

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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FINAL JUDGMENT

August 9, 2021

Before

DANIEL A. MANION, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

	UNITED STATES OF AMERICA, Plaintiff - Appellee
No. 20-3264	v.
	ADAM L. WARE, Defendant - Appellant
Original Trial Court Information	
District Court No: 1:19-cr-10005-JBM-JEH-1	
Central District of Illinois	
District Judge Joe Billy McDade	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

form name: c7_FinalJudgment (form ID: 132)

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued June 3, 2021
Decided August 9, 2021

Before

DANIEL A. MANION, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 20-3264

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 1:19-cr-10005

ADAM L. WARE,
Defendant-Appellant.

Joe Billy McDade,
Judge.

O R D E R

When, pursuant to a warrant issued by a state-court judge, officers from the Peoria, Illinois, police department searched the home of Adam Ware, they found drugs, cash, and firearms. Ware wound up facing federal charges, in the course of which he challenged the validity of the search warrant. The district court rejected his argument, however, prompting Ware conditionally to plead guilty while preserving his right to appeal the denial of his motion to suppress. See FED. R. CRIM. P. 11(a)(2). On appeal, Ware argues both that the warrant was not supported by probable cause and that the good-faith exception recognized by *United States v. Leon*, 468 U.S. 897 (1984), is

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unavailable. We conclude that the district court properly applied the rule of *Leon*, and so on that basis we affirm.

I

The police had their eye on Ware for some time before the search we mentioned. At a traffic stop in May 2018, a dog sniff alerted officers to the presence of narcotics. A search of his vehicle turned up \$18,000 in cash, wrapped in rubber bands. Between July 2018 and February 2019, the police received at least three anonymous tips suggesting that Ware was distributing drugs from his home. The police also confirmed that Ware was on parole and that he had provided 1103 S. Warren Street in Peoria as his home address.

More suspicious activities followed. On February 6, 2019, Officer Matthew Lane tailed Ware as he drove from the Warren Street residence to Millman Street, where he stopped. Lane observed an unknown man enter Ware's car, stay for five minutes, and then leave. When Ware drove away, Lane briefly lost sight of his vehicle, but he saw it at 1103 S. Warren shortly thereafter.

Along with Officer Erin Barisch, Lane stayed at the house and maintained surveillance on it. About 45 minutes later, Ware's vehicle drove off again; Lane and Barisch reported this to other police officers. Two officers pulled Ware over after he turned without signaling 100 feet before an intersection (as required by Illinois law). During the traffic stop, the officers asked Ware to consent to a search, after they noticed an open cup of a liquid that appeared to be alcoholic in the car. Ware consented, and the officers found 4.4 grams of cocaine and \$1,140 in his pockets.

Later that day, Lane decided to get a search warrant for Ware's home. He prepared an affidavit, which included the following information:

- In May 2018, after a dog sniff alerted officers to possible drugs in Ware's vehicle, the officers found \$18,000 in cash wrapped in rubber bands, which Lane said (based on his training and experience) was "consistent with how narcotics dealers bundle their currency."
- At least three times since July 2018, an anonymous caller said that "Adam Ware was still dealing narcotics and storing them" at his Warren Street residence.
- Ware was currently on parole for "manufacturing/delivering 15-100 grams of cocaine" and had "7 dangerous drug arrests with 5 convictions."

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- Lane observed what he believed to be a drug transaction on February 6, 2019, when Ware drove from Warren Street and stopped at Millman Street, based on the short meeting with another man at Millman Street.
- About 45 minutes after reestablishing surveillance at 1103 S. Warrant Street, Ware again drove away from the residence and shortly thereafter committed a traffic violation.
- During the stop for the traffic violation, officers discovered 4.4 grams of cocaine and \$1,140.

Lane also stated that Ware lived at 1103 S. Warren, even though Ware had given a different address when he was arrested. The affidavit concluded that, based on his training and experience, which included training and working as a Drug Enforcement Administration task force officer, Lane believed that evidence of illegal drug activity would likely be found at 1103 S. Warren. Lane then met with a state circuit judge at a restaurant and presented this affidavit; the judge issued the requested warrant.

Upon obtaining the warrant, Lane and some other officers immediately searched the Warren Street residence. They found over five kilograms of cocaine, 86 grams of cocaine base, \$200,000 in cash, firearms, and proof that Ware resided there. Ware was then charged in federal court with possessing controlled substances with intent to distribute, 21 U.S.C. § 841(a)(1), possessing a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c), and possessing a firearm as a felon, 18 U.S.C. § 922(g).

