.

No. 20-2686
|
Argued March 2, 2021
|
Decided August 27, 2021

Synopsis

Background: Defendant pled guilty and was convicted in the United States District Court for the Southern District of Illinois, Nancy J. Rosenstengel, Chief Judge, of possessing an unregistered short-barreled rifle. Defendant appealed.

The Court of Appeals, Ripple, Circuit Judge, held that officer had good-faith basis to believe that probable cause existed to search defendant's camper trailer, the surrounding land, and the other buildings as stated in search warrant, and thus the good-faith exception to the exclusionary rule applied to permit admission of evidence obtained from that search.

Affirmed.

Hamilton, Circuit Judge, filed separate opinion concurring.

Procedural Posture(s): Appellate Review; Plea Challenge or Motion.

***649** Appeal from the United States District Court for the Southern District of Illinois. No. 3:18-cr-30102-NJR-1 — **Nancy J. Rosenstengel**, *Chief Judge*.

Attorneys and Law Firms

Laura Reppert, Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Criminal Division, Fairview Heights, IL, for Plaintiff - Appellee.

Todd M. Schultz, Attorney, OFFICE OF THE FEDERAL PUBLIC DEFENDER, East St. Louis, IL, for Defendant - Appellant.

Before Ripple, Hamilton, and Kirsch, Circuit Judges.

Opinion

Ripple, Circuit Judge.

****1** The Clinton County, Illinois, Sheriff's Office executed a search warrant on a property where Kyle Matthews lived in a camper trailer. The warrant authorized the police to search every structure on the premises in the belief that Mr. Matthews lived on and had access to the whole property. The Sheriff's Office, however, had not offered the issuing judge much information to substantiate this belief.

The evidence found during the search led to a federal indictment, and Mr. Matthews moved to exclude the fruits of the search. The district court held that the warrant was not supported by probable cause to believe that any of the suspected crimes were linked to the property. The district court nevertheless concluded that the good-faith exception to the exclusionary rule applied and therefore denied the motion to suppress. Mr. Matthews pleaded guilty to possessing an unregistered short-barreled rifle that had been found at his home, but he conditioned his plea on an appeal of the denial of the motion to suppress the evidence.

We affirm the judgment of the district court. An objectively reasonable officer, having consulted with the State's Attorney ***650** in the preparation of the complaint and affidavit accompanying the application for the warrant, could have relied in good faith on the search warrant that he obtained from a judge. The warrant here, although incomplete, was not so utterly lacking in indicia of probable cause that suppression is justified.

I

BACKGROUND

A.

On Saturday, March 31, 2018, Michael Long—an employee at an auto-parts store in Carlyle, Illinois—overheard his coworker discussing pipe bombs with Mr. Matthews in the store. Long heard the two men share their excitement about a bomb that they had detonated the previous day; they also discussed where to place another bomb that Mr. Matthews appeared to be carrying with him. They considered a local church and a school, as well as a competing auto-parts store and a car dealership.

Concerned about the danger that these two men and their plan posed, Long called the Clinton County Sheriff's Office late on Sunday evening. Detective Sergeant Charles Becherer opened an investigation. He interviewed Long, who explained that Mr. Matthews was a frequent customer and that he knew Mr. Matthews owned a "highly modified" AR-15 with a silencer, lived in a camper trailer behind "the old Fin & Feather Restaurant," worked on his cars in the nearby shed, and had "free reign of the property." [1] Detective Becherer also consulted with his colleagues in the Sheriff's Office and learned that someone living near the Fin & Feather restaurant had called about an explosion that past Friday and that Mr. Matthews's public social-media posts showed that he possessed explosive materials. Another detective reported that he had spoken with a local resident who said "the word on the street" was that Mr. Matthews possessed bombs. [2]

Following his regular practice, Detective Becherer promptly consulted with the State's Attorney, who began drafting a complaint for a search warrant and a supporting affidavit. The affidavit outlined the conversation Long had overheard at the store (but not the rest of Detective Becherer's interview) and listed the other officers' discoveries. The complaint sought authorization to search all buildings and structures on the property of the former Fin & Feather restaurant at 21000 North Emerald Road, including the motor home and camper trailer behind the restaurant building, for any explosives, explosive materials, firearms, or ammunition. This motor home and camper trailer, the complaint asserted, were "believed to be occupied by persons including Kyle S. Matthews ... who is also believed to have access to all other structures and building [sic] situated on the premises." [3] Nothing in the complaint or affidavit explained specifically how Detective Becherer or the State's Attorney had come to this belief. Rather, the affidavit stated generally that Detective Becherer had, "in the course of [his] investigation ... obtained the information contained herein, some by personal interviews and some through other law enforcement officers." [4]

****2** On Monday morning, the State's Attorney and Detective Becherer completed the complaint and submitted it to a judge of ***651** the Circuit Court of Clinton County, Illinois. In his affidavit, Detective Becherer again stated only that the buildings pictured were "believed to be the residence of Suspect." [5] Attached to the affidavit were pictures of the Fin & Feather property that Detective Becherer had taken earlier that morning, but the pictures included no clearly identifying features, such as a street

number. After reviewing the exhibits, the judge heard testimony from Long, who summarized again the conversation he had overheard and identified Mr. Matthews from a photograph. Detective Becherer also testified. He reaffirmed and signed his affidavit before the judge, and explained his intent to search "the entire property where [Mr. Matthews has] been staying which is at the Fin and Feather restaurant," including the several outbuildings, because it was his "understanding [that] Mr. Matthews has access to all those places." [6] The judge determined there was probable cause to believe Mr. Matthews had materials to commit terrorism, among other crimes, stored at the Fin & Feather property and signed the warrant.

Just over an hour later, a joint team including Detective Becherer and members of the Clinton County Sheriff's Office, other local law enforcement agencies, the Illinois Secretary of State Police Hazardous Device Unit, and the Federal Bureau of Alcohol, Tobacco, and Firearms arrived at the old Fin & Feather restaurant to execute the search warrant. They found multiple firearms, silencers, a pipe bomb, and more explosive materials. Mr. Matthews was present at the time of the search, as were two other individuals.

B.

A grand jury later indicted Mr. Matthews for possessing a machine gun, 18 U.S.C. § 922(o), an unregistered silencer, 26 U.S.C. § 5861(d), and an unregistered short-barreled rifle, *id.*

Mr. Matthews moved to suppress the evidence obtained from the search of the Fin & Feather property. The warrant was fatally overbroad, he asserted, because it extended to every building on the property, and it otherwise failed to establish a nexus between his alleged illegal activity and the property. The Government asked the district court to deny the motion to suppress solely because Detective Becherer had executed the warrant in good faith. It did not maintain that the warrant was supported by probable cause.

Although the Government relied on the good faith exception to the exclusionary rule, the district court nevertheless determined that it was appropriate to examine the probable-cause question and to determine whether the warrant was invalid. The evidence convinced the district court that the state court judge and Sheriff's Office had reason to suspect that Mr. Matthews might have been involved in criminal activity. The district court noted, however, that Detective Becherer had offered the state court judge little evidence linking either Mr. Matthews or his suspected crimes to the Fin & Feather property, let alone to every single structure on the property.

The district court then considered whether the good-faith exception to the exclusionary rule applied. This exception permits the admission of evidence obtained in violation of the Fourth Amendment if the officers conducted the search in good-faith reliance on a warrant. *United States v. Leon*, 468 U.S. 897, 918–23, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). In finding good faith, the district court noted Detective ***652** Becherer's choice to consult with the State's Attorney before filing the complaint. It also emphasized the many details Long had given Detective Becherer about Mr. Matthews's living situation. Based on this information, the district court concluded that the detective had strong reason to believe that probable cause existed to search Mr. Matthews's camper, the surrounding land, and the other buildings. The court acknowledged that Detective Becherer never "articulated the reasons for that belief in his affidavit or testimony" but thought the "exigency of the situation may have contributed to the error." [7]

Mr. Matthews promptly sought reconsideration of its ruling. As he saw it, the district court's analysis rested on facts that Detective Becherer knew but never had offered to the state court judge who had issued the warrant. He argued that the good-faith exception prohibited resort to any evidence not presented to the state court judge.

