

No. _____

In The Supreme Court of The United States

RONALD WAYNE THRASHER, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED ON REVIEW

1. When probable cause in support of a search warrant is based on the word of a confidential informant, is it sufficient for law enforcement to establish the reliability or veracity of the informant by having her “self-corroborate” her own reliability by, as in this case, accepting her explanation that a facially innocent phone call was, in fact, a call to arrange a drug transaction?
2. When a search warrant affidavit misrepresents a facially innocent phone call between two people discussing a plan to meet as an unequivocal and unambiguous phone call to arrange a drug transaction, does the affiant thereby usurp the magistrate’s constitutional authority to determine what inferences may be drawn from evidence and to ultimately determine whether a search warrant affidavit establishes probable cause to search?
3. Is a search warrant supported by probable cause and in compliance with the Fourth Amendment’s particularity requirement when it authorizes a search of all cars controlled or owned by the defendant, but the affidavit merely states that, at some unknown time in the past, defendant traveled to another state to obtain drugs and that, in general, drug dealers use vehicles to traffic in narcotics?
4. Is a state search warrant valid for purposes of the Fourth Amendment if, pursuant to state law, it has become null and void by the time of its execution?

LIST OF PROCEEDINGS

The proceedings below are as follows:

1. *United States of America v. Ronald Wayne Thrasher*, United States District Court, District of Oregon, Case Number 6:17-CR-00274-MC-1. The judgment was entered on December 30, 2000.
2. *United States of America v. Ronald Wayne Thrasher*, United States Court of Appeals for the Ninth Circuit, Case Number 20-30275. The judgment was entered on March 31, 2022.

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PETITION FOR A WRIT OF CERTIORARI

Ronald Wayne Thrasher respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND ORDERS BELOW

The unpublished memorandum decision of the United States Court of Appeals, Ninth Circuit, 2022 WL 986684 (9th Cir., March 31, 2022) (Ninth Circuit Case Number 20-30275), is found at Appendix 1. The rulings of the district court are found at Appendix 5, 8, and 23.

JURISDICTION

The memorandum decision of the Court of Appeals was entered on March 31, 2022. (Appendix 1). This Court has jurisdiction to review on a writ of certiorari the judgment of the Ninth Circuit pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

STATEMENT OF THE CASE

Defendant was charged and convicted of a Conspiracy to Distribute 500 grams or more of Methamphetamine, 21 U.S.C. § 846, and several substantive counts of Possession with Intent to Deliver Methamphetamine, 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). The District Court had jurisdiction over this prosecution pursuant to 18 U.S.C. § 3231.

The prosecution arose from a search warrant that the Central Oregon Drug Enforcement Team (CODE) executed on defendant's home and vehicle. The warrant was based on an affidavit describing information provided by a confidential informant. (Appendix 35). After the informant's arrest in a controlled narcotics buy, the informant told the CODE team that defendant was her source of methamphetamine. In order to corroborate that the defendant was, in fact, the informant's source of methamphetamine, the officers asked the informant to call the defendant and order more drugs. In the search warrant affidavit, the affiant described this phone call in its entirety as follows:

During the phone conversation *Thrasher agreed to sell CRI methamphetamine and arranged to meet CRI to purchase the methamphetamine*. This conversation corroborated the CRI's drug purchasing relationship with Ronald Wayne Thrasher.

(Appendix 37) (emphasis added).

However, the officer's report describing this phone call did not characterize it as unambiguously and expressly about methamphetamine.

Rather, the report stated,

during this conversation[,] CRI asked Thrasher if he/she could 'meet him' or if he/she could 'come see him.' Thrasher advised he was driving from Prineville, OR towards Madras and was almost to the Terrebonne area. Thrasher advised CRI could meet him at his residence.

(Appendix 49). The report also recounts that the informant told the officers that, in the past when she spoke to Thrasher to arrange for a drug meeting, she never discussed the substance, price or amounts in plain language and instead used "code." But the search warrant affidavit did not state that the informant and Thrasher spoke in coded language or that the phone call described in the affidavit was in code.

The search warrant affidavit also described the informant's previous history as an informant for the CODE team who provided reliable information that led to the prosecution of others. The affidavit set forth some of the informant's prior convictions. However, defendant submitted extensive evidence significantly undercutting the credibility of the informant, including evidence that CODE officers and a local prosecutor did not think she was reliable and evidence that she previously had lied about being undercover in order to avoid an arrest for drug possession.

The search warrant also authorized the search of all vehicles registered to or within defendant's control. (Appendix 46). But the affidavit did not identify any particular vehicle to be searched. The only information provided by the informant relating to defendant's travel was her statement that defendant has travels to California to obtain methamphetamine. But she did not say whether defendant takes his own car on that trip or provide any information to support the inference that drugs would still be in the car on the day of the search.

The officers found methamphetamine in the house and in the undercarriage of a vehicle that was registered to defendant but driven by another person, Talina Ortiz. Defendant filed a motion to suppress evidence derived from the execution of a search warrant on defendant's home and car and a motion for an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). Pursuant to the *Franks v. Delaware* standard, defendant argued that he had made a substantial preliminary showing that the affiant intentionally or recklessly misrepresented the material phone call between the informant and defendant and had intentionally or recklessly omitted material information bearing on the informant's reliability. With regard to the car search, defendant also argued that the affidavit lacked probable cause to search the car and the

warrant failed to describe the car to be searched with sufficient particularity.

The district court denied defendant's motion for a *Franks* hearing and denied defendant's motion to suppress. (Appendix 8). With respect to the phone call, the court concluded that because the officer's report accurately described the phone call and set forth the informant's account of how she would normally order drugs from the defendant using coded language, the affiant could not have intentionally or recklessly misled the magistrate with his description in the search warrant affidavit. Regarding the incomplete information of the informant's history, the court faulted defendant for not producing any evidence that the affiant was aware of that history. Regarding the vehicle search, the court ruled that the affidavit supported probable cause to search defendant's vehicles and that the particularity requirement was met by describing all cars registered to or owned by defendant. (Appendix 7).

In a separate motion, defendant moved to suppress evidence obtained by a state search warrant directed to defendant's cell phone providers for cell site data showing the location of the phones at certain relevant times. Defendant argued that the warrants for the cell phone data had expired by the time the officer served them on the cell phone companies, and therefore, under state law, they had become null and void. The court denied the

motion, ruling that although the warrants were invalid under state law, suppression was not warranted under the Fourth Amendment. (Appendix 23).

The Court of Appeals affirmed defendant's conviction in a memorandum decision. (Appendix 1). The Court ruled that the affidavit "fairly described the phone call between Thrasher and the Confidential Informant ("CI"), which was conducted in code." Also, the Court determined that any inaccuracies regarding the CI's history "are not material." With regard to the vehicle search, the Court held that the affidavit supported probable cause that defendant used it to traffic methamphetamine and it explained that vehicles are commonly used for that purpose. The Court also concluded that the warrant identified the searched vehicle with specificity because it encompassed all vehicles registered to him or under his direct control. Finally, the Court ruled that the warrants for the cell phone data complied with the Fourth Amendment because they were valid "*ab initio*."

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ARGUMENT

1. The Ninth Circuit's Decision Effectively Removes The Requirement That Law Enforcement Corroborate An Informant's Reliability And Veracity By Allowing The Informant To Explain The Contents Of A Phone Call That Was Intended To Establish The Informant's Reliability And Veracity

The search warrant affidavit in this case did not accurately describe the monitored phone call between the informant and defendant. The affidavit described the call as unambiguously and expressly about setting up a methamphetamine transaction. Instead, the informant told the defendant that she wanted to meet him, and they arranged to get together in the near future as defendant was driving from another location towards home. There was no coded language for drugs, quantities or prices. Despite the fact that the whole point of the phone call was to confirm informant's story that defendant was her drug supplier, the phone call itself did not corroborate that critical point.

To establish that corroboration, the trial and appellate courts relied on the fact that the informant told the officers that the phone call was typical of how she would prepare to meet defendant for a drug transaction and she used "coded language." However, the phone call did not contain any obviously coded language, such as coded terms for drugs, quantities or

prices. The informant simply said she wanted to meet the defendant, and he agreed.

Moreover, by resting its decision on the fact that the informant explained to the officers that she used coded language to order drugs and that the phone call was typical of how she would order drugs, the lower court effectively allowed the informant to corroborate the veracity of her own accusation that defendant was her drug source. Because the phone call was not obviously coded, and because the officers did not have the informant follow through with a controlled purchase of drugs from defendant, the officers were required to corroborate her allegations some other way. Simply having the informant explain the phone call did not meet that requirement, because the informant's credibility was not thereby corroborated and remained at issue.