Early in the proceedings, Ware moved to suppress all evidence that had been seized from the Warren Street house, as well as the evidence from the February 6, 2019, traffic stop. The district court held an evidentiary hearing, at which Lane and Barisch, along with the officers who made the February 6 stop, all testified. Their testimony focused primarily on the February 2019 surveillance and traffic stop. The court also heard oral argument on Ware's motions. His attorney made several points: Lane's affidavit relied on stale, uncorroborated information; nothing but speculation about the interaction on Millman Street pointed to drugs; and his past drug convictions and possession of the 4.4 grams of cocaine did not support an assumption that drugs were inside his house. Ware also urged that the basis of the warrant was so flimsy that *Leon* could not save it.

The district court denied the motion to suppress the evidence from Ware's home. It acknowledged that Lane had a history of shoddy warrant applications, and that a number of judges had expressed frustration over Lane's weak affidavits. On the other hand, the court found in this particular affidavit enough indicia of probable cause to permit the team of officers to rely on the warrant in good faith. (The court made no

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secret of its view of the warrant: what it said was “the good-faith exception will salvage this case,” just as it had done in an earlier case.) It singled out the cocaine and the large sum of cash that the officers recovered during the traffic stop, after they had observed Ware drive from his home and possibly conduct a drug transaction. This was enough at least for *Leon*, if not for an acceptable warrant. The court concluded by reiterating that it did not endorse Lane’s unsatisfactory affidavits.

II

On appeal, Ware continues to assert that the warrant was not supported by probable cause and that the affidavit was so faulty that it did not even support the good-faith exception to the exclusionary rule. Because the district court relied exclusively on the good-faith exception, we begin (and end) with that theory. We do not address either the stand-alone sufficiency of the warrant, nor the government’s argument (newly minted on appeal) that probable cause was not needed for the search of the home because of Ware’s status as a parolee.

Ware concedes that an officer’s decision to obtain a warrant is *prima facie* evidence of good faith. See *Edmond v. United States*, 899 F.3d 446, 452 (7th Cir. 2018). That presumption is rebutted here, he contends, because the affidavit was “so lacking in indicia of probable cause” that a reasonable officer would not have believed that the search warrant was adequately supported. See *United States v. Koerth*, 312 F.3d 862, 869 (7th Cir. 2002). To support that contention, Ware emphasizes the fact—also noted prominently by the district court—that courts have previously admonished Lane for his inadequate affidavits.

We can assume, favorably to Ware, that an officer as seasoned as Lane, and one who has been criticized in the past, should have known better than to submit such a sparse affidavit to justify invading a person’s home. Nevertheless, that does not dispose of the good-faith issue. The affidavit must be judged objectively, based on the information it did contain; courts do not privilege affidavits drafted by favored officers, or disregard those drafted by people who are normally sloppy. With that in mind, we agree with the district court that there were just enough indicia of probable cause in Lane’s affidavit to permit the good-faith exception to apply. The officers’ observations of Ware driving from his home to meet briefly with a person who climbed into his car, and the discovery of 4.4 grams of cocaine and over \$1,000 in cash on Ware’s body shortly thereafter, combined with Ware’s criminal history, would allow a reasonable officer to believe that the search warrant was properly issued.

Ware’s arguments to the contrary do not meet the demanding standard for rebutting the presumption of good faith that arose when Lane sought the warrant. See

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Messerschmidt v. Millender, 565 U.S. 535, 547 (2012) (“the threshold for establishing [the] exception [to the presumption] is a high one, and it should be”). His attacks on the district court’s reasoning primarily rehash his arguments that the affidavit failed to establish probable cause. But we assume probable cause was lacking if we reach the *Leon* argument. The point of *Leon* is that not all evidence obtained without probable cause must be suppressed. Ware’s strongest argument for bad faith—Lane’s track record—cannot overcome the cumulative signals to an objective officer that Ware was engaged in the drug trade, and that evidence of those activities was likely to be at his home.

The district court thus correctly denied Ware’s motion to suppress. With that resolved, his convictions and his 180-month sentence stand as well.

AFFIRMED.

State of Illinois)
County of Peoria) SS

The Circuit Court of
the Tenth Judicial Circuit
of Illinois

SEARCH WARRANT

ALVARADO

TO: ALL PEACE OFFICERS OF THE STATE OF ILLINOIS

On this date, Sergeant Matthew Lane, Complainant has signed and sworn to a complaint for a search warrant before me. Upon examination of the said complaint, I find that it states facts sufficient to show probable cause.

I, therefore, command that you search the premises in the City and County of Peoria, State of Illinois, located at: 1103 S. Warren, being one and a half story, gray with brick open front porch, single family residence with the numbers "1103" to the right of the front door, including any outbuildings and any vehicles located thereon;

and seize the following things: Cocaine, U.S. Currency and any books, papers, records, photographs, recordings, documents, computer disks, computer tapes or other software and the contents thereof, or other things which tend to evidence possession or control of the premises or the cocaine and any related paraphernalia which have been used in the commission of, or which constitutes evidence of Unlawful Possession of a Controlled Substance in violation of Chapter 720, Illinois Compiled Statutes, 570/402, 2016, as amended. Unless seized under Federal asset forfeiture laws pursuant to Title 21 United States Code section 881 and to dispose of said property is no longer of evidentiary value.