**3 Relying on our decision in *United States v. Koerth*, 312 F.3d 862 (7th Cir. 2002), the district court agreed with Mr. Matthews that it should not have relied on evidence not presented to the state court judge. But it determined that the outcome was the same. The state court judge had heard Detective Becherer's testimony about intending to search the entirety of the Fin & Feather property, saw the pictures identified as that property, and knew that Detective Becherer had interviewed Long. The failure to connect expressly these pieces of evidence did not render unreasonable Detective Becherer's reliance on the state court judge's determination that there was probable cause to search the property.

Mr. Matthews pleaded guilty to possessing an unregistered short-barreled rifle, in violation of 26 U.S.C. § 5861(d), but conditioned his plea on his right to appeal the denial of his motion to suppress, *see* Fed. R. Crim. P. 11(a)(2). The district court accepted the plea and sentenced Mr. Matthews to three years' probation.

Mr. Matthews now appeals and challenges the denial of his motion to suppress. He maintains that the materials submitted to the state court judge lacked any indicia of probable cause, and, consequently, Detective Becherer could not have executed the warrant in good faith.

II

DISCUSSION

We review de novo whether the good-faith exception to the exclusionary rule applies to a search based on a warrant later determined to be invalid. *See* *United States v. Adams*, 934 F.3d 720, 725 (7th Cir. 2019), *cert. denied*, —— U.S. ——, 140 S. Ct. 824, 205 L.Ed.2d 495 (2020).

A.

The basic principles that guide our analysis are well settled. The exclusion of evidence for a violation of the Fourth Amendment is a judicial remedy intended to deter police misconduct and thereby protect Fourth Amendment rights. *Leon*, 468 U.S. at 906, 104 S.Ct. 3405. To tailor this exclusionary rule to the harm it seeks to prevent, the Supreme Court held in *Leon* that, despite the exclusionary rule, evidence obtained in violation of the Fourth Amendment is admissible if the officer who conducted the search reasonably relied on a warrant. *Id.* at 913, 104 S.Ct. 3405; *United States v. Woodfork*, 999 F.3d 511, 519–20 (7th Cir. 2021). [8]

*653 The determination of reasonableness, and therefore good faith, is an objective inquiry. *Leon*, 468 U.S. at 922, 104 S.Ct. 3405. Although it is the Government's burden to demonstrate that the officer was acting in objective good faith, an officer's decision to obtain a warrant is prima facie evidence of his good faith. *Koerth*, 312 F.3d at 868. We therefore presume that an officer with a warrant was acting in good faith, and the defendant's burden is to rebut that presumption. *Edmond v. United States*, 899 F.3d 446, 453 (7th Cir. 2018). The burden to show unreasonable reliance on a warrant is heavy by design. *See* *Messerschmidt v. Millender*, 565 U.S. 535, 547, 132 S.Ct. 1235, 182 L.Ed.2d 47 (2012). A warrant is "a judicial mandate to an officer to conduct a search" that "the officer has a sworn duty to carry out" in a nearly "ministerial" fashion. *Utah v. Strieff*, 579 U.S. 232, 136 S. Ct. 2056, 2062–63, 195 L.Ed.2d 400 (2016) (quoting *Leon*, 468 U.S. at 920 n.21, 104 S.Ct. 3405) (internal quotation marks omitted). A magistrate or judge is, moreover, typically far more qualified than a police officer

to decide whether probable cause exists, *Malley v. Briggs*, 475 U.S. 335, 346 n.9, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986), and so an officer "cannot ordinarily be expected to question a judge's probable cause determination," *United States v. Lickers*, 928 F.3d 609, 619 (7th Cir.), *cert. denied*, —— U.S. ——, 140 S. Ct. 410, 205 L.Ed.2d 234 (2019). A magistrate's erroneous approval of a warrant certainly does not immunize an officer's subsequent search, *Malley*, 475 U.S. at 345–46 & n.9, 106 S.Ct. 1092; *Owens v. United States*, 387 F.3d 607, 608 (7th Cir. 2004), but it is still "no small feat" to overcome the presumption of good faith, *Lickers*, 928 F.3d at 619.

**4 To overcome this heavy burden, a defendant must establish one of four situations:

> (1) the affiant misled the magistrate with information the affiant knew was false or would have known was false but for the affiant's reckless disregard for the truth; (2) the magistrate wholly abandoned the judicial role and instead acted as an adjunct law-enforcement officer; (3) the affidavit was bare boned, "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; and (4) the warrant was so facially deficient in particularizing its scope that the officers could not reasonably presume it was valid.

United States v. Rees, 957 F.3d 761, 771 (7th Cir. 2020) (quoting *Leon*, 468 U.S. at 923, 104 S.Ct. 3405).[9] With these principles in mind, we now assess Mr. Matthews's submission.

B.

Mr. Matthews contends that Detective Becherer's affidavit was so bare boned that he could not reasonably have believed it had established probable cause. He admits that "it is clear the affidavit established probable cause that [he] was engaged *654 in criminal activity."[10] But, Mr. Matthews insists, there was nothing substantial to link him or that activity to all the buildings on the Fin & Feather property.

At the outset, we note explicitly the narrow boundaries of our inquiry. First, we pretermit the antecedent question of whether the warrant was supported by probable cause. The district court concluded the warrant was not supported by probable cause and therefore invalid. The Government does not challenge that ruling on appeal, and we decline to look past that concession on our own initiative. Although, as the district court recognized, it is often preferable to consider whether a warrant is supported by probable cause before addressing the officer's good-faith reliance, *see* *Koerth*, 312 F.3d at 866, a court is never obligated to decide the questions in that order and can address the officer's good faith without passing on the warrant directly. *See* *Leon*, 468 U.S. at 924–25, 104 S.Ct. 3405; *Woodfork*, 999 F.3d at 519; *see also* *Pearson v. Callahan*, 555 U.S. 223, 241–42, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009).

We also have no reason to revisit the district court's original ground for denying the motion to suppress. The Government does not challenge the district court's decision, on reconsideration, to limit its review to the evidence presented to the state court judge. *See* *Koerth*, 312 F.3d at 871. We limit our own review likewise and do not consider whether the portions of Detective Becherer's interview with Long that were never passed on to the state court judge filled any gaps in the affidavit.

Having articulated these limits to our inquiry, we now examine whether an officer in Detective Becherer's situation could rely reasonably on the warrant issued by the state court judge as valid authorization to search the Fin & Feather property.

**5 As the Government acknowledges, Detective Becherer's supporting affidavit elided important details. On the other hand, it was far from boilerplate. It outlined for the judge's consideration the entirety of his investigation. Detective Becherer also

sought the substantial assistance of the State's Attorney in the preparation of this affidavit and the other material submitted to the state court judge.

Mr. Matthews sees matters differently. In his view, the only pertinent evidence connecting him to the Fin & Feather property is Detective Becherer's conclusory belief that he lived there and had access to all the buildings. Such a "[w]holly conclusory statement[ ]," he argues, could not reasonably be thought to provide probable cause to search the property. [11]

Mr. Matthews overstates his case. Detective Becherer's affidavit cannot fairly be characterized as wholly conclusory. It explained, albeit in broad strokes, how the officer came to his belief that Mr. Matthews lived on the property—"by personal interviews and ... through other law enforcement officers." [12] His crucial omission was in the details, including clarification of which of the two identified sources he relied upon for his belief, and what articulable facts that source had given him to support that belief. This lack of detail is far more than a technicality and undermines substantially the probative weight of ***655** the affidavit. Nevertheless, the affidavit was more than a conclusion alone and truthfully informed the state court judge of the source of Detective Becherer's suspicions.

Mr. Matthews identifies a key shortcoming of the affidavit. It not only fails to explain how Detective Becherer knew he lived on the Fin & Feather property but fails to identify any witness who readily could be assumed to know his address. As far as the state court judge knew, Long had met Mr. Matthews only the one time at the store.