This Court did not intend for the reliability of an informant's tip be established in such an illusory fashion when it decided *Illinois v. Gates*, 462 U.S. 213 (1983). In *Gates*, the Court clarified the standard for establishing the reliability of an informant to support probable cause by removing the *Aguilar/Spinelli* rule that the affiant prove both the informant's veracity and her basis of knowledge. But *Gates* also reconfirmed the fundamental requirement that, when probable cause turns on an informant's tip, law enforcement must determine that the informant is reliable and explain the

informant's reliability in the search warrant affidavit. *Gates*, 462 U.S. at 230. To have the informant bolster her own reliability by explaining that an innocent-sounding phone call was actually a drug call does not fulfill that requirement of corroboration.

The Court should grant the writ to reconfirm *Gates* and the requirement that law enforcement turn to external sources to corroborate an informant's tip when relying on that tip to support probable cause for a search warrant.

2. The Ninth Circuit Decision Condones Law Enforcement's Tactic Of Removing From The Neutral Magistrate The Constitutional Task Of Assessing Probable Cause By Misstating The Evidence In A Way That Permits Only One Reasonable Inference Supportive Of Probable Cause

The Fourth Amendment requires that a neutral magistrate determine whether a search warrant is support by probable cause. The affiant must set forth enough information from which the magistrate may draw inferences and conclude that a sufficient showing has been made that evidence of a crime will be found in the place to be searched. The affiant may ask the magistrate to draw certain inferences and may provide the magistrate with the inferences that the affiant draws from a particular piece of evidence based on the affiant's training and experience, as long as the affiant is truthful with the facts and transparent with the inferences.

In this case, the affiant was not truthful with the facts nor transparent about having drawn an inference in a way that rendered the magistrate's probable cause all but certain. The affiant was not truthful because the phone conversation in which the participants merely discussed meeting was described as an unambiguous prelude to a drug transaction. The affiant should have described the phone call exactly as it occurred. The affiant then might have stated his opinion that, based on his training and experience, the call was drug related. Had he done so, it would have been transparent to the magistrate that the affiant was drawing an inference from the phone call in light of the affiant's training and experience, and the magistrate would then decide if that inference was reasonable and independently determine probable cause. But by circumventing that process and preventing the magistrate from drawing the inference, or from even knowing that there was an inference to be drawn from the phone call, the affiant effectively and improperly decided the probable cause question. Presented falsely as an unambiguous drug call, the question of probable cause was a foregone conclusion.

In *Johnson v. United States*, 333 U.S. 10, 13–14 (1948), this Court held, “[t]he essential protection of the warrant requirement of the Fourth Amendment” lies in the requirement that the usual inferences that reasonable people draw from evidence be drawn “by a neutral and detached

magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” By upholding the denial of a *Franks* hearing, the Ninth Circuit condoned a practice whereby the affiant striped the neutral and detached magistrate of his constitutional role to draw inferences from the evidence and determine probable cause. This Court should allow the writ to reconfirm that law enforcement may not misstate the facts in order to subvert the magistrate’s authority to determine probable cause.

3. The Ninth Circuit Decision Eviscerates The Requirement That A Search Warrant Particularly Describe The Place To Be Searched By Upholding The Search Of A Car That Was Not Described In The Warrant Or Affidavit And For Which Probable Cause Was Not Supported In The Affidavit

The search warrant authorized the search of “[a]ll vehicles registered to or under the direct control of [defendant, and] [a]ny and all vehicles registered to or under the direct control of the occupants frequenting the premises to be searched at the time of warrant service.” (Appendix 46). The Pontiac at issue was registered to defendant. But the warrant was constitutionally deficient because the warrant failed to support a probable cause basis to search any car and the warrant failed to particularly describe the Pontiac.

The search warrant affidavit describes the informant’s statement to law enforcement that defendant told the informant that he “travels to

southern California to pick up multiple pounds of methamphetamine” that he traffics in the Madras, Oregon area. The informant did not say when defendant had most recently traveled to California for this purpose. She did not disclose how defendant travels to California, whether he takes his own car, whether he travels with anyone else, or whether she has ever seen drugs in any car registered to or controlled by defendant. The affidavit did not include the informant’s description of defendant’s vehicles. The affidavit does not refer to or describe the Pontiac or any other of defendant’s vehicles, directly or indirectly. The mere allegation that, at some unknown time in the past, defendant used some mode of transportation to bring methamphetamine from California to Oregon was insufficient to establish probable cause to search the Pontiac.

The affidavit states that, based on the affiant’s training and experience, he knows that drug dealers frequently use vehicles to transport narcotics. However, the informant told the police that, within 14 days of the warrant application, she purchased commercial quantities of methamphetamine from defendant and saw multiple pounds of methamphetamine in defendant’s bedroom. Defendant did not travel to the informant to deliver drugs. The weight of evidence set forth in the affidavit shows that defendant stored methamphetamine at home and engaged in illicit transactions at home, where his purchaser came to see him. This

further illustrates that probable cause to believe that drugs would be found in any vehicle associated with defendant was lacking.

The district court concluded that the affidavit supported probable cause to search all cars registered to defendant and that the warrant did not need to identify the Pontiac by name. The Ninth Circuit agreed. However, the Court should grant the writ because the Court of Appeals' decision hallows out and eviscerates the core rights protected by the Fourth Amendment. Probable cause to support a warrant is the cornerstone of the Fourth Amendment; yet, it was utterly lacking in this case. The failure to identify the Pontiac in any way violates the requirement that the warrant describe with particularity the place to be searched. U.S. Const., 4th Amd. This failure and the scope of the warrant targeting virtually any vehicle associated with defendant *or* with his residence violates the fundamental prohibition against general or overbroad warrants. *See generally Marron v. United States*, 275 U.S. 192, 196 (1927) (the particularity requirement is supposed to “make[] general searches . . . impossible and prevent[] the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.”).

4. The Ninth Circuit Erred In Holding That A Warrant That Becomes Null And Void Under State Law Is A Valid Warrant Under The Fourth Amendment

It is well established that a search or seizure executed in violation of state law does not result in exclusion of evidence in federal court unless the conduct also violates the Fourth Amendment. *See Virginia v. Moore*, 553 U.S. 164 (2008) (police did not violate Fourth Amendment when they made an arrest based on probable cause but prohibited under state law). But the circumstance in this case is distinguishable. Pursuant to Oregon law, the warrants for cell phone data were void after the expiration of five days. That is, legally, they ceased to exist. Because the warrants had become null and void, the searches effectively were warrantless, in violation of the Fourth Amendment warrant requirement.

Under Oregon law, a search warrant must be executed within five days, unless an exception is provided in the warrant. Oregon Revised Statute, § 133.565(3). In this case, one warrant was executed about eight days late and another was more than two months late. In *State v. Daw*, 765 P.2d 241 (Ore App Ct 1988), the Oregon Court of Appeals held that when a warrant expires due to the passage of time, the warrant is “no longer valid on its face.” *Id.* at 242. “A search based on an expired warrant is a warrantless search.” *Ibid.*

The Sixth Circuit has held that a search warrant deemed invalid *ab initio* under state law also is invalid for Fourth Amendment purposes. In *United States v. Master*, 614 F.3d 236 (6th Cir. 2010), the Court suppressed evidence derived from a search warrant because, pursuant to state law, the issuing magistrate did not have authority to issue a search warrant in a neighboring county. The government had relied on *Virginia v. Moore* and other cases that hold “that additional protections a state provides its citizens against search and seizure are irrelevant in federal prosecutions.” *Id.* at 239. But, the Sixth Circuit held that the warrant failed to comply with the Fourth Amendment because the judge did not have the necessary legal authority to issue the warrant. “[W]hen a warrant is signed by someone who lacks the legal authority necessary to issue search warrants, the warrant is void *ab initio*.” *Ibid.*, quoting *United States v. Scott*, 260 F.3d 512, 515 (6th Cir. 2001).

In this case, the Ninth Circuit stated that the warrants to the cell phone providers were “valid *ab initio*.” But they became invalid by the time they were executed. Whether the warrants were invalid from the beginning or became invalid by the time they were executed should not make any difference. In either case, the warrant was null and void at the relevant time of the search, rendering it warrantless in violation of the Fourth Amendment. *See Carpenter v. United States*, 138 S. Ct. 2206 (2018) (the

government needs a search warrant to obtain historical cell site data from cell phone providers).

The district court stated that the Fourth Amendment does not require that search warrants contain expiration dates, and therefore, the warrants here do not violate the federal constitution. But the issue is not whether the Fourth Amendment requires that a warrant be executed within a certain time. The problem is not delay *per se*, but rather, the fact that the passage of time rendered the warrants nonexistent, and the subsequent search warrantless.