I further command that a return of anything so seized shall be made without unnecessary delay before me or before any court of competent jurisdiction.

Time of Issuance: 8:37 o'clock p.m.

Date of Issuance: February 6, 2019.

Lea C. Wilson
Judge

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State of Illinois)
) SS
County of Peoria)

The Circuit Court of
the Tenth Judicial Circuit
of Illinois

COMPLAINT FOR SEARCH WARRANT

Sergeant Matthew Lane (Complainant), a peace officer employed by the City of Peoria, Illinois, appears before the undersigned judge and requests the issuance of a search warrant to search the premises in the City and County of Peoria, State of Illinois, located at: 1103 S. Warren, being one and a half story, gray with brick open front porch, single family residence with the numbers "1103" to the right of the front door, including any outbuildings and any vehicles located thereon;

and seize the following things: Cocaine, U.S. Currency and any books, papers, records, photographs, recordings, documents, computer disks, computer tapes or other software and the contents thereof, or other things which tend to evidence possession or control of the premises or the cocaine and any related paraphernalia which have been used in the commission of, or which constitutes evidence of Unlawful Possession of a Controlled Substance in violation of Chapter 720, Illinois Compiled Statutes, 570/402, 2016, as amended. Unless seized under Federal asset forfeiture laws pursuant to Title 21 United States Code section 881 and to dispose of said property is no longer of evidentiary value.

Complainant states that he does believe that the above-listed items to be seized are now located at the premises described above because: On around July 2018, Peoria Police Sgt. Barisch received a phone call from a Confidential Source. The CS wanted to remain anonymous, but provided information to Sgt. Barisch about the narcotics dealing of an Adam Ware. Sgt. Barisch advised me of the CS's information. Both Sgt. Barisch and Complainant are familiar with an Adam Ware and knew him to deal narcotics. This CS has called in at least twice since the original phone call stating Adam Ware was still dealing narcotics and storing them at this residence.

On today's date, 02/06/19, Complainant observed Ware walking from the residence and entering a silver vehicle. Complainant followed the vehicle to the 2300 block of Millman. Complainant observed the vehicle park facing west with the lights still on. Complainant observed a male exit a residence and get in the front passenger seat of the vehicle. The vehicle remained parked with the lights on. After approximately five minutes, Complainant observed the front passenger exit and start walking toward a residence. Based on Complainants training and experience, I believed a drug transaction just occurred. Complainant observed the vehicle pull away from the curb and travel west on Millman. Complainant lost the vehicle after it drove away west on Millman.

COMPLAINT FOR SEARCH WARRANT
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Complainant went back to 1103 S. Warren and observed the vehicle parked in front with its lights on. Ofc. Logan and Ofc. Slavens drove by and stated a male was still inside the vehicle. Complainant attempted to establish surveillance on the residence and vehicle. Complainant drove by the residence and noticed the vehicle was unoccupied. Complainant and Sgt. Barisch established surveillance on the vehicle and residence.

About 45 minutes later, Sgt. Barisch observed a male whom he believed to be Ware exit the front door of the residence and enter the silver vehicle. Complainant and Sgt. Barisch followed the vehicle away from the residence. Sgt. Barisch observed the vehicle travel north on Shelly to Lincoln. Sgt. Barisch observed the vehicle stop then turn on the turn signal to travel East on Lincoln. This was not within 100 feet as required by IVC. Officers Isonhart and Johnston were in a semi-marked Tahoe. We relayed the information about the vehicle and they observed it going north on MacArthur. They followed the vehicle to Moss Avenue where they observed a traffic violation. They stopped the vehicle for the traffic violation.

Ofc. Isonhart approached the driver's side of the vehicle and the driver identified himself as Adam Ware, D.O.B. 01/02/81, from an Illinois Driver's license. Ofc. Isonhart observed a clear plastic cup in the center console. Ofc. Isonhart observed a light pink colored liquid in the cup. Ofc. Isonhart asked if it was alcohol and if he could smell it. Ofc. Isonhart smelled the liquid and it smelled like alcohol. Ware made the statement to Ofc. Isonhart that he hasn't even taken a drink of it yet. Ofc. Isonhart asked Ware to step out of the vehicle due to the open alcohol. He stated he was going to search him and the vehicle due to open alcohol and Ware stated that's fine. Ofc. Isonhart asked Ware if there was anything illegal on him or the vehicle and he stated no. Ofc. Isonhart began his search of Ware. Ofc. Isonhart placed his right hand in Ware's right front jacket pocket and felt a plastic bag. Ofc. Isonhart pulled the plastic bag out and noticed the plastic bag contained a white powdery substance. Ofc. Isonhart placed the bag back into his pocket and Ware was placed in handcuffs. Ofc. Isonhart asked if there was anything else illegal on him and he stated no. No other contraband was located on his person or in the vehicle.