Nevertheless, we must agree with the Government that the record does support the good-faith finding made by the district court. When considering Detective Becherer's objective good faith we are looking for only "indicia" of probable cause. *Leon*, 468 U.S. at 923, 104 S.Ct. 3405. As Mr. Matthews concedes, an indicium is a lesser quantum of evidence. [13] Less proof is required to permit good-faith reliance than to demonstrate probable cause to search a location in the first instance.

The affidavit here clears this lower good-faith threshold. The affidavit references twice "the residence of Suspect," provides pictures of a camper trailer behind a building (albeit without visible street numbers) and seeks authorization to search a camper trailer behind the Fin & Feather restaurant (among other, secondary locations). [14] One reasonable conclusion from these materials is that this camper and Mr. Matthews's residence are the same location. An officer seeking a warrant certainly should offer more and not leave it to rely on suppositions. However, we also cannot say that what Detective Becherer provided was so lacking in substance that he could not rely reasonably on the warrant that issued. Even with the demise of the local phone book that once inhabited a kitchen shelf in almost every American home, a person's address is rarely difficult to determine or the result of intensive investigation.

****6** In short, we conclude that Detective Becherer's failure to specify a source for his knowledge that Mr. Matthews lived on the Fin & Feather property at 21000 North Emerald Road does not deprive the affidavit of all indicia of probable cause to search the property. *See* *United States v. Brown*, 832 F.2d 991, 995 (7th Cir. 1987).

Mr. Matthews also argues that even if there were an adequate link between him and the Fin & Feather property, that link did not extend to every structure on the property. The affidavit did not explain why Detective Becherer understood Mr. Matthews to have control over all the buildings or show probable cause to search each one. He draws an analogy to a warrant that purports to authorize a search of an entire multi-unit apartment building. We have long recognized that an officer must make a distinct probable cause showing to search each residence of a multi-unit dwelling unless he presents reason to believe a suspect has control over the whole building. [15] Mr. Matthews contends that any reasonable officer would know the warrant here therefore failed this test. [16]

***656** This argument adds little to the strength of Mr. Matthews's case. The analogy to a multi-unit building limps badly. It is common knowledge that the separate residences of an apartment building typically belong to different people. A reasonable

judge or officer still might well assume that, here, the person living in a camper has control over the other structures on the property in much the same way as the owner of a house is most likely to control a shed or detached garage in close proximity to the house. An officer could reasonably defer to the magistrate's decision to authorize the search of all the buildings. [17]

Detective Becherer's objective good faith is further demonstrated by his decision to consult with the State's Attorney before preparing the complaint for a search warrant. "At its core, *Leon* is about encouraging responsible and diligent police work." *Lickers*, 928 F.3d at 620. Consulting with the State's Attorney or similar prosecutorial officer certainly is one step a responsible and diligent officer can take, and such consultation is, in many respects, exactly what *Leon*'s good-faith exception expects of law enforcement. *See* *United States v. Pappas*, 592 F.3d 799, 802 (7th Cir. 2010). The Supreme Court has held that attorney (and magistrate) approval of a warrant is not "dispositive," but it is "certainly pertinent in assessing whether [an officer] could have held a reasonable belief that the warrant was supported by probable cause." *Messerschmidt*, 565 U.S. at 554–55, 132 S.Ct. 1235. That officers consulted with attorneys before seeking a warrant featured prominently in both *Leon*, 468 U.S. at 902, 104 S.Ct. 3405, and its companion case, *Massachusetts v. Sheppard*, 468 U.S. 981, 985, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984). We have repeatedly credited an officer's choice to confer with an attorney before seeking a warrant as evidence of good faith. [18]

****7** Detective Becherer here provided all the information he obtained in his investigation to the State's Attorney, and the State's Attorney prepared the complaint for a search warrant and the affidavit that Detective Becherer eventually signed. [19]

Mr. Matthews does not dispute the general principle that attorney involvement supports a finding of good faith. He argues, ***657** however, that attorney involvement cannot "compensate for an affidavit's glaring omission of information needed for probable cause." [20]

We agree. However, such a consultation is a relevant consideration in determining whether the warrant was facially deficient —or the supporting affidavit, bare boned—in the first place. *See* *Messerschmidt*, 565 U.S. at 556, 132 S.Ct. 1235 ("The fact that none of the officials who reviewed the application expressed concern about its validity demonstrates that any error was not obvious."). Here, the involvement of the State's Attorney in preparing and approving the warrant and affidavit simply bolsters our conclusion that these documents contained sufficient indicia of probable cause to permit Detective Becherer to rely on the warrant.

Conclusion

Mr. Matthews has failed to rebut the presumption that the search was undertaken in good faith. The district court therefore applied properly the good-faith exception to the exclusionary rule. We therefore affirm the district court's denial of Mr. Matthews's motion to suppress.

AFFIRMED

Hamilton, Circuit Judge, concurring.
I join fully Judge Ripple's opinion for the court. I write separately only to note an issue that we need not decide here but that may arise in other cases applying the *Leon* good-faith exception to the exclusionary rule. The issue is whether and when a court may rely on evidence beyond the search-warrant application to decide whether the application was so lacking in indicia of probable cause as to make it unreasonable for an officer to rely upon the warrant. See *United States v. Leon*, 468 U.S. 897,

922 n.23, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (inquiry is objective and all circumstances may be considered). The district court here relied on *United States v. Koerth*, 312 F.3d 862, 869 (7th Cir. 2002), to refuse to consider evidence not presented to the issuing state-court judge. The government has not challenged that refusal.

Our opinion in *Koerth* did not acknowledge that it was taking sides on an issue that has divided the circuits. On the other side of that question, see, e.g., *United States v. McKenzie-Gude*, 671 F.3d 452, 460 (4th Cir. 2011); *United States v. Proell*, 485 F.3d 427, 431–32 (8th Cir. 2007); *United States v. Martin*, 297 F.3d 1308, 1318–19 (11th Cir. 2002). Consistent with *Koerth* on this issue, see, e.g., *United States v. Knox*, 883 F.3d 1262, 1272 (10th Cir. 2018); *United States v. Frazier*, 423 F.3d 526, 535–36 (6th Cir. 2005); and *United States v. Hove*, 848 F.2d 137, 140 (9th Cir. 1988) (inquiry limited to four corners of search-warrant application). Finally, note that it is difficult to reconcile *Koerth*'s treatment of this question with *United States v. Dickerson*, 975 F.2d 1245, 1250 (7th Cir. 1992) (affirming application of *Leon* good-faith exception based on knowledge of on-scene officers that was not presented in the warrant application).

All Citations

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Footnotes

1 R.45 at 1.
2 R.29-2 at 1.
3 R.29-1 at 1.
4 R.29-2 at 1.
5 *Id.* at 2.
6 R.29-3 at 8, 9.
7 R.48 at 16.
8 The exception also applies in other situations not relevant here, including warrantless searches authorized by later-invalidated statutes or binding appellate precedents. *See* *Davis v. United States*, 564 U.S. 229, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011); *Illinois v. Krull*, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987).
9 We have restated these four possibilities in various ways, and sometimes count them as only three. *E.g.*, *Edmond v. United States*, 899 F.3d 446, 453 (7th Cir. 2018) (quoting *United States v. Pappas*, 592 F.3d 799, 802 (7th Cir. 2010)). Any difference in phrasing or organization is immaterial and reflects the significant overlap in the analysis of bare-boned affidavits and facially deficient warrants.
10 Appellant's Br. 21.
11 Appellant's Br. 22 (quoting *Illinois v. Gates*, 462 U.S. 213, 239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)).
12 R.29-2 at 1.
13 *See, e.g.*, *United States v. Bynum*, 293 F.3d 192, 195 (4th Cir. 2002).
14 R.29-2 at 2.
15 *See* *United States v. White*, 416 F.3d 634, 637 (7th Cir. 2005); *Jacobs v. City of Chicago*, 215 F.3d 758, 771 (7th Cir. 2000) (holding rule was clearly established); *United States v. Hinton*, 219 F.2d 324, 326 (7th Cir. 1955).