Under this Court's Fourth Amendment jurisprudence, a warrantless search is presumptively unreasonable. This case presents the Court with an opportunity to address an important question that has the potential for arising with frequency: whether a warrant rendered null and void pursuant to state law can be deemed valid under the Fourth Amendment, or whether a warrantless search must be deemed warrantless for both federal and state purposes.

A ruling in defendant's favor on this issue would not be contrary to *Virginia v. Moore*. "It is settled law that the search and seizure conducted under a warrant must conform to the warrant[.]" *United States v. Upham*, 168 F.3d 532, 536 (1st Cir. 1999), *citing Marron v. United States*, 275 U.S. 192, 196-197 (1927). The warrants at issue in this case did not, on their

face, require their execution within five days, but that requirement was implicitly part of the warrants by virtue of state law. Even if the Fourth Amendment does not require execution within five days, a warrant that does contain an expiration provision is invalid after it expires. *See Sgro v. United States*, 287 U.S. 206, 210 (1932) (“A search warrant must be executed and returned to the judge who issues it within [the time frame specified in the warrant]; after the expiration of this time the warrant, unless executed, is void.”)

The Court should grant the petition for writ of certiorari in order to address an issue that likely arises with some frequency, *i.e.*, whether a state-issued search warrant that becomes null and void with the passage of time renders any search conducted pursuant to the warrant effectively a warrantless search under Fourth Amendment analysis.

CONCLUSION

The Court should grant the petition for a writ of certiorari with respect to any or all of the foregoing issues.

Respectfully submitted,

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APPENDIX

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 31 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 20-30275

Plaintiff-Appellee,

D.C. Nos. 6:17-cr-00274-MC-1

v.

6:17-cr-00274-MC

RONALD WAYNE THRASHER,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Argued and Submitted February 17, 2022
San Francisco, California

Before: GOULD and RAWLINSON, Circuit Judges, and ZIPPS,** District Judge.

A jury convicted Ronald Wayne Thrasher (“Thrasher”) of committing a series of crimes related to selling methamphetamine, and he was sentenced to 300 months imprisonment. Thrasher appeals the district court’s denial of his pretrial motions for a *Franks* hearing and to suppress evidence gained during a search of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Jennifer G. Zipps, United States District Judge for the District of Arizona, sitting by designation.

his residence and vehicle. Because the parties are familiar with the facts and procedural history of the case, we do not recite them here. We affirm the district court's denial of Thrasher's motions.

We review the denial of a motion to suppress and the denial of a motion for a *Franks* hearing *de novo*. *United States v. Norris*, 942 F.3d 902, 907 (9th Cir. 2019). “We review for clear error a finding of probable cause for a search warrant.” *United States v. Meek*, 366 F.3d 705, 712 (9th Cir. 2004). “The standard of review for the specificity of a warrant is *de novo*.” *United States v. Wong*, 334 F.3d 831, 836 (9th Cir. 2003).

1. The district court did not err in denying Thrasher's motion for a *Franks* hearing. Thrasher's evidence does not make a “substantial preliminary showing” that the warrant affidavit contained a knowingly or recklessly false and material statement. *See Franks v. Delaware*, 438 U.S. 154, 155–56 (1978). Examining the evidence, we are satisfied that the warrant affidavit fairly described the phone call between Thrasher and the Confidential Informant (“CI”), which was conducted in code.

Even assuming *arguendo* that Thrasher could make a substantial preliminary showing that the warrant affidavit knowingly or recklessly misrepresented the CI's criminal history, the CI's record of cooperation with law enforcement, or Thrasher's criminal history, the inaccuracies Thrasher identifies are not material.

The warrant affidavit made clear the CI's significant criminal record, including a conviction for a crime of dishonesty. Many of the alleged inaccuracies regarding the CI's record are minor or unproven allegations. Thrasher's criminal history was not central to the warrant affidavit's probable cause showing, and the warrant affidavit's description does not materially alter the overall picture that Thrasher himself had a significant criminal history.

2. The district court did not err in denying Thrasher's motion to suppress evidence found in a search of Thrasher's vehicle. The warrant affidavit established probable cause to search Thrasher's vehicle because there was significant evidence that he used it to traffic methamphetamine, and the warrant affidavit explained that vehicles are commonly used to purchase and deliver illicit drugs. The search warrant also identified Thrasher's vehicle with specificity because it encompassed all vehicles registered to or under his direct control.

3. We also hold that there was no error in the district court's denial of Thrasher's motion to suppress evidence gained through warrants to his cell phone providers. Thrasher's reliance on an out-of-circuit case is unpersuasive: the warrants here complied with the Fourth Amendment and were valid *ab initio*. See *Virginia v. Moore*, 553 U.S. 164, 176 (2008); *United States v. Artis*, 919 F.3d 1123, 1130 (9th Cir. 2019). The evidence obtained through these warrants was admissible in Thrasher's federal trial.

AFFIRMED.

1 we go ahead and say, Well, it wasn't false because look at
2 Detective Walls' report that the defense has offered, and
3 let's do an affidavit from him, which is what Franks is
4 talking about.

5 The one thing that Mr. Olson and I both agree about
6 is the warrant, as written, would have been signed by any
7 judge. And we submit that he has not made a substantial
8 showing that this affiant was intentionally dishonest or
9 recklessly omitted stuff to mislead this judge. We don't
10 think that's there.

11 And on top of that, if you insert the information
12 Mr. Olson complains about, alleges was recklessly omitted
13 with intent to mislead, as you pointed out with just the
14 within statement or the address statement, it makes it
15 stronger. It makes it a more -- quite frankly, better
16 written warrant, affidavit. That's all. Thank you.

17 THE COURT: Mr. Olson, you touched on the vehicle
18 issue. I think your argument is that the warrant was too
19 broad to describe adequately the vehicle. If I remember
20 right, the warrant says any vehicle under the control of
21 Mr. Thrasher, and the vehicle we are talking about was
22 registered to him.

23 MR. OLSON: Well, there's two issues, Your Honor.
24 There's that, but there's also the fact that the search
25 warrant affidavit makes no mention of the car whatsoever.

1 And so there's no probable cause basis for them.

2 THE COURT: Okay. It doesn't make a specific
3 reference to that car, just cars under his control?

4 MR. OLSON: No cars whatsoever.

5 MR. PAPAGNI: Look at the affidavit. It says, trips
6 to California every four to five days. And I don't know if
7 that was airplane or car or train. But I think if we read
8 the entire affidavit, including the officer's experience
9 about knowing how drug dealers transport drugs, and the fact,
10 of course, that we had the phone conversation where he's
11 driving from Prineville on the way to the house, we contend
12 to make a drug deal, that would give you the probable cause
13 that makes you think you could find something in the car.

14 We also add into the equation that the car was
15 stopped, not driven by Mr. Thrasher, but registered to him,
16 which specifically is sufficient for the particularity
17 requirement of the Fourth Amendment. And then later, not at
18 the time when Mr. Thrasher is arrested in the BMW, but later
19 at the house it's being driven by a felon who is under the
20 influence of methamphetamine. Who, by the way, consents to
21 get her purse out of the car. And we wait until we get the
22 warrant to go ahead and search the car, and underneath it we
23 find the metal cylinder that contains 95 grams of meth.

24 I don't know if the Court wanted to have a hearing
25 on that with the officers that were involved, but we can do

1 that. And I think that was the only other issue, unless the
2 Franks hearing results in suppression. In which case I am
3 going to argue the plain smell and consent issue.

4 THE COURT: I mean, my thought is with regard to the
5 vehicle, the question is should it have been added into the
6 warrant that a reasonable -- the magistrate to sign a warrant
7 to include a vehicle. And I think based on the affidavit and
8 the information given to the judge at the time, that it would
9 be reasonable to include the vehicles driven or under the
10 control of Mr. Thrasher to be included in the warrant.

11 I don't think we need a separate evidentiary hearing
12 as to whether it was appropriate to stop the vehicle. So to
13 me, that's -- the vehicle issue is not a large issue. I
14 think the warrant covered it. I think it was appropriate
15 that it was in the warrant.

16 The plain smell issue --

17 MR. OLSON: So, Your Honor, I think the way I have
18 looked at today's hearing is that I wasn't planning on
19 discussing anything that would come into play if Your Honor
20 finds that the warrant was invalid. Mr. Papagni will correct
21 me if I am wrong, but I think we get to issues of the plain
22 smell and the automobile exception, which can be another
23 basis that the government has put forth for the automobile.

24 Those issues, I believe, if Your Honor rules in
25 favor of the government, you don't have to get to that,

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

Case. No. 6:17-cr-00274-MC

v.