Ware was transported to the Peoria Police station. Ware had \$1140.00 in his front right pocket. The plastic bag with white powdery substance was weighed (4.4gm) and tested positive (Nik wipe) for the presence of cocaine by Ofc. S. Johnston.

COMPLAINT FOR SEARCH WARRANT
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Complainant checked the Peoria Police electronic database and located report #18-8569 (04/28/18) where an Adam Ware, D.O.B. 01/02/81, reported a vandalism to a vehicle at 1103 S. Warren.

Ofc. Miller ran Ware's Criminal History and located 7 dangerous drug arrests with 5 convictions. Ware is currently on parole for manufacturing/delivery 15-100 grams of cocaine. Ware's parole address is 1103 S. Warren. Complainant asked Ware where he lived and he stated what was on his license (1606 W. Smith).

It should be noted in May of 2018, Ware was stopped for speeding by the Illinois State Police. Pursuant to a k-9 alert, Ware's vehicle was searched and \$18,000.00 in cash was located. This cash was individually wrapped in rubber bands. Based on my training and experience, I know this to be consistent with how narcotics dealers bundle their currency. State Police report F06-18-00133.

Based upon Complainant's training and experience Complainant believes there will be more cocaine inside 1103 S. Warren.

Complainant is employed by the City of Peoria as a police officer for the last eighteen years. Complainant has attended an eighty hour DEA basic narcotics investigation school. Complainant is currently assigned to the Special Investigations Divisions/Target Offender Unit as a supervisor and previously worked as a Task Force Officer with the Drug Enforcement Administration.

Matthew D. Lee
Complainant

Signed and sworn to before me this 6th day of February, 2019.

Judge
Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Case No. 1:19-cr-10005
ADAM LEE WARE,)
Defendant.)

ORDER & OPINION

This matter is before the Court on Defendant Adam Lee Ware's Motion to Quash Search Warrant and Suppress Evidence (Doc. 21) and Motion to Suppress Evidence (Doc. 22). The Prosecution has responded (Docs. 25, 26), and a hearing was held on July 17, 2019. For the reasons stated below, Defendant's Motions (Docs. 21, 22) are DENIED.

BACKGROUND

According to the application for the search warrant at issue, Defendant was known to the police for having dealt narcotics in the past; indeed, he was on parole for manufacture/delivery of cocaine. (Doc. 21-1 at 2, 4). In July of 2018, an anonymous tip was provided to Peoria Police Sergeant Erin Barisch stating Defendant was dealing narcotics; the initial tip did not mention the residence subject to the search warrant at issue. (Doc. 21-1 at 2). The same anonymous source followed up twice and informed the police Defendant was still dealing narcotics and storing them at a residence located on 1103 South Warren Street. (Doc. 21-2 at 2). The application for

a search warrant provided no further detail about the informant or how the information was acquired, the timeline of the calls, any other information provided by the anonymous tip, or steps taken to corroborate the tip before February 2019.

On February 6, 2019, Peoria Police Sergeant Matthew Lane was surveilling the residence at 1103 S. Warren. (Doc. 21-1 at 2). He saw Defendant leave the building and get into a silver car. (Doc. 21-1 at 2). Lane followed the car and saw it park outside of a different house on the 2300 block of Millman Street. (Doc. 21-1 at 2). Lane then observed a man exit the house and get into Defendant's car. (Doc. 21-1 at 2). The man sat in the front seat of Defendant's car for about five minutes before exiting the car and reentering the house on Millman. (Doc. 21-1 at 2). In the affidavit supporting his application for a search warrant, Lane reported he believed, based on his training and experience, a drug transaction had occurred. (Doc. 21-1 at 2). Lane was unable to follow the car when it drove away. (Doc. 21-1 at 2). However, he and other officers returned to 1103 S. Warren and saw the same silver car parked in front of the residence, at first with someone inside and the lights on, then empty with the lights off. (Doc. 21-1 at 2).

Shortly thereafter, Barisch noticed someone leave 1103 S. Warren, go back to the car, and begin driving. (Doc. 21-1 at 3). Barisch followed it as it drove away until it reached the intersection of Shelley Street and Lincoln Street. (Suppression Hrg. on 7/17/2019). At that intersection, the driver failed to signal a right turn for the last continuous 100 feet before turning onto Lincoln; Lane's affidavit stated the vehicle stopped at the stop sign controlling the intersection before

the turn signal was activated. (Doc. 21-1 at 3). Barisch informed another pair of officers who had begun following the car and instructed them to stop it. (Doc. 21-1 at 3). Those officers reported seeing the car cross the road centerline on Moss Avenue and pulled it over. (Doc. 22 at 4). The officers determined Defendant had an open container of alcohol in the vehicle. (Doc. 21-1 at 3). They asked Defendant to step out of the car and told him they would search him and the vehicle; Defendant responded that was fine. (Doc. 21-1 at 3). The officers searched Defendant and the vehicle, discovering a plastic bag in his jacket pocket that contained a white powder, later determined to be cocaine. (Doc. 21-1 at 3). Although no other contraband was located in the search of Defendant and his car, the officers did find \$1,140 in his pockets. (Doc. 21-1 at 3).