16 *Cf.* *United States v. Koerth*, 312 F.3d 862, 869 (7th Cir. 2002) (recognizing that good-faith exception does not apply if "courts have clearly held that a materially similar affidavit previously failed to establish probable cause under facts that were indistinguishable from those presented in the case at hand").

17 Some courts have suggested that no separate showing of probable cause is necessary to search outbuildings adjacent to a residence and part of its curtilage. *See, e.g.*, *United States v. Finnigin*, 113 F.3d 1182, 1186 (10th Cir. 1997). We need not go so far in this case. *Cf.* *United States v. Contreras*, 820 F.3d 255, 261–62 (7th Cir. 2016) (noting that this court has not decided whether attached garage is considered "integral part" of home for purpose of warrantless search). It is enough to say that an objectively reasonable officer might view the burden of proving joint control over the outbuildings to be less than that necessary for a multi-unit residence.

18 *See, e.g.*, *Edmond*, 899 F.3d at 456; *Pappas*, 592 F.3d at 802; *United States v. Mitten*, 592 F.3d 767, 776 n.4 (7th Cir. 2010); *United States v. Merritt*, 361 F.3d 1005, 1012 (7th Cir. 2004), *vacated on other grounds*, 543 U.S. 1099, 125 S.Ct. 1024, 160 L.Ed.2d 995 (2005). Our court is far from alone in this respect. *See, e.g.*, *United States v. Conant*, 799 F.3d 1195, 1202 (8th Cir. 2015); *United States v. Tracey*, 597 F.3d 140, 153 (3d Cir. 2010); *United States v. Otero*, 563 F.3d 1127, 1134 (10th Cir. 2009).

19 The Government also asks us to consider the time pressure that Detective Becherer and the State's Attorney were operating under as reason to conclude any errors were good-faith negligence. (About fifteen hours elapsed between Mr. Long's call to the Sheriff's office and the search.) We decline the Government's invitation and do not decide today whether evidence can be admitted because an invalid warrant was obtained under exigent circumstances.

20 Appellant's Reply Br. 6.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 3:18–CR-30102-NJR**
	)	
	)	
KYLE MATTHEWS,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

This matter is before the Court on the Motion to Reconsider Due to Manifest Error of Law filed by Defendant Kyle Matthews (Doc. 50). Matthews argues that the Court committed a manifest error of law in denying his motion to suppress evidence (Docs. 28, 48). Specifically, Matthews asserts the Court improperly relied on Detective Becherer's subjective belief and materials not presented to the reviewing judge in finding that the good faith exception to the exclusionary rule, as found in *United States v. Leon*, 468 U.S. 897, 923 (1984), applied in this instance. The Government did not respond to the motion. For the reasons set forth below, the Court agrees with Matthews that an error was made but, nevertheless, finds that the motion should be denied.

Motions to reconsider are permitted in criminal cases and may be filed to allow district courts the opportunity to promptly correct errors. *United States v. Healy*, 376 U.S. 75, 77 (1964); *United States v. Rollins*, 607 F.3d 500, 502 (7th Cir. 2010). "The purpose of such a motion is to bring the court's attention to newly discovered evidence or to a manifest error of law or fact." *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 368 (7th Cir.

2003). A manifest error of law warranting relief "is not demonstrated by the disappointment of the losing party" and instead means "wholesale disregard, misapplication, or failure to recognize controlling precedent" by a district court. *Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000).

On June 7, 2018, Matthews was indicted on three counts by a federal Grand Jury: illegal possession of a machine gun (Count 1); unlawful possession of an unregistered firearm silencer (Count 2); and unlawful possession of an unregistered short-barreled rifle (Count 3) (Doc. 1). On August 17, 2018, Matthews moved to suppress evidence obtained during a search of his residence and several surrounding structures on the property located at 21000 North Emerald Road in Keyesport, Illinois (Doc. 28). Matthews argued that the search warrant was defective and violated his Fourth Amendment rights because a "bare bones affidavit" by Detective Charles Becherer of the Clinton County Sheriff's Office was insufficient to establish probable cause to search the premises. Matthews asserted the affidavit made no nexus between himself, the alleged illegal activity, and any—much less *all*—of the buildings located at 21000 North Emerald Road. For that same reason, Matthews argued, no reasonable officer could rely in good faith on the existence of probable cause in the affidavit, thereby rendering the good faith exception inapplicable.

On January 28, 2019, the undersigned denied Matthews's motion (Doc. 48). The Court first found that Detective Becherer's affidavit and testimony before the state court judge failed to establish probable cause because it did not provide any factual basis for Detective Becherer's belief that Matthews lived at 21000 North Emerald Road, nor did it create a link between any alleged illegal activity and 21000 North Emerald Road.

Nevertheless, the Court found *Leon*'s good faith exception to the exclusionary rule applied because Detective Becherer had knowledge from his interview of Michael Long that Matthews: lived in a camper at 21000 North Emerald Road, had access to the adjoining structures, and generally had free reign of the property; brought a pipe bomb into O'Reilly's and discussed targets for detonating it; possessed materials to make explosives; was known on the street to have explosives; and, only days earlier, detonated a bomb in Keyesport. The Court surmised that, while Detective Becherer did not articulate how he knew the information about Matthews's residence and access to the structures, the exigency of the situation may have contributed to that oversight. Accordingly, the Court concluded that Detective Becherer relied in good faith on the invalid warrant when he reasonably could have believed "the materials presented to the magistrate judge were sufficient to establish probable cause." The Court did not address whether the affidavit and supporting testimony were so lacking in indicia of probable cause that reliance on the warrant was objectively unreasonable.

The Court now recognizes that subjective analysis was wrong under Seventh Circuit precedent. As explained in *United States v. Koerth*, a district judge cannot consider documents that were not presented to the warrant-issuing judge, for the good faith reliance test is an objective one. *United States v. Koerth*, 312 F.3d 862, 871 (7th Cir. 2002) (the probable-cause determination is based solely on the information presented to the judge during the warrant application process); *see also United States v. Bynum*, 293 F.3d 192, 212 (4th Cir. 2002) (Michael, J., dissenting) ("In sum, the government cannot establish an officer's objective good faith under *Leon* by producing evidence of facts known to the officer but not disclosed to the magistrate."). Thus, the Court should not have considered

the information Detective Becherer knew from his interview of Long but did not explain to the judge.

Still, the outcome is the same. Analyzing the evidence under the appropriate standard, the Court finds that the affidavit and supporting testimony were not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923; *see also Bynum*, 293 F.3d at 195 (*Leon* prevents a finding of objective good faith only where an officer's affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," a less demanding showing than the "substantial basis" threshold required to prove the existence of probable cause in the first place).

Detective Becherer appeared before the state court judge along with Michael Long, the witness who reported Matthews to the police. Long testified that he saw Matthews with a pipe bomb inside an O'Reilly's Auto Parts store and overheard him discussing public places to detonate it including a school, church, a car dealership, and another auto parts store (Doc. 29-3, pp. 3-6). Long also testified that Matthews told him he had detonated a bomb in the Keyesport area on March 30, 2018 (*Id.*). Long explained that he came forward with this information as a concerned citizen because has a wife and small child and he works in the area (*Id.*).

Detective Becherer then testified that he had corroborated Long's information about a bomb being detonated in Keyesport by way of a prior independent complaint to the police about a large explosion in the area on March 30, 2018 (*Id.*, p. 7). In his affidavit, Detective Becherer noted the caller lived approximately 1.5 miles from Matthews's residence. Detective Becherer also told the judge that a sergeant with the Clinton County

Sheriff's Office said the "word on the street" was that Matthews was in possession of explosives and that an officer with the Carlyle Police Department found social media postings where Matthews indicated he possessed explosives or materials for making explosives (*Id.*, p. 8). Detective Becherer explained to the judge that he intended to search the entire property at 21000 North Emerald Road because it was his understanding that Matthews had access to all those places (*Id.*, pp. 8-9). While Detective Becherer did not expressly state that it was Long who told him Matthews lived at and had access to all structures at 21000 North Emerald Road in Keyesport, he did state that said premises were believed to be Matthews's residence based on information he obtained through "personal interviews" and/or through other law enforcement officers, and he testified that he interviewed Long (Doc. 29-2; 29-3). Given the information that was presented to the judge, a reasonable officer could have believed that the facts set forth in the affidavit and supporting testimony were sufficient to support the judge's finding of probable cause.[1] *See Koerth*, 312 F.3d at 869.