ORDER

RONALD WAYNE THRASHER,

Defendant.

MCSHANE, Judge:

Defendant Ronald Wayne Thrasher is charged with Felon in Possession of a Firearm, Possession of a Stolen Firearm and Ammunition, Conspiracy to Possess with Intent to Distribute Methamphetamine, Possession with Intent to Distribute 50 or more grams of Methamphetamine, and Possession of a Firearm in furtherance of a Drug Trafficking Crime. On May 19, 2017, members of the Central Oregon Drug Enforcement (CODE) team executed a search warrant at Thrasher's residence located at 8109 Northwest Deschutes Avenue in Madras, Oregon. Officers executed the warrant after CODE team members Jason Wall, Richard Bigelow, and Josh Spano were involved in a controlled buy leading to an informant's arrest earlier that day. The informant identified Thrasher as her supplier and told the officers that she had purchased methamphetamine from Thrasher the previous day. The informant also indicated that Thrasher had transported large

amounts of methamphetamine from California back to Central Oregon. She told officers she saw what she believed to be 15 pounds of methamphetamine in zip lock bags inside a black bag that Thrasher retrieved from under his bed. The informant then showed the detectives where she believed Thrasher lived, 8109 Northwest Deschutes Drive in Madras, Oregon.

Relying on this information, the detectives asked the informant to call Thrasher to arrange a purchase of methamphetamine. The informant agreed. The informant told the detectives that whenever she speaks with Thrasher over the phone, they use “code” language, and never explicitly speak of controlled substances, prices, or amounts during their conversations. Under the detectives’ supervision, the informant contacted Thrasher and asked if she could “meet him” or if she could “come see him”. Thrasher stated he was driving from Prineville back to Madras, but could meet the informant at his residence.

Based on all of this, Detective Bigelow started the process of obtaining a search warrant. Thrasher was stopped that afternoon by state police before he arrived back at his residence. Once Thrasher was in custody, Detectives Wall, Spano, and other officers went to Thrasher’s residence. Upon arrival, they contacted Robert Greene, who also resided at 8109 Deschutes Drive. Greene informed the officers that Thrasher rented one room in the house and allowed the officers to gain entry and search the common areas of the residence. Later that evening, officers executed the search warrant. Officers smelled a chemical indicative of methamphetamine emanating from the hall closet. The officers opened the closet and saw a black bag containing 15 pounds of methamphetamine. The officers also discovered a package containing \$16,965 worth of cash. Officers seized a smaller quantity of a controlled substance and a firearm found inside Thrasher’s bedroom.

Pursuant to the search warrant, officers were also authorized to conduct a search of “all vehicles registered to or under the direct control of the occupants frequenting the premises to be searched at the time of warrant service.” During the search of a Pontiac owned by Thrasher, officers found a canister of methamphetamine attached with a magnet to the car’s undercarriage.

Thrasher moves for a *Franks* hearing, arguing that affiant Bigelow recklessly and intentionally made false statements and material omissions in his probable cause affidavit. Thrasher argues the affidavit does not support a finding of probable cause without this alleged false information and he is therefore entitled to a *Franks* hearing to cross examine the officers.

STANDARDS

The Supreme Court outlined the standards a defendant faces when moving for a *Franks* hearing:

There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant. Finally, if these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.

Franks v. Delaware, 438 U.S. 152, 170 (1978).

DISCUSSION

“The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity”

and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a “substantial basis for . . . conclud[ing]’ that probable cause existed.” *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983) (alterations in original) (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)). Thrasher argues that upon removing the affidavit’s false statements, and including material omissions Officer Bigelow withheld from the magistrate, the affidavit does not provide probable cause that methamphetamine would be found in Thrasher’s residence or vehicle. In reviewing the affiant’s statements and omissions, courts are not to “flyspeck” the affidavit. *United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006). After all, officers drafting affidavits to present to a magistrate are usually not attorneys, and prepare the affidavit “in the midst and haste of a criminal investigation.” *Gates*, 462 U.S. at 235. Therefore, courts reviewing an affidavit in the context of a *Franks* motion must use a commonsense manner rather than a “hypertechnical” review. *Id.* at 236. So long as the magistrate had a “substantial basis” for concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more. *Id.*

Thrasher points to numerous alleged omissions and false statements from Officer Bigelow’s affidavit. Below is the affidavit, with Thrasher’s allegations included in bold brackets:

Summary of Affidavit:

This affidavit establishes probable cause to believe and I do believe that Ronald Wayne Thrasher DOB 08/28/1969 has committed the crimes of Unlawful Delivery of Methamphetamine and Unlawful Possession of Methamphetamine and Frequenting a Place where Controlled Substances are Used and that evidence of these crimes will be located within:

The residence located at 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon. The residence is further described as being a single story manufactured home. The primary color is white with light blue in color trim. The front door is white and faces to the south. The numbers

8109 are posted in white on a green sign that is posted directly to the west of the residence driveway at Deschutes Drive.

Any person frequenting the listed address at the time of warrant service.

All vehicles registered to or under the direct control of **Ronald Wayne Thrasher DOB 08/29/1969**.

Any and all vehicles registered to or under the direct control of the occupants frequenting the premises to be searched at the time of warrant service.

Local Investigation:

Within seven days of 05/19/2017 I spoke to a Confidential Reliable Informant, hereafter referred to as CRI, about the drug trafficking of Ronald Wayne Thrasher DOB 08/28/1969. **[False – this happened on 5/19/17, not within 7 days of it]**. At the time CRI described thrasher as a white male adult, approximately 50 years old that lived in Madras, Jefferson County, Oregon.

CRI told me he/she has purchased methamphetamine from Thrasher on multiple occasions in the last 2 months. CRI told me he/she purchases methamphetamine from Thrasher every four or five days. CRI stated Thrasher told him/her that he travels to southern California to pick up multiple pounds of methamphetamine and then traffics the methamphetamine back to the Madras, Jefferson County, Oregon area. CRI has observed what he/she described as multiple pounds of methamphetamine that Thrasher showed him/her.

CRI told me within 14 days of 05/19/2017 CRI purchased commercial quantities of methamphetamine from Thrasher at his residence. While at the residence CRI observed what he/she described as multiple pounds of methamphetamine in Thrasher's room. I know based on my training and experience that methamphetamine is often times sold in .1 gram increments. I also know based on my training and experience that anything over 10 grams of methamphetamine is considered a commercial quantity of methamphetamine under Oregon law.

CRI stated he/she communicates with Thrasher via cellular phone using text messages and phone calls. CRI provided me with a phone number for Thrasher of 971-712-6424. A check of the cellular phone numbers using commercial databases revealed phone number 971-712-6424 is associated with Ronald Wayne Thrasher DOB 08/28/1969. **[Omission of fact that these databases would have shown Thrasher's association with address in Portland area]**. I showed CRI a photograph of Ronald Wayne Thrasher DOB 08/28/1969. I asked CRI if he/she knew the person from the photograph. CRI told me the person in the photograph was the Ron Thrasher he/she told me about. **[Omission of known fact that Thrasher's DMV address is in Gresham]**.

CRI showed me his/her cellular phone which he/she used to communicate with Thrasher. I noted several phone calls made to Thrasher's phone number. I did not

find any text messages from Thrasher on CRI's phone. CRI told me he/she routinely deletes text messages from Thrasher. CRI drove with Detective Jason Wall of the Deschutes County Sheriff's Office and Central Oregon Drug Enforcement Team and Officer Josh Spano of the City of Bend Police Department to 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon. **[Not accurate. CRI drove her own vehicle to Safeway parking lot in Madras, where she then got into the officer's vehicle]**. CRI identified the property as the residence he/she went to when he/she purchased methamphetamine from Thrasher.

Within 48 hours of 05/19/2017 CRI contacted Thrasher via cellular phone. **[False – this happened same day]**. The phone conversation was conducted in the presence of Detective Jason Wall and Officer Josh Spano. During the phone conversation Thrasher agreed to sell CRI methamphetamine and arranged to meet CRI to purchase the methamphetamine. **[Intentionally false description of phone call]**. This conversation corroborated the CRI's drug purchasing relationship with Ronald Wayne Thrasher. **[Intentionally false]**.

Using a law enforcement database I found that Ronald Wayne Thrasher DOB 08/28/1969 has a criminal history that includes convictions for Delivery of Controlled Substances X5 **[False – only 2 DCS convictions]**, Possession of Controlled Substances X 6 **[False – only 3 PCS convictions]**, and additional felony convictions for Felon in Possession of a Firearm, Burglary I, Unauthorized Use Motor Vehicle X2 **[False – only 1 UUMV conviction]**, and Criminal Driving Suspended X2. **[Omission of fact that last conviction was 19 years ago]**.