Lane and one of the officers who stopped Defendant proceeded to a Hardee's. (Suppression Hrg. on 7/17/2019). There, they met a judge of the Circuit Court of the Tenth Judicial Circuit of Illinois to present an application for a warrant to search 1103 S. Warren. In addition to the above information, Lane's application for a search warrant included information that Defendant had previously been stopped for speeding in May 2018. (Doc. 21-1 at 4). During that stop, a drug dog alerted, leading to a search of Defendant's vehicle. (Doc. 21-1 at 4). The search did not yield contraband, but officers did discover \$18,000 in cash, wrapped in a way Lane states in the February 6, 2019 application for a warrant is consistent with how narcotics traffickers bundle money. (Doc. 21-1 at 4).

Based on Lane's application, the judge issued a warrant to search 1103 S. Warren. (Doc. 21-1 at 1). The warrant was served the same evening. (Doc. 26 at 1-2). The subsequent search uncovered over five kilograms of cocaine, 86 grams of cocaine base, \$200,000 in cash, evidence of drug manufacturing, and firearms. (Doc. 26 at 3-4). Defendant was indicted for possession with intent to distribute cocaine, possession with intent to distribute cocaine base, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm by a felon. (Doc. 11 at 1-3).

His instant motions argue the stop of his vehicle was an unlawful seizure of his person, so the fruits thereof should be suppressed, and there was not probable cause to search 1103 S. Warren, so the evidence uncovered there should be suppressed.

LEGAL STANDARD

Police may stop a vehicle where they have probable cause to believe a traffic violation occurred. *United States v. Lewis*, 920 F.3d 483, 489 (7th Cir. 2019). This standard is met when "the circumstances confronting a police officer support the reasonable belief that a driver has committed even a minor traffic offense." *United States v. Muriel*, 418 F.3d 720, 724 (7th Cir. 2005) (quoting *United States v. Cashman*, 216 F.3d 582, 586 (7th Cir. 2000)). "But when a police officer mistakenly believes that the law prohibits an act that is, in fact, perfectly legal, even a good faith belief that the law has been violated will not support the stop." *United States v. Garcia-Garcia*, 633 F.3d 608, 612 (7th Cir. 2011).

The review of a search warrant is deferential. “[I]n reviewing the issuing judge’s probable cause determination, the district court need only evaluate whether the judge had a ‘substantial basis’ for concluding that probable cause existed.” *United States v. Kelly*, 772 F.3d 1072, 1080 (7th Cir. 2014) (quoting *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983)). “Probable cause exists when the supporting affidavit presents a total set of circumstances which create a ‘fair probability’ that a search will uncover evidence of a crime.” *United States v. Haynes*, 882 F.3d 662, 665 (7th Cir. 2018) (quoting *Gates*, 462 U.S. at 238). “Those circumstances need only indicate a reasonable probability that evidence of crime will be found in a particular location; neither an absolute certainty nor even a preponderance of the evidence is necessary.” *United States v. Aljabari*, 626 F.3d 940, 944 (7th Cir. 2010). When a judge is presented with only an affidavit to support the search warrant, “the validity of the warrant rests solely on the strength of the affidavit.” *United States v. McMillian*, 786 F.3d 630, 639 (7th Cir. 2015) (quoting *United States v. Peck*, 317 F.3d 754, 755 (7th Cir. 2003)).

Even if a reviewing court determines a warrant was issued without the requisite probable cause, “the Fourth Amendment exclusionary rule does not apply to evidence obtained by police officers who acted in objectively reasonable reliance upon a search warrant issued by a neutral magistrate.” *Illinois v. Krull*, 480 U.S. 340, 342 (1987) (explaining the holding of *United States v. Leon*, 468 U.S. 897 (1984)). The good-faith inquiry “is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal” given “all of the circumstances.” *Herring v. United States*, 555 U.S. 135, 145 (2009) (quoting

Leon, 468 U.S. at 922 n. 23). The issuance of a search warrant is *prima facie* evidence of good faith. *United States v. Reichling*, 781 F.3d 883, 889 (7th Cir. 2015). Thus, when a search warrant has issued, a defendant seeking exclusion must demonstrate

(1) the issuing judge wholly abandoned his judicial role and failed to perform his neutral and detached function, serving merely as a rubber stamp for the police; (2) the affidavit supporting the warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (3) the issuing judge was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.