For these reasons, the Motion to Reconsider Due to Manifest Error of Law filed by Defendant Kyle Matthews (Doc. 50) is **DENIED**.

IT IS SO ORDERED.

DATED: April 9, 2019

NANCY J. ROSENSTENGEL
Chief U.S. District Judge

[1] The Court further notes that, from this information, the judge reasonably could have inferred that there was a fair probability that evidence of a crime would be found at 21000 North Emerald Road. *See United States v. Zamudio*, 909 F.3d 172, 175 (7th Cir. 2018) ("issuing judges may draw reasonable inferences about where evidence is likely to be found based on the nature of the evidence and the offense"); *United States v. Aljabari*, 626 F.3d 940, 944 (7th Cir. 2010) ("we have made clear that direct evidence linking a crime to a particular place, while certainly helpful, is not essential to establish probable cause to search that place"). Of course, the Government has not asked the Court to reconsider its probable cause determination, given that it found the good faith exception applied.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 3:18–CR-30102-NJR**
	)	
KYLE MATTHEWS,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

This action is before the Court on a Motion to Suppress Evidence filed by Defendant Kyle Matthews (Doc. 28). Matthews moves to suppress all evidence obtained through execution of a search warrant at 21000 North Emerald Road on April 2, 2018. For the reasons set forth below, the motion is denied.

BACKGROUND

On March 31, 2018, Defendant Kyle Matthews entered an O'Reilly's Auto Parts store in Carlyle, Illinois, with a 10-inch-long, white PVC pipe bomb (Doc. 29-2; Doc. 44, pp. 14-16). An employee of the store, Michael Long, overheard Matthews and another O'Reilly's employee, Zachary Smith, discussing what to do with the bomb, including placing it at a school, a church, a Ford dealership, or another auto parts store in Carlyle (Doc. 44, pp. 15-16). Long also heard Matthews and Smith say they had detonated a pipe bomb near Keyesport, Illinois, on March 30, 2018, and that they were surprised they did not go to jail because the explosion was very loud (*Id.*, p. 16).

Concerned that Matthews and Smith were going to do something "very bad," Long went to the Clinton County Sheriff's Office the following day and told Officer Wendy Bromley about what he had seen and heard (*Id.*, Doc. 29-3). Officer Bromley reported this information to Detective Charles Becherer of the Clinton County Sheriff's Office, who then met with Long (*Id.*, p. 15-16). Detective Becherer also spoke with Sergeant Dennis Perez of the Clinton County Sheriff's Office (*Id.*). Sergeant Perez told Detective Becherer that the Sheriff's Office had received a complaint of a very loud explosion on March 30, 2018, that shook the complainant's house (*Id.*). The person lived approximately 1.5 miles south of Matthews's residence (*Id.*). Additionally, Sergeant Perez reported having recently talked to an individual who said the "word on the street" is that Matthews has explosives (*Id.*).

After speaking with Long, Officer Bromley, and Sergeant Perez, Detective Becherer passed the information along to the State's Attorney of Clinton County, John Hudspeth (Doc. 45). Hudspeth then prepared a Complaint for Search Warrant and a Search Warrant for Matthews's residence (*Id.*). It is common practice for the State's Attorney to prepare these documents (*Id.*). Detective Becherer reviewed the documents before presenting them to the judge. (*Id.*).

On April 2, 2018, Detective Becherer presented the Complaint for Search Warrant to a circuit court judge in Clinton County (Docs. 29-1, 29-2). The complaint described the place to be searched as:

> "The structure of the former Fin and Feather restaurant, motor home and camper trailers, and all outbuildings located at 21000 North Emerald Road . . . and all other structures and things situated thereon . . . the motor home

> and camper trailer are situated within approximately 50 feet to the east behind the former Fin and Feather restaurant building. Said motor home and camper trailer are believed to be occupied by persons including Kyle S. Matthews . . . who is also believed to have access to all other structures and building situated on the premises to be searched.

(Doc. 29-1).

Detective Becherer also provided an affidavit supporting the complaint, in which he relayed the information provided by Long regarding the incident at O'Reilly's Auto Parts. Detective Becherer further attested that a witness recently informed the Clinton County Sheriff's Office that Matthews was known on the street to have explosives, that Officer Bromley had found social media posts indicating Matthews possesses materials suitable for the construction of explosive devices, and that on March 30, 2018, a Clinton County citizen reported hearing an explosion that shook her home, which is about 1.5 miles from Matthews's residence (Doc. 29-2). Finally, attached to the affidavit were seven photographs of the premises to be searched (with no identifying information or address markers), which Detective Becherer "believed to be the residence of [Matthews]." (*Id.*). The affidavit itself makes no mention of 21000 North Emerald Road or Matthews's connection to that address (*Id.*).

Both Detective Becherer and Long also testified at a hearing on the search warrant complaint. Long testified that Smith and Matthews discussed "blowing up bombs that night" and that Matthews had a "bomb on him" inside the store (Doc. 29-3, pp. 3-4). Detective Becherer testified that he received information that Matthews had admitted detonating a bomb on March 30, 2018, and that Matthews had made social media postings indicating he was in possession of explosives or materials to make explosives (*Id.*, pp. 7-

8). Detective Becherer further verified that he intended to search the entire Fin and Feather restaurant property, including a motor home, a camper, an outbuilding, several dumpsters and vehicles, and the primary structure of the former restaurant itself because Matthews had "access to all those places" (Doc. 29-3, pp. 8-9).

Finding there was probable cause, the judge issued a search warrant for "the former Fin and Feather restaurant, motor home and camper trailers, and all out buildings located at 21000 North Emerald Road . . . Said motor home and camper trailer are believed to be occupied by persons including Kyle S. Matthews (DOB 1-5-93), who is also believed to have access to all other structures and building[s] located on the premises to be searched." (Doc. 29-4). Among other things, the warrant authorized seizure of all pipe bombs, bombs of other kinds, incendiary devices, gunpowder, firearms, ammunition, and explosive materials (*Id.*). The warrant was executed shortly thereafter, and numerous items were seized from a camper on the premises belonging to Matthews, including a machine gun, a firearm silencer, and an unregistered short barrel rifle (Docs. 29-5, p. 44). Matthews was living in the camper at the time of the search (Doc. 29-6).

On June 7, 2018, a federal Grand Jury charged Matthews in a three-count indictment (Doc. 1). Count 1 charged Matthews with illegal possession of a machine gun, Count 2 charged Matthews with unlawful possession of an unregistered firearm silencer, and Count 3 charged Matthews with unlawful possession of an unregistered short barreled rifle (*Id.*).

Matthews now seeks to suppress the evidence obtained during the search because, he asserts, the search warrant was defective and violated his Fourth Amendment rights

(Doc. 28). Specifically, Matthews claims the "bare bones affidavit" by Detective Becherer failed to establish probable cause to search 21000 North Emerald Road, as there was no nexus between the alleged illegal activity, Matthews, and any of the buildings located at 21000 North Emerald Road. Furthermore, he argues, the warrant was fatally overbroad in that there was no probable cause to search *all* of the structures at 21000 North Emerald Road and no facts to support a conclusion that Matthews had access to each building.

After Matthews filed his Motion to Suppress in this case, Detective Becherer met with Long again to confirm his recollection of the information Long gave him on April 1, 2018 (Doc. 45). Long verified that he told Detective Becherer: (1) that Matthews told him he lived in a camper behind the old Fin and Feather Restaurant near Keyesport; (2) Matthews works on cars in the shed next to his camper; (3) Matthews has free reign of the property; and (4) Matthews sometimes works on cars in the back portion of the old restaurant (*Id.*). Long also told Detective Becherer that Zachary Smith showed him where Matthews lived, and that Matthews brought several weapons into the O'Reilly's store, including a highly modified AR-15 with a silencer on it (*Id.*).