CRI is considered reliable because he/she has provided specific and verified information to the Central Oregon Drug Enforcement Team, hereafter referred to as CODE team. **[Omission of fact that CRI repeatedly violated the law before, during, and after period of working for CODE, that she falsely claimed to be on a CODE operation during one arrest, and that she ultimately failed to fulfill her commitment to CODE and was convicted of drug charges]**. Previously, the CRI has conducted controlled buys for CODE and given reliable information which resulted in a search warrant and multiple arrests and convictions of offenders in federal court. **[False – only one federal conviction; only other prosecution, in state court, was dismissed]**. The information provided by CRI was found to be true and accurate through independent investigation. **[Too vague to be meaningful]**. CRI has provided information regarding illegal drug dealers including names, vehicles, and locations that I know to be accurate. **[Too vague and of questionable accuracy, since the affiant did not know this CRI before 5/19/17]**. CRI has provided information for consideration on pending criminal charges which includes drug charges where Ronald Wayne Thrasher was the source of the methamphetamine. CRI has a criminal history that includes convictions for Possession of Controlled Substances X 5, Identity Theft, and Hindering Prosecution. **[Omission of several identity theft counts and other crimes; omission of other uncharged crimes that**

reflect negatively on credibility; fails to mention criminal activity while acting as informant and that most recent conviction was in 2016].

Memo. in Supp. 8-10.

I address each of Thrasher's challenges in turn.

I. Thrasher argues that the affidavit falsely states that the informant provided the information within 7 days of the search warrant being executed.

Thrasher argues that the affidavit falsely states that affiant Bigelow spoke with CRI "within 7 days of May 19, 2017." Thrasher points out that this happened on May 19, 2017, and contends that affiant Bigelow wanted to give the impression that he had time to corroborate the information that CRI gave him.

Officer Bigelow did not mislead the magistrate. The Government has a protected "interest in maintaining [the] integrity of ongoing criminal investigations and ensuring the safety of the informant." *United States v. Napier*, 436 F.3d 1133, 1136 (9th Cir. 2006) (citing *Roviaro v. United States*, 353 U.S. 53, 60-64 (1957)). The government's interest "protects more than just the name of the informant and extends to information that would tend to reveal the identity of the informant." *Id.* Officer Bigelow truthfully stated the dates in his affidavit. Any lack of specificity as to the underlying circumstances of the arrest and the informant's purchases of methamphetamine from Thrasher fall under the government's privilege in protecting the identity of a confidential informant during an active investigation.

II. Thrasher argues that affiant Bigelow made a material omission when he failed to include that DMV records indicated that Thrasher lived in Gresham, Oregon.

Thrasher points out that affiant Bigelow failed to disclose that the DMV record check revealed that Thrasher was listed as living in Gresham, Oregon, instead of at 8109 NW Deschutes Drive in Madras, Oregon. While this is true, before obtaining the warrant, the detectives established that Thrasher was residing at the Madras, Oregon address. The informant

told detectives that she had repeatedly purchased methamphetamine from Thrasher at the Madras, Oregon address. The informant drove with the officer's to Thrasher's residence. Before obtaining the warrant, officers spoke to the owner of the residence at 8109 NW Deschutes Drive. The owner confirmed Thrasher rented one bedroom in the home. Additionally, Thrasher's own admission during the phone conversation revealed that he was driving back to Madras and that the informant could meet him at his residence in Madras, Oregon. The omission of Thrasher's apparently stale DMV address was not negligent and, in any case, was not material.

III. Thrasher argues that affiant Bigelow intentionally falsified the affidavit by claiming that Thrasher agreed to sell methamphetamine to the informant during their phone conversation.

Thrasher argues that affiant Bigelow made an intentional misrepresentation in the affidavit when he said that Thrasher "agreed to sell CRI methamphetamine and arranged to meet CRI to purchase the methamphetamine." In describing the phone call, Officer Wall wrote:

during this conversation CRI asked Thrasher if he/she could "meet him" or if he/she could "come see him." Thrasher advised he was driving from Prineville OR towards Madras and was almost in the Terrebonne area. Thrasher advised CRI could meet him at his residence.

Ex. 2, 1.

Thrasher argues, "That was the full extent of the phone call; there was no mention of an 'agreement' to sell methamphetamine, nor any mention of drugs at all, either in coded language or not." Memo. in Supp., 21. Thrasher argues that adding the seemingly innocuous conversation to the affidavit detracts from any finding of probable cause.

Thrasher, however, may not point only to those portions of Officer Wall's narrative that purportedly support his case while ignoring portions of that same report indicating the call was not as innocent as argued by Thrasher. Here, Thrasher seeks to pluck one statement out of the

report without including context from the statement immediately following. Officer Wall's report continues:

CRI had previously explained that he/she would use code to speak to Thrasher, and never spoke of the actual controlled substances, prices, or amounts in plain language. CRI explained the code word he/she used during the conversation myself and Officer Spano listened to, referred to him/her attempting to obtain more methamphetamine.

Based on my training and experience, I know and have been present during phone conversations when subjects involved in the distribution of controlled substances will use "code" words or phrases to make reference to quantities and prices to avoid detection by Law Enforcement.

Ex. 2, 1.

At best, Thrasher demonstrates that Officer Bigelow negligently failed to include a more detailed explanation of the call, including the informant's statement to the officers that she and Thrasher in fact spoke in code during the relevant phone call, and that the call related to an agreement for the informant to meet Thrasher to purchase methamphetamine. Recognizing that Officer Bigelow prepared the affidavit "in the midst and haste of a criminal investigation," *Gates*, 462 U.S. at 235, I decline to review the affidavit in a "hypertechnical" manner, *id.* at 236.

I note the context of the phone call not to peek outside the four corners of the affidavit, but instead to determine whether Officer Bigelow intentionally misled the magistrate. In viewing the rest of Officer Wall's report (introduced by Thrasher in support of his motion), it is clear that Officer Bigelow neither intentionally, nor recklessly, misled the magistrate. Instead, Officer Bigelow's statement that Thrasher "agreed to sell CRI methamphetamine and arranged to meet CRI to purchase the methamphetamine" is a reasonable interpretation of Officer Wall's description of the phone call and the informant's description of code words she and Thrasher used to arrange the sale of methamphetamine.

IV. Thrasher argues that the affidavit is inaccurate because it did not expressly state the fact that CRI parked at Safeway and drove with detectives to Thrasher's residence in Madras, Oregon.

The affidavit states that the informant drove with Wall and Spano to 8109 NW Deschutes Drive. Thrasher argues that this is not accurate because the informant actually drove her own vehicle to a Safeway in Madras, where she parked and then accompanied Wall and Spano to 8109 NW Deschutes Drive. Thrasher seems to argue that this is a material issue. This argument is meritless and, if accepted, would constitute “flyspecking” the affidavit. The informant directed Wall and Spano to 8109 NW Deschutes Drive, and the affidavit states that fact. Whether she drove to Safeway before getting in the officers’ car is immaterial, and would have no influence on the probable cause determination.

V. Thrasher argues that the affidavit falsely overstates his criminal history while minimizing the informant's criminal history.

Thrasher argues that affiant Bigelow falsely claimed that Thrasher had five convictions for delivery of a controlled substance, six convictions for possession of a controlled substance, and two convictions for unauthorized use of a motor vehicle. Thrasher contends that these misstatements are material to the finding of probable cause because although he has convictions for all of these offenses, he does not have as many as stated in the affidavit. He also points out that affiant Bigelow failed to mention that his convictions are 19 years old and therefore stale.

Under *Franks*, the Court rejected the argument that a “truthful” showing meant that every fact recited in the affidavit is necessarily correct. *Franks*, 438 U.S. at 165. Instead, the Court said that “probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant’s own knowledge that sometimes must be garnered hastily, thus truthful means that the information put forth is believed or appropriately accepted by the affiant as true.” *Id.* The Court also made clear that defendant’s accusations of

deliberate falsehoods or reckless disregard for the truth must be accompanied by evidence, such as affidavits or sworn statements by witnesses. *Id.* at 171.

Detectives may have acted hastily, knowing they needed to collect all of this information quickly, but there is no evidence they acted in bad faith. The affidavit accurately informed the magistrate that Thrasher had numerous felony drug convictions. “A suspect’s criminal history ‘can be helpful in establishing probable cause, especially where the previous arrest or conviction involves a crime of the same general nature as the one the warrant is seeking to uncover.’”