Edmond v. United States, 899 F.3d 446, 453 (7th Cir. 2018), *reh'g and suggestion for reh'g en banc denied* (Oct. 4, 2018), *cert. denied*, 139 S. Ct. 1216 (2019) (quoting *United States v. Pappas*, 592 F.3d 799, 802 (7th Cir. 2010)). Defendant here seeks exclusion under the second standard, which requires either that a materially similar affidavit previously failed to establish probable cause or that the affidavit is plainly deficient. *United States v. Glover*, 755 F.3d 811, 819 (7th Cir. 2014).

DISCUSSION

I. The Traffic Stop

The gravamen of Defendant's argument against the stop is that if a motorist forms the intent to turn closer than 100 feet before an intersection, no violation has been committed. (Doc. 22 at 5-6). He argues the officers here could not have had probable cause to believe Defendant had formed such an intention before he came to a stop and utilized his turn signal; consequently, they lacked probable cause to stop

him. (Doc. 22 at 5-6). Because this argument is directly foreclosed by binding Seventh Circuit precedent, the Court cannot agree.¹

The relevant law states: “A signal of intention to turn right or left when required must be given continuously during not less than the last 100 feet traveled by the vehicle before turning within a business or residence district . . .” 625 ILCS 5/11-804(b). There is no dispute that Defendant did not signal continuously for 100 feet before turning, or that he was in a business or residence district. Defendant’s inventive argument is that the “when required” language indicates some situation where signaling is not required, and that situation is where a person stopped at a stop sign makes a decision of whether and where to turn while stopped. (Doc. 22 at 5-7). This argument was made, and squarely rejected, in *United States v. Kenerson*, 585 F.3d 389, 391–92 (7th Cir. 2009). The precise argument in that case was

because the defendant came to a full and complete stop, there was no traffic at the intersection, and a hypothetical driver who decided that he wanted to turn right only after stopping could not comply with relevant provision no matter how hard he tried, the code yields ‘an absurd result’ and cannot provide a lawful basis for a *Terry* stop.

Id. The Seventh Circuit, however, held “a violation of the relevant provision of the Illinois Motor Vehicle Code, routine and safe though it might have been,” nonetheless provided probable cause for a stop. *Id.* at 392.

The Defense attempts to distinguish *Kenerson* by noting the absurd result argument, stating the court engaged in little analysis, arguing it predated another

¹ Defendant also argues there is no evidence he committed another violation, such as the alleged crossing of the centerline. (Doc. 22 at 7-8). Because Defendant’s first argument fails, the Court finds it unnecessary to address whether there was another suitable basis to initiate a traffic stop.

relevant precedent, and suggesting that in this case, unlike that one, the defendant had not demonstrated an intent to turn before stopping. (Doc. 22 at 7 n.1). These arguments, however, cannot succeed. The slight difference in argument—claiming the adverse reading of the statute would lead to an absurd result rather than just arguing it is incorrect—is not enough of a distinction to allow this Court to disregard *Kenerson*. And the sufficiency of the Seventh Circuit’s analysis is irrelevant; even were *Kenerson* not thoroughly reasoned, this Court is bound by Seventh Circuit decisions.

Defendant’s factual distinction is similarly unpersuasive. *Kenerson* began signaling slightly before reaching a stop sign—at which he would have needed to stop regardless—while Defendant claims he did not signal until fully stopped. But this potential slight departure between the facts of the two cases is a distinction without a difference. Either way, the argument is that the intention to turn was formed within 100 feet of the intersection and so it would have not been possible to signal continuously for the full 100 feet.

As for the later precedent, Defendant relies on *United States v. Stanbridge*, 813 F.3d 1032, 1037 (7th Cir. 2016). In *Stanbridge*, the Seventh Circuit determined the statute at issue in this case did not require a driver to signal before pulling alongside a curb to park. *Id.* Although Defendant would broadly read *Stanbridge* to suggest no signal is required where it would not be reasonable to need one (Doc. 22 at 5-6), the better reading of *Stanbridge* is curbside parking is not a turn within the meaning of the statute. 813 F.3d at 1037 (holding the statute “is not ambiguous, and does not

require a driver to signal for 100 feet before pulling alongside a curb to park. The minimum signaling distances required by subsection (b) apply only when a driver intends to *turn* right or left.” (emphasis in original; internal quotation marks omitted)). The holding of *Kenerson* controls.