DISCUSSION

While Matthews argues that the warrant in this case was issued without probable cause, the Government submits that the Court should decide Defendant's motion solely on whether the good faith exception to the exclusionary rule applies—without reaching the issue of probable cause. Nevertheless, the Government argues, probable cause did exist to search the entire property at issue.

Although the Government believes Matthews's motion to suppress evidence can

be decided on the good faith exception alone, the Court finds that a review of the warrant application for probable cause would be beneficial in this case.[1]

I. The Fourth Amendment

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. In order to "compel respect for the constitutional guaranty," the United States Supreme Court created the exclusionary rule. *Davis v. United States*, 131 S.Ct. 2419, 2426 (2011) (citing *Elkins v. United States*, 364 U.S. 206, 217 (1960)). When applicable, that rule forbids the use of evidence obtained by police officers in violation of the Fourth Amendment.

It is well established, however, that a violation of the Fourth Amendment does not necessarily mean that the exclusionary rule applies. *Herring v. United States*, 555 U.S. 135, 140 (2009) ("We have repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation."). It applies only when the benefits of deterring future Fourth Amendment violations outweighs the heavy costs of suppressing evidence. *Herring*, 555 U.S. at 141. "The principal cost of applying the rule is, of course, letting guilty and possibly dangerous defendants go free." *Herring* 555 U.S. at 141 (citing *Leon*, 468 U.S. at 908); *Davis*, 131 S.Ct. at 2427 ("Exclusion exacts a heavy toll on both the judicial system and society at large" because "its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment.")

[1] The parties assert, and the Court agrees, that the motion to suppress can be decided without an evidentiary hearing because the documents submitted by the parties establish a sufficient record for the Court to determine whether probable cause existed and/or whether the good faith exception applies.

As a result, exclusion "has always been our last resort, not our first impulse." *Herring*, 555 U.S. at 140 (citing *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)).

II. Probable Cause

A search warrant affidavit establishes probable cause when "considering the totality of the circumstances, there is sufficient evidence to cause a reasonably prudent person to believe that a search will uncover evidence of a crime." *United States v. Harris*, 464 F.3d 733, 737 (7th Cir. 2006). "Probable cause denotes more than a mere suspicion, but does not require certainty." *United States v. Fleischli*, 305 F.3d 643, 651 (7th Cir. 2002). In determining whether there is probable cause to issue a search warrant, the judge's task is "to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Butler*, 71 F.3d 243, 248–49 (7th Cir. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

The Seventh Circuit Court of Appeals has held that the standard of review of a determination that probable cause exists supporting issuance of a search warrant is "one of affirmance absent clear error by the issuing magistrate." *United States v. Pless*, 982 F.2d 1118, 1124 (7th Cir. 1992). Indeed, "[a] magistrate's determination of probable cause 'is to be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the magistrate could reasonably conclude that the items sought to be seized are associated with the crime and located in the place indicated.'" *United States v. Newsom*, 402 F.3d 780, 782 (7th Cir. 2005) (quoting *United*

States v. Spry, 190 F.3d 829, 835 (7th Cir. 1999)).

Matthews argues that Detective Becherer's affidavit fails to establish probable cause because it does not present facts and circumstances demonstrating a fair probability that evidence of a crime would be found at 21000 North Emerald Road.

First, Matthews argues, the affidavit relies solely on Detective Becherer's "belief" that Matthews resides at 21000 North Emerald Road. Detective Becherer provided no evidence of property ownership, rental records, utility bills, or any information from any source that Matthews was living at 21000 North Emerald Road, was seen on the premises, or that any illegal activity had taken place there. Matthews argues that the only plausible inference to be drawn from the affidavit is that he is a suspect and, therefore, evidence of a crime will probably be found at his residence. And under Seventh Circuit precedent, that inference is impermissible. *See United States v. Wiley*, 475 F.3d 908, 916 (7th Cir. 2007) (finding it inappropriate to adopt a categorical rule that, in every case, probable cause exists to search a particular location simply because a suspect resides there).

Matthews relies on *United States v. Brown*, in which the Seventh Circuit upheld the district court's finding that, under the totality of the circumstances, the search warrant affidavit failed to establish probable cause for searching the defendant's residence. *United States v. Brown*, 832 F.2d 991, 994 (7th Cir. 1987). In *Brown*, the affidavit in support of the search warrant stated that the defendant leased apartment #709 at 1201 Westminster Row but provided no other information supporting the detective's belief that the defendant actually leased that apartment. *Id.* The Court noted that, had the affidavit shown the address truly belonged to the defendant, "there of course would have been probable

cause." *Id.*; *see also United States v. McNeal*, 82 F. Supp. 2d 945, 957 (S.D. Ind. 2000) (affidavit provided no factual basis for affiant's belief that residence was under defendant's control and, as such, was insufficient to establish probable cause to search the residence). However, the failure to show how the police knew the address belonged to defendant, in addition to the "paucity of information suggesting that a search of the . . . address would uncover evidence of wrongdoing," did not support a finding of probable cause. *Id.*

Likewise, Matthews argues, the affidavit here provided no factual basis for Detective Becherer's unsubstantiated "belief" that Mr. Matthews resided at 21000 North Emerald Road. Furthermore, the affidavit failed to provide any nexus between the alleged criminal activity and 21000 North Emerald Road. There was no indication Matthews was ever observed at 21000 North Emerald Road, that any illegal activity took place there, or that evidence would likely be found there.

The United States admits that Detective Becherer did not explain in his affidavit or his testimony how he knew Matthews lived at 21000 North Emerald Road or had access to all buildings on the property. Nevertheless, the Government contends there was a sufficient link demonstrated between Matthews and 21000 North Emerald Road to establish probable cause for the search warrant, relying on *United States v. Hunter*, 86 F.3d 679 (7th Cir. 1996), to support its position.

In *Hunter*, the defendant was accused of conspiring with his father to rob numerous banks in several states while masked as various presidential figures. *Hunter*, 86 F.3d at 681. In his suppression motion, Hunter asserted the search warrant for his

residence was issued without probable cause when the warrant application and affidavit did not state how the FBI knew his residence was, in fact, his residence. *Id.*

The Seventh Circuit noted that an "affidavit's failure to state explicitly that 510 Palace Court was Hunter's residence, by itself, is not a fatal flaw." *Id.* The documents established the place to be searched was Hunter's residence, as they referred to it four times without reference to any other place. *Id.* at 682. The Court concluded that while the affidavit never explicitly stated that 510 Palace Court was Hunter's residence, "that is the only logical conclusion supported by a common-sense reading of the affidavit." *Id.*

As for a connection between the residence and the items sought, the Court noted that Hunter had turned himself in prior to the search, which, in itself, weighed in favor of finding probable cause to search his residence. *Id.* Furthermore, the warrant application and affidavit indicated the FBI had seized a number of incriminating items from the co-conspirator's house, and the two men used the same *modus operandi*—including wearing masks of American presidents and carrying certain guns. *Id.* The "continuous nature of the crimes made it reasonable to conclude that they preserved those items for future use, and that Hunter might keep them in his residence." *Id.* There also was testimony from Hunter's ex-wife who told the FBI he kept an office and meticulous records in his home. *Id.*

The Government argues that the affidavit in this case similarly indicated the crime was ongoing and, thus, evidence would likely be found at Matthews's home. Matthews admitted detonating a bomb on March 30, 2018—the same day a citizen reported hearing a loud explosion about one-and-a-half miles from Matthews's residence. The next day,

Matthews carried a pipe bomb around O'Reilly's Auto Parts and discussed detonating it in certain locations. And social media posts indicated Matthews was in possession of materials to make explosives. The Government submits that these factors support the idea that evidence would be found at Matthews's home and, thus, there was probable cause to issue the warrant.