United States v. Perkins, 850 F.3d 1109, 1120 (9th Cir. 2017) (quoting *United States v. Nora*, 765 F.3d 1049, 1059 (9th Cir. 2014)). Thrasher had multiple prior felony drug convictions. Although those convictions were many years old, the “temporal gap” is bridged here by the fact that Thrasher was only recently released from prison after serving 17 years in federal prison. Although Officer Bigelow was perhaps reckless in listing the exact number of Thrasher’s convictions, the fact that Thrasher has been convicted of delivery of a controlled substance two times instead of five times, and possession of a controlled substance three times instead of six times is immaterial in determining whether probable cause exists.

Thrasher also argues that affiant Bigelow intentionally downplayed the informant’s past criminal behavior in order to make her information look more credible to the magistrate. He points out that the affidavit does not state that the informant had lied to law enforcement on previous occasions, that her most recent conviction was in 2016 for theft, and that the informant had a less-than stellar performance history when working as an informant. Thrasher fails to submit any evidence demonstrating Officer Bigelow was aware of the informant’s questionable history as an informant, including an email from a deputy district attorney essentially stating the informant lied about everything, or the specific facts surrounding the informant’s previous

arrests. One cannot expect an officer to peruse every police report of every interaction with an informant before preparing an affidavit. This is especially true when, as was the case here, the informant's arrest, her information about Thrasher, and the search of Thrasher's residence occurred on the same day. Additionally, despite Thrasher's statement at oral argument that this case does not involve a large police department with hundreds of officers, there is scant evidence (and no direct evidence) that Officer Bigelow knew any of the information Thrasher argues he should have been aware of.

For purposes of determining the existence of probable cause, an informant's reliability and basis of knowledge "are relevant considerations in the totality-of-the-circumstances analysis that traditionally has guided probable-cause determinations: a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Gates*, 462 U.S. at 233. "[E]ven if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case." *Id.* at 234.

The informant's multiple convictions for crimes of dishonesty indicate the officers should have questioned the reliability of her statements. This is true of most informants involved in drug trafficking investigations. But numerous factors compensated for the informant's deficits when it came to assessing truthfulness. If the informant has provided accurate information on past occasions, they may be presumed trustworthy on subsequent occasions. *United States v. Alexander*, 761 F.2d 1294, 1300 (9th Cir.1985). When the information provided in the past involved the same type of criminal activity as the current information, the inference of trustworthiness is even stronger. *United States v. Angulo-Lopez*, 791 F.2d 1394 (9th Cir. 1986)

(citing *Gates*, 462 U.S. at 233). Finally, an informant's reliability may be demonstrated through independent police corroboration of the information provided. *United States v. Freitas*, 716 F.2d 1216, 1222 (9th Cir.1983).

Here, the informant provided reliable information in the past, and had participated in controlled buys before that led to multiple arrests and at least one conviction. Additionally, the detectives corroborated her story by verifying that all of Thrasher's information she gave them was accurate, including his name, residence, and phone number. As noted, before obtaining the search warrant, the officers confirmed with the owner of 8109 NW Deschutes Drive that Thrasher in fact rented a room at the house. Detectives listened to the phone conversation the informant had with Thrasher setting up a purchase of methamphetamine.

The informant incriminated herself with her statements to the officers. Although the officers arrested the informant with methamphetamine, she volunteered numerous other commercial purchases from Thrasher in the weeks before that arrest. The affidavit accurately portrayed the informant as one seeking consideration for providing information about Thrasher. Although the affidavit perhaps recklessly minimized the informant's prior convictions for crimes of dishonesty, the affidavit alerted the magistrate to the informant's conviction for identity theft. Therefore, any omission of the informant's other convictions was immaterial. The fact that the informant provided inculpatory information to the officers, had previously provided accurate tips leading to a conviction for a drug crime, and the fact that the officers corroborated many of her statements compensated for her general unreliability. *See Gates*, 462 U.S. at 232 (an informant's reliability and basis of knowledge "are relevant considerations in the totality-of-the-circumstances analysis that traditionally has guided probable-cause determinations: a deficiency

in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.”).

Thrasher argues this case is analogous to *United States v. Hall*, 113 F.3d 157 (9th Cir. 1997). I disagree. In *Hall*, the officer withheld the informant’s crime of dishonesty from the magistrate. Here, the magistrate knew the informant had a conviction for a crime of dishonesty, but did not know the number of convictions. Probable cause in *Hall* depended entirely upon the information provided by the informant. The “corroboration of innocent facts” in *Hall* consisted of confirming a heavysset man named “Ron” drove a red pickup and lived in a mobile home. The only drug-related tip from that informant, regarding where Hall hid the cocaine inside his trailer, could not be corroborated until after the magistrate signed the warrant. Here, the officers listened to the informant arrange what they reasonably believed to be a coded agreement for Thrasher to sell methamphetamine to the informant. Additionally, while the informant in *Hall* only provided inculpatory information the officers already knew, the informant here told officers that Thrasher recently sold her multiple commercial quantities of methamphetamine. Finally, unlike the informant in *Hall* (who had a history of making false reports but no prior history of providing law enforcement with reliable information), the informant here previously provided information leading to at least one arrest and conviction for distributing a controlled substance. This case is distinguishable from *Hall*.

CONCLUSION

The affidavit demonstrated a fair probability that methamphetamine would be found at Thrasher’s residence and vehicles. The affidavit stated that an informant with a conviction for identity theft and numerous drug offenses revealed purchasing commercial quantities of methamphetamine from Thrasher, who also had numerous convictions for drug offenses. The

informant personally observed 15 pounds of methamphetamine in Thrasher's residence. The magistrate understood the informant hoped to receive consideration for providing information regarding Thrasher. The officers listened to a phone call in which the officers reasonably believed the informant agreed to meet Thrasher at his residence to purchase methamphetamine. The informant took officers to Thrasher's residence where the landlord confirmed Thrasher rented a room. The affidavit provided probable cause that officers would find methamphetamine in Thrasher's residence or vehicles. Therefore, Thrasher is not entitled to a *Franks* hearing. *Franks*, 438 U.S. at 170 ("if, when material that is subject to the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.").

IT IS SO ORDERED.

DATED this 13th day of July, 2018.

/s/ Michael McShane
Michael McShane
United State District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

Case. No. 6:17-cr-00274-MC

v.

ORDER

RONALD WAYNE THRASHER,

Defendant.

MCSHANE, Judge:

Defendant Ronald Wayne Thrasher is charged with Felon in Possession of a Firearm, Possession of a Stolen Firearm and Ammunition, Conspiracy to Possess with Intent to Distribute Methamphetamine, Possession with Intent to Distribute 50 or more grams of Methamphetamine, and Possession of a Firearm in furtherance of a Drug Trafficking Crime. Thrasher moves for the suppression of evidence obtained from cell service providers of three devices allegedly used by him. This motion is made pursuant to the Fourth Amendment, arguing that the cell phone data was obtained through a warrantless search since the warrants were not served within five days as stipulated by Oregon law.

BACKGROUND

On May 19, 2017, members of the Central Oregon Drug Enforcement (CODE) team executed a search warrant at Thrasher's residence located at 8109 Northwest Deschutes Avenue in Madras, Oregon. In execution of this warrant, officers seized three cell phones. On May 31,

2017, Jefferson County Circuit Court Judge Ahern issued a search warrant for data from the service providers of the three phones supported by an affidavit sworn by Detective Richard C. Bigelow, a member of the CODE team. Detective Bigelow's affidavit identified Verizon Wireless (Cellco) as the service provider for two of the phones and T-Mobile affiliate MetroPCS as the provider for the other phone. According to the affidavit, all numbers were described to the officer by the Confidential Reliable Informant (CRI) as numbers that the CRI had previously used to communicate with Thrasher.

The search warrants were faxed from the Federal Bureau of Investigations office in Bend, Oregon, to the service providers on June 13, 2017, thirteen days after Judge Ahern issued the warrants. Cell phone data from Verizon was received on June 30, 2017. A search warrant was faxed a second time to T-Mobile on August 25, 2017, and cell phone data was later received on September 6, 2017. Detective Bigelow compiled the evidence provided by the service providers and delivered it to DEA Agent Wilson.

DISCUSSION

Thrasher moves for the suppression of the evidence received from the service providers. Thrasher argues that because the warrants were executed thirteen days after they were issued, the warrants were null and void under Oregon law at the time of execution. If the warrants were void, then the search of the cell service providers was a warrantless search, and the evidence from the search could be suppressed. However, suppression of this evidence is not necessary in this case.