II. The Search of 1103 S. Warren

Six years ago, Lane submitted an application for a search warrant to search a house in Peoria for evidence of cocaine trafficking based upon information from an anonymous informant. *United States v. Thompson*, 801 F.3d 845, 846–47 (7th Cir. 2015) (per curiam). Although the Seventh Circuit “share[d] the district court’s initial instinct about the weakness of th[e] affidavit” and noted it was “growing weary of thin affidavits that suffer from the same omissions which provoked [its] criticisms in the past,” it held the search of the residence in that case survived a motion to suppress under the good-faith exception. *Id.* at 848. Still, the Seventh Circuit ended its opinion with a warning: “The government would be well advised . . . not to confuse this decision with an endorsement of Officer Lane’s affidavit.” *Id.* at 849. That warning was not heeded. The application for a search warrant Lane submitted in this case bears similar hallmarks of insufficiency to those identified in *Thompson*, suggesting Lane may not have recognized the jeopardy in which he places cases by submitting shoddy affidavits. Like the Seventh Circuit, this Court is not inclined to let the errors slide.

Nonetheless, the good-faith exception will salvage this case, just as it did *Thompson*. On a motion to quash a search warrant and suppress evidence obtained therefrom, to prevent the application of the good-faith exception through an

argument that the warrant lacked sufficient indicia of probable cause for reasonable reliance, a defendant must demonstrate either that a materially similar warrant was found deficient or that the warrant is plainly deficient. *Glover*, 755 F.3d at 719. Defendant advances the latter theory here. (Doc. 21 at 8).

In its consideration, the Court will set aside the threadbare, potentially eight-month-old tip from an unknown tipster who did not appear before the issuing magistrate and may not have even furnished firsthand knowledge of the matters contained in the tip, and consider whether there are sufficient indicia of probable cause to support good-faith reliance elsewhere in the warrant application. The Court will also not consider Lane's unsupported assertion that based on his training and experience there would be more cocaine inside 1103 S. Warren. While an officer may raise his training and experience in a warrant application, the officer should explain what his training and experience is and how it affects his judgment of the facts before him. *See United States v. Scott*, 901 F.3d 842, 844-46 (7th Cir. 2018). Here, it is unclear whether Lane is drawing his conclusion that cocaine would be in the house from his observation of Defendant's activity on February 6 or from the stop in May 2018 (the facts directly preceding the assertion) or whether he simply has no basis beyond a hunch.

However, the Court cannot say Lane's affidavit "was so lacking in indicia of probable cause as to make entirely unreasonable a belief that probable cause existed." *United States v. Elst*, 579 F.3d 740, 746 (7th Cir. 2009). The affidavit explains officers observed Defendant commit what appeared to be a drug transaction and return to

1103 S. Warren. When he departed again, officers stopped his car and found a small quantity of cocaine and a large quantity of cash. Although not much, this is enough that an officer could reasonably believe the warrant was issued on probable cause. After all, the circumstances described in the affidavit could allow the conclusion that what occurred on Millman Street was a drug deal.² That Defendant was found with cocaine and a significant amount of cash and that he was on parole for a prior drug trafficking offense could give rise to the inference that he was the dealer, not the buyer, in the interaction on Millman Street. And the activity of touching base at 1103 S. Warren could seem to a reasonable officer to allow for the conclusion Defendant was storing his cocaine there.

That being said, this warrant application was done without the due care that ought to accompany the process of obtaining a search warrant. An application to invade the privacies protected by the Fourth Amendment of our Constitution is not the place to cut corners. The preparation and review of an application for a search warrant is rather a trust the public has placed in government officials to protect

² A reasonable officer could think the issuing judge concluded the Millman Street activity appeared to be a drug transaction even absent Lane's assertion of training and experience on this point, but Lane's assertion here was more sufficiently supported. His claim that his training and experience, described in the final paragraph of the application, caused him to believe a drug transaction had occurred comes immediately after his description of the activity on Millman Street; it is clear the facts to which he is applying his training and experience are the behaviors there displayed. A reasonable officer would certainly be able to conclude the reviewing judge might have relied upon Lane's explanation in asserting he knew the activity on Millman Street was a drug deal due to his training and experience, even though it is less clear that Lane's later assertion that due to his training and experience he believed cocaine would be found in 1103 S. Warren could be relied upon.

any person's Fourth Amendment rights have been infringed. *See United States v. Bonitz*, 826 F.2d 954, 958 (10th Cir. 1987) ("The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home." (quoting *McDonald*, 335 U.S. at 455–56) (alteration in original)).

In sum, exclusion is inappropriate here; the Court cannot find the good-faith exception does not apply. But even if the deterrent force of the exclusionary rule will not be brought to bear, the Court believes important lessons can be learned nonetheless. To that end, the Clerk is directed to furnish a copy of this Opinion to the Chief Judge of the Tenth Judicial Circuit and the Chief of Police for the City of Peoria, so they may share my concerns with their colleagues.

CONCLUSION

Defendant's Motions (Docs. 21, 22) are DENIED. The evidence from the traffic stop and the search of 1103 South Warren Street will not be excluded on Fourth Amendment grounds. The Clerk is directed to furnish a copy of this Opinion to the Chief Judge of the Tenth Judicial Circuit and the Chief of Police for the City of Peoria.