The Court is not so convinced. While these factors are evidence of Matthews's alleged illegal activity, they do not create a link between that activity and 21000 North Emerald Road. It is true that "[w]arrants may be issued even in the absence of direct evidence linking criminal objects to a particular site." *United States v. Kelly*, 772 F.3d 1072, 1080 (7th Cir. 2014) (quoting *United States v. Orozco*, 576 F.3d 745, 749 (7th Cir. 2009)). Furthermore, a judge is "entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense . . . ." *Id.* In such cases, however, there is *some* evidence from which that inference can be drawn.

In *Kelly*, the affidavit established a reasonable probability the defendant was a drug dealer and evidence of the crime would be found at the defendant's residence. *Id.* The affidavit stated that the defendant had been seen emerging from behind the residence to be searched and an informant had previously met the defendant at the rear door of the residence. *Id.* Importantly, the detective attested that, based on his experience in law enforcement and executing more than 700 narcotics search warrants, drug dealers are likely to keep contraband in their homes. *Id.* Accordingly, the Court found there was a fair probability that evidence would be found at the defendant's residence. *Id.*

Similarly, in *United States v. Orozco*, the warrant application stated that the

defendant was a "large-scale drug trafficker" from whom reliable sources had purchased drugs "in the recent past." *Id.* (citing *United States v. Orozco*, 576 F.3d 745, 748 (7th Cir. 2009)). The agent's affidavit further stated that, based on his ten years of experience, he knew that high-ranking gang members often kept membership lists, drug transaction records, and other evidence of gang- and drug-related activity in their homes. *Orozco*, 576 F.3d at 748. The Court in *Orozco* held that while the agent's belief about finding evidence in a gang member's home was not corroborated by information specific to Orozco's activities at his home, the "magistrate judge was entitled to credit [the agent's] lengthy experience and high degree of confidence that the sought-after evidence was very likely to be found in Orozco's home." *Id.* at 749.

Here, Detective Becherer's affidavit and testimony provide no explanation as to why, in his experience, he believed evidence of any wrongdoing would be found at Matthews's home. The lack of facts from which a judge could reasonably infer that evidence would be found in Matthews's residence, combined with the affidavit's failure to provide any factual support for the conclusion that Matthews lived at 21000 North Emerald Road or had access to all buildings on the property, leads the Court to conclude that probable cause did not exist to search Matthews's residence at 21000 North Emerald Road. And, if probable cause was not established to search Matthews's residence at 21000 North Emerald Road, certainly it was not established to search *every* building at 21000 North Emerald Road.

Even if probable cause is lacking, however, "exclusion is not appropriate where 'the police act with an objectively reasonable good-faith belief that their conduct is

lawful.'" *United States v. Kienast*, 907 F.3d 522, 527 (7th Cir. 2018). Thus, the Court must determine whether the good faith exception to the exclusionary rules applies.

II. Good Faith Exception

The Supreme Court adopted the good faith exception to the exclusionary rule in *United States v. Leon*, 468 U.S. 897 (1984). Under the good faith exception, the fruits of a search based on an invalid warrant may be admitted at trial if the executing officer relied on the invalid warrant in good faith. *Id.* at 922; *see also United States v. Kienast*, 907 F.3d 522, 527 (7th Cir. 2018) ("[E]xclusion is not appropriate where the police act with an objectively reasonable good-faith belief that their conduct is lawful."). In *Leon*, the Supreme Court explained that where "law enforcement officers have acted in objective good faith or their transgressions have been minor" the costs of the suppression on society and the judicial system compared to the magnitude of the benefit conferred on guilty defendants "offends basic concepts of the criminal justice system." *Id.* at 908.

A police officer's decision to obtain a warrant is treated as *prima facie* evidence that the officer was acting in good faith. *Id.* at 922; *United States v. Mykytiuk*, 402 F.3d 773, 777 (7th Cir. 2005). Additionally, "[c]onsulting with the prosecutor prior to applying for [a] search warrant provides additional evidence of [that officer's] objective good faith." *United States v. Pappas*, 592 F.3d 799, 802 (7th Cir. 2010) (citation and internal quotation marks omitted).

A defendant can rebut the *prima facie* evidence of good faith by showing that (1) the affiant misled the issuing judge with a reckless or knowing disregard for the truth; (2) the issuing judge abandoned his judicial role; (3) the complaint supporting the search

warrant was "bare bones" or "so lacking in indicia of probable cause" that belief in the existence of probable cause is unreasonable; or (4) the warrant was so facially deficient in failing to particularize the place to be searched or the things to be seized that the executing officers cannot reasonably presume it to be valid. *United States v. Glover*, 755 F.3d 811, 818-19 (7th Cir. 2014) (citing *Leon*, 468 U.S. at 923).

In this case, there is *prima facie* evidence that Detective Becherer acted in good faith. Not only did he decide to obtain a search warrant, but he also consulted with State's Attorney Hudspeth, who himself prepared the Complaint for Search Warrant. Therefore, the burden shifts to Matthews to rebut the *prima facie* evidence of good faith. To demonstrate that Detective Becherer did not rely in good faith on the warrant, Matthews solely argues that the affidavit was so lacking in probable cause that no officer reasonably could have relied on it.

In determining whether Detective Becherer could have relied in objective good faith on the magistrate's decision to issue a search warrant, the Court must determine whether Detective Becherer could have reasonably believed the materials presented to the magistrate judge were sufficient to establish probable cause. *United States v. Koerth*, 312 F.3d 862, 869 (7th Cir. 2002). This analysis is similar to a qualified immunity analysis. *Id.* Police officers are presumed to have knowledge of "well-established legal principles as well as an ability to apply the facts of a particular situation to these principles." *Id.* Thus, evidence will be excluded where courts have clearly held that a materially similar affidavit previously failed to establish probable cause under identical facts or the affidavit is so plainly deficient that any reasonably well-trained officer would have known that it

failed to establish probable cause and that he should not have applied for the warrant. *Id.*

Matthews again points to the lack of any information linking him or any illegal activity to 21000 North Emerald Road in Detective Becherer's affidavit. Matthews argues that, without any such nexus, no reasonable officer could rely in good faith on the existence of probable cause in the affidavit. Matthews also argues that longstanding Seventh Circuit law holds that probable cause to search one part of a multi-unit property does not support a warrant authorizing the search of the entire property. *Jacobs v. City of Chicago*, 215 F.3d 758, 767 (7th Cir. 2000). Despite this well-established legal principle, Detective Becherer made no attempt in his affidavit or testimony to establish probable cause to search the campers, the restaurant, or the single apartment unit adjoining the Fin and Feather restaurant.

It is true that a warrant is fatally overbroad when it authorizes the search of an entire multi-unit building and the officers do not know which unit contains the evidence of illegal conduct. *Jacobs*, 215 F.3d at 771; *United States v. Johnson*, 26 F.3d 669, 694 (7th Cir. 1994). That rule does not apply, however, "when (1) the officer knows there are multiple units and believes there is probable cause to search each unit, or (2) the targets of the investigation have access to the entire structure." *Johnson*, 26 F.3d at 694. In determining whether an officer had a good faith belief that a defendant had access to the entire structure, the Seventh Circuit has stated that "factual perfection" is not required; rather, officers are merely required to "act reasonably." *Id.* (citing *Illinois v. Rodriguez*, 497 U.S. 177, 183–84 (1990)). "[I]n order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must

regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable." *Id.* (quoting *Rodriquez*, 497 U.S. at 183).

In this case, Detective Becherer reasonably believed that Matthews not only lived at 21000 North Emerald Road, but also had access to each structure on the property—rendering the rule stated in *Jacobs* inapplicable. Although it was not articulated in his affidavit or testimony before the judge, Detective Becherer had knowledge from his interview of Long on April 1, 2018, that Matthews lived in a camper behind the old Fin and Feather Restaurant, worked on cars in the shed next to his camper and the back of the old restaurant, and generally had free reign of the property (Doc. 45).

Detective Becherer also knew that Matthews brought a pipe bomb into O'Reilly's and discussed targets for detonating it, that he possessed materials to make explosives, that he was known on the street to have explosives, and that an explosive was recently detonated and heard a mile and a half from Matthews's residence. Based on this information—and his knowledge of Matthews's free reign of the property—it was reasonable for Detective Becherer to believe probable cause existed to search the camper Matthews lived in as well as the other structures on the property. And while he may not have articulated the reasons for that belief in his affidavit or testimony, the Court agrees with the Government that the exigency of the situation may have contributed to the error.