ORS § 133.565(3) stipulates that, notwithstanding an exception provided by a judge, search warrants must be executed within five days of being issued. Thrasher correctly argues that under Oregon law, a warrant served after the five days is "no longer valid on its face." *State v.*

Daw, 94 Or. App. 370, 372 (1988). The warrants executed on the service providers were executed thirteen days after being issued in violation of ORS § 133.565(3) and were thus invalid under state law. This circuit, though, has long recognized that “evidence obtained by federal officials acting in concert with state officials in violation of state law but in compliance with federal law is admissible in federal court.” *United States v. Chavez-Vernaza*, 844 F.2d 1368, 1372 (9th Cir. 1987)(case citations omitted).

However, Thrasher points to a potential exception to this rule highlighted in *United States v. Master*, where the Sixth Circuit suppressed evidence for violation of state law that made the warrant invalid on its face. *United States v. Master*, 614 F.3d 236, 239–40 (6th Cir. 2010). In that case, a judge issued a warrant in a county where he did not possess authorization to do so under state law. *Id.* The court held that without the proper judicial authorization under state law, the warrant was invalid “ab initio,” and the evidence gained from the execution of the warrant was suppressed. *Id.* Thrasher argues that the holding in *Master* should be applied in this case because the warrants for the cell phone data had become invalid on their face under state law. However, this argument is unpersuasive because the holding in *Master* does not apply to the facts of this case.

The Sixth Circuit in *Master* held not just that the warrant was invalid under state law, but also that it was invalid under federal law. *Id.* The court noted that the violated state law was not an additional protection for its citizens, but instead a procedural rule defining the authority of the judge issuing the warrant. Because the judge in the case lacked the authorization to issue the warrant, the warrant was invalid pursuant to the Fourth Amendment in addition to state law. Because of this distinction, Thrasher’s reliance on *Master* is misplaced. Oregon’s statute providing an expiration date for warrants is an additional protection for citizens and not a

requirement under the Constitution. The Fourth Amendment does not require search warrants to contain expiration dates. *United States v. Sims*, 428 F.3d 945, 955 (10th Cir. 2005)(quoting *United States v. Gerber*, 994 F.2d 1556, 1559 (11th Cir. 1993); *see also United States v. Butts*, 357 Fed. Appx. 850 (9th Cir. 2009). Therefore, unlike in *Master*, the warrants executed in this case were invalid under state law, but not under federal law. Accordingly, the ruling of the Sixth Circuit in *Master* does not apply to this case.

Additionally, two other circuits have faced the issue of evidence acquired by expired warrants under state law. *See United States v. Brewer*, 588 F.3d 1165, 1172–72 (8th Cir. 2009); and *United States v. Syphers*, 426 F.3d 461, 468–69 (1st Cir. 2005). In these cases, both courts held that violations of such state warrant expiration laws were inconsequential in federal court so long as probable cause had not dissipated at the time of execution of the warrants. In this case, there is no evidence that the probable cause from the initial warrant to search the cell phone data had dissipated because of the extra eight days taken to execute the warrant. Given that probable cause still existed at the time of execution, the warrants, in this case, were compliant with federal law, and the evidence does not need to be suppressed.

CONCLUSION

For the reasons set forth above, Defendant’s Motion to Suppress, ECF No. 395, is DENIED.

IT IS SO ORDERED.

DATED this 2nd day of July, 2019.

/s/ Michael McShane
Michael McShane
United State District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA

Plaintiff,

v.

RONALD WAYNE THRASHER

Defendant.

JUDGMENT IN A CRIMINAL CASE**Case No.: 6:17-CR-00274-MC-1****USM Number: 63167-065**Per C. Olson,
Defendant's AttorneyAmy E. Potter and Judith Harper
Assistant U.S. Attorney**THE DEFENDANT:**

☒ was found guilty on counts 1, 2, 5, 7, 10, and 11, of the Fourth Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of the following offense(s):

<u>Title, Section & Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
21:841(a)(1), (b)(1)(A)(viii), 846 Conspiracy to Possess with Intent to Distribute a Mixture or Substance Containing Methamphetamine; Forfeiture Allegation	Beginning on or about 5/1/2016 and continuing until 8/7/2017	1ssss
21:841(a)(1), (b)(1)(A)(viii) Possession with Intent to Distribute a Mixture or Substance Containing Methamphetamine; Forfeiture Allegation	1/18/2017	2ssss
21:841(a)(1), (b)(1)(A)(viii) Possession with Intent to Distribute a Mixture or Substance Containing Methamphetamine; Forfeiture Allegation	2/14/2017	5ssss
21:841(a)(1), (b)(1)(A)(viii) Possession with Intent to Distribute a Mixture or Substance Containing Methamphetamine; Forfeiture Allegation	2/17/2017	7ssss
21:841(a)(1), (b)(1)(A)(viii) Possession with Intent to Distribute a Mixture or Substance Containing Methamphetamine; Forfeiture Allegation	4/24/2017	10ssss
21:841(a)(1), (b)(1)(A)(viii) Possession with Intent to Distribute Methamphetamine; Forfeiture Allegation	5/19/2017	11ssss

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on counts 3 and 12 of the Fourth Superseding Indictment and is discharged as to such counts.

☒ The Indictment, Superseding Indictment, Second Superseding Indictment and Third Superseding Indictment as to this defendant are dismissed on the motion of the United States. Count 9 of the Fourth Superseding Indictment is dismissed on the Court's ruling on the Defendant's Motion for Acquittal entered in open court on August 8, 2019. Count 14 of the Fourth Superseding Indictment was dismissed on the Motion of the United States.

☒ The defendant shall pay a special assessment in the amount of \$100.00 for Counts 1, 2, 5, 7, 10, and 11 as to the Fourth Superseding Indictment for a total of \$600.00 payable to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties Sheet.)

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.

December 17, 2020

Date of Imposition of Sentence



Signature of Judicial Officer

Michael J. McShane, U.S. District Judge

Name and Title of Judicial Officer

December 23, 2020

Date

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 2 - ImprisonmentDEFENDANT: RONALD WAYNE THRASHER
CASE NUMBER: 6:17-CR-00274-MC-1

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IMPRISONMENT

As to **Counts 1, 2, 5, 7, 10, and 11**, the defendant is committed to the Bureau of Prisons for confinement for a period of **300 months** on each count, with the sentences on all counts to be served **concurrent** with each other. All counts are to be served **concurrent to** the supervised release revocation sentence in **3:98-CR-00388-1**.

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

1. That the defendant be incarcerated in FCC Lompoc or FCI Phoenix

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

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

☐ at _____ 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 _____ on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 USC §3585(b) and the policies of the Bureau of Prisons.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years**.

MANDATORY CONDITIONS

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 which 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)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

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 _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must submit your person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. You must participate in a substance abuse treatment or alcohol abuse treatment program, which may include inpatient treatment, and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The program may include urinalysis testing to determine if you have used drugs or alcohol. You must not attempt to obstruct or tamper with the testing methods.
3. You must submit to substance abuse testing to determine if you have used a prohibited substance. Such testing may include up to twelve (12) urinalysis tests per month. You must not attempt to obstruct or tamper with the testing methods.
4. You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption, except with the prior approval of the probation officer.
5. You must not go to, or remain at any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer. Except as authorized by court order, you must not possess, use or sell marijuana or any marijuana derivative (including THC) in any form (including edibles) or for any purpose (including medical purposes). Without the prior permission of the probation officer, you must not enter any location where marijuana or marijuana derivatives are dispensed, sold, packaged, or manufactured.
6. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: RONALD WAYNE THRASHER
CASE NUMBER: 6:17-CR-00274-MC-1

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this judgment.

	<u>Assessment</u> <u>(as noted on Sheet 1)</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA</u> <u>Assessment¹</u>	<u>JVTA</u> <u>Assessment²</u>	<u>TOTAL</u>
<u>TOTALS</u>	\$600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ 600.00

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

☐ The defendant shall 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 non-federal victims must be paid in full prior to the United States receiving payment.

☐ If applicable, restitution amount ordered pursuant to plea agreement: \$_____.

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 the Schedule of Payments 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 is waived for the ☐ fine and/or ☐ restitution.

☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

Any payment shall be divided proportionately among the payees named unless otherwise specified.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment¹ of the total criminal monetary penalties shall be as follows:

- A. ☐ Lump sum payment of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or
- B. ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or
- C. ☐ If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$ _____, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately upon release from imprisonment.
- D. ☐ Any balance at the imposition of this sentence shall be paid in monthly installments of not less than \$ _____, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately.
- E. ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows: (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program. . If the defendant received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, the defendant shall be required to apply the value of such resources to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

Nothing ordered herein shall affect the government's ability to collect up to the total amount of criminal monetary penalties imposed, pursuant to any existing collection authority.