SO ORDERED.

Entered this 30th day of July 2019.

s/ Joe B. McDade
JOE BILLY McDADE
United States Senior District Judge

UNITED STATES DISTRICT COURT

Central District of Illinois

UNITED STATES OF AMERICA

v.

Adam Lee Ware

) **JUDGMENT IN A CRIMINAL CASE**
)
)
) Case Number: 19-cr-10005-01
)
) USM Number: 22703-026
)
) Robert A Alvarado
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1, 2, 3 and 4

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
21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A)	Possession of a Controlled Substance with Intent to Distribute	2/6/2019	1
21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B)	Possession of a Controlled Substance with Intent to Distribute	2/6/2019	2
18 U.S.C. § 924(c)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	2/6/2019	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.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

11/18/2020

Date of Imposition of Judgment

s/Joe B McDade

Signature of Judge

Joe B. McDade U.S. District Judge

Name and Title of Judge

11/19/2020

Date

DEFENDANT: Adam Lee Ware
CASE NUMBER: 19-cr-10005-01

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) and 18 U.S.C. § 92(a)(1)	Possession of a Firearm by a Prohibited Person	12/6/2019	14

DEFENDANT: Adam Lee Ware
CASE NUMBER: 19-cr-10005-01

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Cts. 1 & 2: 120 months to run concurrent with each other and with Ct. 4.
Ct. 3: 60 months to run consecutive to Cts. 1, 2 & 4.
Ct. 4: 120 months to run concurrent with Cts. 1 & 2.

The court makes the following recommendations to the Bureau of Prisons:

It is recommended that the defendant serve his sentence at FCI-Oxford or a similar secured facility as close to his family in Peoria, Illinois, as possible. Is also recommended that the defendant be allowed to participate in the Residential Drug and Alcohol Treatment Program and maximize his exposure to educational and vocational training.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Adam Lee Ware
CASE NUMBER: 19-cr-10005-01

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

- Ct. 1: 5 years
- Ct. 2: 4 years
- Ct. 3: 5 years
- Ct. 4: 3 years, all terms of supervised release to be concurrent with each other.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the following conditions:

1. The defendant shall not knowingly leave the federal judicial district without the permission of the court or probation officer.
2. You shall report to the probation office in the district to which you are released within 72 hours of release from custody. The defendant shall report to the probation officer in a reasonable manner and frequency as directed by the district court.
3. The defendant shall follow the instructions of the probation officer as they relate to the defendant's conditions of supervision. Any answers the defendant gives in response to the probation officer's inquiries as they relate to the defendant's conditions of supervision must be truthful. This condition does not prevent the defendant from invoking his Fifth Amendment privilege against self-incrimination.
4. The defendant shall notify the probation officer at least ten days prior, or as soon as knowledge is gained, to any change of residence or employment which would include both the change from one position to another as well as a change of workplace.
5. The defendant shall permit a probation officer to visit him at home or any other reasonable location between the hours of 6 a.m. and 11 p.m., unless investigating a violation or in case of emergency. The defendant shall permit confiscation of any contraband observed in plain view of the probation officer.
6. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
7. The defendant shall not knowingly be present at places where controlled substances are illegally sold, used, distributed, or administered.

DEFENDANT: Adam Lee Ware
CASE NUMBER: 19-cr-10005-01

ADDITIONAL SUPERVISED RELEASE TERMS

8. You shall not purchase, possess, use, distribute, or administer any controlled substance or psychoactive substances that impair physical or mental functioning except as prescribed by a physician. You shall participate in a program for substance abuse treatment as approved by the U.S. Probation Office including not more than six tests per month to determine whether you have used controlled substances. You shall abide by the rules of the treatment provider. You shall pay the costs of the treatment to the extent you are financially able to pay. The U.S. Probation Office shall determine your ability to pay and any schedule for payment, subject to the court's review upon request.
9. You shall, at the direction of the district court, participate in and successfully complete a cognitive based therapy (CBT) program as approved by the district court. You shall pay the costs of the program to the extent you are financially able to pay. The district court shall determine your ability to pay and any schedule for payment, subject to the court's review upon request.
10. You shall not knowingly possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921(a)(4) or any object that you intend to use as a dangerous weapon as defined in 18 U.S.C. § 930(g)(2).

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Adam Lee Ware

CASE NUMBER: 19-cr-10005-01

CRIMINAL MONETARY PENALTIES

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

Assessment JVTA Assessment* Fine Restitution
TOTALS \$ 400.00 \$ \$ \$

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.

TOTALS 44 0.00 44 0.00

- 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 the 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 the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* 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.

DEFENDANT: Adam Lee Ware
CASE NUMBER: 19-cr-10005-01

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 \$ 400.00 due immediately; balance due

not later than _____, or
 in accordance with 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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:
Property listed in the Indictment

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.