Because Detective Becherer relied in good faith on the warrant in searching all buildings at 21000 North Emerald Road, the good faith exception to the exclusionary rule applies in this instance. Accordingly, the Court finds that Defendant's Motion to Suppress should be denied.

CONCLUSION

Although probable cause was lacking to support a search of 21000 North Emerald Road, the good faith exception to the exclusionary rule applies, and Defendant Kyle Matthews's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

DATED: January 28, 2019

NANCY J. ROSENSTENGEL
United States District Judge

AO 245B (SDIL Rev. 10/19) Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

Southern District of Illinois

UNITED STATES OF AMERICA

v.

KYLE S. MATTHEWS

JUDGMENT IN A CRIMINAL CASE

Case Number: **18-CR-30102-NJR-01**
USM Number: **14124-025**

TODD M. SCHULTZ
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count 3 of the Indictment.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
26 U.S.C. §5861(d)	Unlawful Possession of an Unregistered Short Barreled Rifle	04/02/2018	3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Counts 1 and 2 are DISMISSED WITH PREJUDICE on the motion of the United States.

Forfeiture pursuant to Order of the Court. See page x for specific property details.

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

Restitution and/or fees may be paid to:
Clerk, U.S. District Court*
750 Missouri Ave.
East St. Louis, IL 62201

*Checks payable to: Clerk, U.S. District Court

Date of Imposition of Judgment: August 26, 2020

Signature of Judge
NANCY J. ROSENSTENGEL
CHIEF U.S. DISTRICT JUDGE
Name and Title of Judge

Date Signed: August 26, 2020

DEFENDANT: KYLE S. MATTHEWS
CASE NUMBER: 18-CR-30102-NJR-01

PROBATION

The defendant is hereby sentenced to probation for a term of **3 years as to Count 3 of the Indictment.**

Other than exceptions noted on the record at sentencing, the Court adopts the presentence report in its current form, including the suggested terms and conditions of probation and the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3563(a):

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The mandatory drug testing condition is suspended, as the defendant poses a low risk of future substance abuse.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

ADMINISTRATIVE CONDITIONS

The following conditions of probation are administrative and applicable whenever probation is imposed, regardless of the substantive conditions that may also be imposed. These conditions are basic requirements essential to probation.

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

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The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Pursuant to the factors in 18 U.S.C. § 3553(a) and 18 U.S.C. § 3563(b), the following special conditions are ordered. While the Court imposes special conditions, pursuant to 18 U.S.C. § 3603(10), the probation officer shall perform any other duty that the Court may designate. The Court directs the probation officer to administer, monitor, and use all suitable methods consistent with the conditions specified by the Court and 18 U.S.C. § 3603 to aid persons on probation/supervised release. Although the probation officer administers the special conditions, final authority over all conditions rests with the Court.

Condition: The defendant shall participate in mental health services, which may include a mental health assessment and/or psychiatric evaluation, and shall comply with any treatment recommended by the treatment provider. This may require participation in a medication regimen prescribed by a licensed practitioner. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

Condition Explanation: The defendant will be required to report for all scheduled evaluations and counseling sessions, and participate as required by the treatment provider. Mental health treatment may include, but is not limited to, psychiatric services and treatment for anger management, domestic violence, and other forms of therapy based on the defendant's needs as identified by the Court.

Condition: The defendant shall participate in any program deemed appropriate to improve job readiness skills, which may include participation in a Workforce Development Program or vocational program. The Court directs the probation officer to approve the program and monitor the defendant's participation.

Condition Explanation: The defendant shall attend a Workforce Development Program(s) or vocational program(s) in accordance with the program schedule and participate as directed by the program facilitator.

Condition: While any financial penalties are outstanding, the defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

Condition Explanation: While there is an outstanding fine, restitution, or special assessment obligation, the defendant is required to provide any financial information (e.g. banks statements, income verification, tax returns, verification of assets, expenses, and liabilities, etc.) to the probation officer and/or the Financial Litigation Unit of the U.S. Attorney's Office as requested.

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Condition: While any financial penalties are outstanding, the defendant shall apply some or all monies received, to be determined by the Court, from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligation. The defendant shall notify the probation officer within 72 hours of the receipt of any indicated monies.

Condition Explanation: While there is an outstanding fine, restitution, or special assessment obligation, the defendant shall disclose to the probation officer any monies received through income tax refunds (state or federal), lottery winnings, judgments (e.g. civil suits), and/or any other anticipated or unexpected financial gains (e.g. gambling winnings, inheritance, life insurance benefits, etc.) regardless of the amount. The Court will determine the appropriate amount to be applied to any outstanding Court-ordered financial obligation, after considering the defendant's basic needs. The defendant shall notify the probation officer of the receipt of any of the above noted monies within 72 hours.

Condition: The defendant shall pay any financial penalties imposed which are due and payable immediately. If the defendant is unable to pay them immediately, any amount remaining unpaid when supervised release commences will become a condition of supervised release and be paid in accordance with the Schedule of Payments sheet of the judgment based on the defendant's ability to pay.

Condition Explanation: The defendant is to abide by the payment plan established by the Court, and set out in the Schedule of Payments sheet of the judgment to satisfy any fine, administrative fee (Special Assessment), and/or restitution ordered in the defendant's instant federal offense. Payments are to be based on the defendant's ability to pay and if anytime during the term of supervision it is determined the defendant does not have the financial means to comply with the payment plan ordered, or, the defendant's financial situation is such that the defendant's payments can be increased, the Court may adjust the defendant's payment plan accordingly.

Condition: The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

Condition Explanation: Working regularly is defined as maintaining full or part-time lawful employment throughout the term of supervision unless the probation officer or Court has excused the defendant. If unemployed during the term of supervision, the defendant is to actively seek to obtain employment. Employment may be excused if the defendant attends school or a training program on a full-time basis, disabled, retirement age, or for other acceptable reasons (e.g. homemaker, caregiver). If the defendant is ordered to pay a fine or restitution, regardless if the defendant is going to school or is of retirement age, the defendant will be required to work in order to satisfy the financial obligation as soon as possible. Defendants that owe a substantial financial obligation and are working part-time will be required to seek full-time employment in order to expedite payment of the financial obligation.

Condition: The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

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Condition Explanation: All searches are to be conducted by the U.S. Probation Office with the assistance of law enforcement if deemed necessary. This condition does not authorize a law enforcement agency, outside the presence of the U.S. Probation Office, to initiate and conduct a search without a warrant. Searches are generally conducted between the hours of 6:00 a.m. and 10:00 p.m. and can occur any day of the week. Depending on the circumstance and/or conduct of the defendant, searches may occur outside of the previously stated hours. For example, if the defendant works shift work and is unavailable during the stated hours, a search may occur at other times. Searches pursuant to this condition are based on reasonable suspicion meaning that that the probation officer must have facts that are specific, clear, and easy to explain and result in a rational conclusion that the defendant is in possession of contraband or evidence of a violation of the condition of supervision. If the defendant refuses to allow the probation office to execute a search, or obstructs a search, the defendant is in violation of this condition which may result in the Court being petitioned to revoke the defendant's supervision.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

Upon a finding of a violation of a condition(s) of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant's Signature _____ Date _____

U.S. Probation Officer _____ Date _____

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	N/A	$100.00	N/A	N/A

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

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

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

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

☒ the interest requirement is waived for ☒ fine ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

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

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

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

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

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

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

F. ☒ Special instructions regarding the payment of criminal monetary penalties: **All criminal monetary penalties are due immediately and payable through the Clerk, U.S. District Court. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be paid in equal monthly installments of $25.00 or ten percent of his net monthly income, whichever is greater. The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of probation.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

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

☐ The defendant shall pay the cost of prosecution.

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

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: **two silencers, two 9mm Luger caliber STEN type machine guns, and an Anderson AM15 semi-automatic .223 rifle.**

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