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

Clerk of Court
U.S. District Court - Oregon
405 E. 8th Ave., Ste. 2100
Eugene, OR 97401

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

☐ **Joint and Several**

Case Number	Defendant and Co-Defendant Names	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
	(including Defendant number)			

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

¹ Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JEFFERSON COUNTY

STATE OF OREGON

) s.s.
) AFFIDAVIT FOR SEARCH
) WARRANT

I, Richard C. Bigelow, being first duly sworn on oath do hereby depose and say that:

I am a sworn police officer employed by City of Bend Police Department where I have been continuously employed since March 2005. Formerly I was employed as a Reserve Police Officer for the City of Bend for over a year, and for six of those months I was a Law Enforcement Technician for the Deschutes County Sheriff's Office. I currently hold an Advanced Police Certificate from the Oregon Department of Public Safety Standards and Training.

I have successfully completed the Department of Public Safety Standards and Training (DPSST) Certified Police Academy. In addition I have completed over 2000 hours of DPSST certified training through the City of Bend Police Department. I am currently assigned as a Narcotics Detective at the Bend Police Department and the Central Oregon Drug Enforcement Team and was so employed during all times relevant herein. During my training as a Police Officer I have been trained to investigate persons for Homicide, Property Crimes, Traffic and DUI Enforcement, Narcotics, Robbery, Weapons Crimes and Sexual Abuse Investigations. I have been involved in numerous Criminal Investigations during my career to include, but not limited to Robbery Investigations, Narcotics Investigations, Sex Offenses, Thefts, Burglary, Weapons Crimes, Identity Thefts and Forgery Investigations.

Summary of Affidavit:

This affidavit establishes probable cause to believe and I do believe that Ronald Wayne Thrasher DOB 08/28/1969 has committed the crimes of Unlawful Delivery of Methamphetamine and Unlawful Possession of Methamphetamine and Frequenting a Place where Controlled Substances are Used and that evidence of these crimes will be located within:

The residence located at 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon. The residence is further described as being a single story manufactured home. The primary color is white with light blue in color trim. The front door is white and faces to the south. The numbers 8109 are posted in white on a green sign that is posted directly to the west of the residence driveway at Deschutes Drive.

Any person frequenting the listed address at the time of warrant service.

All vehicles registered to or under the direct control of **Ronald Wayne Thrasher DOB 08/29/1969**.

Any and all vehicles registered to or under the direct control of the occupants frequenting the premises to be searched at the time of warrant service.

Local Investigation:

Within seven days of 05/19/2017 I spoke to a Confidential Reliable Informant, hereafter referred to as CRI, about the drug trafficking of Ronald Wayne Thrasher DOB 08/28/1969. At the time CRI described thrasher as a white male adult, approximately 50 years old that lived in Madras, Jefferson County, Oregon.

CRI told me he/she has purchased methamphetamine from Thrasher on multiple occasions in the last 2 months. CRI told me he/she purchases methamphetamine from Thrasher every four or five days. CRI stated Thrasher told him/her that he travels to southern California to pick up multiple pounds of methamphetamine and then traffics the methamphetamine back to the Madras, Jefferson County, Oregon area. CRI has observed what he/she described as multiple pounds of methamphetamine that Thrasher showed him/her.

CRI told me within 14 days of 05/19/2017 CRI purchased commercial quantities of methamphetamine from Thrasher at his residence. While at the residence CRI observed what he/she described as multiple pounds of methamphetamine in Thrasher's room. I know based on my training and experience that methamphetamine is often times sold in .1 gram increments. I also know based on my training and experience that anything over 10 grams of methamphetamine is considered a commercial quantity of methamphetamine under Oregon law.

CRI stated he/she communicates with Thrasher via cellular phone using text messages and phone calls. CRI provided me with a phone number for Thrasher of 971-712-6424. A check of the cellular phone numbers using commercial databases revealed phone number 971-712-6424 is associated with Ronald Wayne Thrasher DOB 08/28/1969. I showed CRI a photograph of Ronald Wayne Thrasher DOB 08/28/1969. I asked CRI if he/she knew the person from the photograph. CRI told me the person in the photograph was the Ron Thrasher he/she told me about.

CRI showed me his/her cellular phone which he/she used to communicate with Thrasher. I noted several phone calls made to Thrasher's phone number. I did not find any text messages from Thrasher on CRI's phone. CRI told me he/she routinely deletes text messages from Thrasher.

CRI drove with Detective Jason Wall of the Deschutes County Sheriff's Office and Central Oregon Drug Enforcement Team and Officer Josh Spano of the City of Bend Police Department to 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon. CRI identified the property as the residence he/she went to when he/she purchased methamphetamine from Thrasher.

Within 48 hours of 05/19/2017 CRI contacted Thrasher via cellular phone. The phone conversation was conducted in the presence of Detective Jason Wall and Officer Josh Spano. During the phone conversation Thrasher agreed to sell CRI methamphetamine and arranged to meet CRI to purchase the methamphetamine. This conversation corroborated the CRI's drug purchasing relationship with Ronald Wayne Thrasher.

Using a law enforcement database I found that Ronald Wayne Thrasher DOB 08/28/1969 has a criminal history that includes convictions for Delivery of Controlled Substances X5, Possession of Controlled Substances X 6, and additional felony convictions for Felon in Possession of a Firearm, Burglary I, Unauthorized Use Motor Vehicle X2, and Criminal Driving Suspended X2

CRI is considered reliable because he/she has provided specific and verified information to the Central Oregon Drug Enforcement Team, hereafter referred to as CODE team. Previously, the CRI has conducted controlled buys for CODE and given reliable information which resulted in a search warrant and multiple arrests and convictions of offenders in federal court. The information provided by CRI was found to be true and accurate through independent investigation. CRI has provided information regarding illegal drug dealers including names, vehicles, and locations that I know to be accurate. CRI has provided information for consideration on pending criminal charges which includes drug charges where Ronald Wayne Thrasher was the source of the methamphetamine. CRI has a criminal history that includes convictions for Possession of Controlled Substances X 5, Identity Theft, and Hindering Prosecution.

Basis of knowledge:

Based on my training and experience I know the following points to be true:

- I have been involved in or been the case agent during controlled buys during my law enforcement career. I know from my training and experience that a "controlled buy" or "controlled purchase" is an investigative technique whereby an informant purchases an illegal controlled substance under controlled circumstances. The informant and his/her vehicle are searched by detectives before the purchase occurs. The detective, through that search, ensures that the

informant is not in possession of any controlled substances, contraband or currency. The informant is then fitted with an audio and/or video transmitting and recording device. The informant is then provided with pre-recorded "buy money," currency used to purchase the controlled substance from a given suspect or suspects.

- The informant then goes to a pre-determined location in order to make the purchase from the suspect(s). During all travel time, the informant is monitored by detectives in order to ensure that the informant does not obtain controlled substances from someone other than the suspect(s). The informant then meets with the suspect(s) and completes the purchase of controlled substances while being monitored by detectives, employing the audio and/or video devices previously mentioned.
- The informant is then monitored by detectives going from the location of the purchase to a pre-determined location in order to meet with detectives. At that location, the informant then hands over any controlled substances purchased from the suspect(s). The detectives again search the informant for any additional controlled substances or currency to ensure that the informant has not taken money or drugs for his/her own use. The informant is asked what transpired between the informant and the suspect(s). The recording devices are removed from the informant and any recordings are reviewed by detectives to ensure that the drug transaction occurred as the informant has described.
- In the course of my work I have had many occasions to speak with people who have used or distributed illegal controlled substances. Some of these people have described their techniques and practices used to conduct their business, and to acquire and sell drugs, while avoiding detection and apprehension.
- I know that people who possess and deliver controlled substances will often have several vehicles and/or foot traffic coming to and from their residence at all hours of the day and night. I know that people will come over to the person's house in order to purchase the controlled substances. Furthermore I know that drug transactions often take place in short periods of time. I have also found that vehicle and foot traffic will often alert neighbors and other concerned citizens in the community to possible drug transactions occurring at the residence. Often times the neighbors and/or concerned citizens will call Law Enforcement to report drug activity in their neighborhood based on their observations of vehicle and foot traffic at a specific residence.
- I also know based on my training and experience that when controlled substance search warrants are served, persons other than the known occupants of the residence are frequently present. It is my experience that frequently these persons are in possession of controlled substances, have just made drug transactions, or are present for the purpose of delivering controlled substances. It

is necessary to identify these persons and to search them for weapons for the safety of the officers and others present at the time of the search.

- I have also found that the persons coming to the residence to purchase drugs, and the persons engaged in the selling of drugs, often conceal such controlled substances inside the vehicles on or near the property.
- I have found that it is routine for sellers of controlled substances to deliver their product to purchasers and such deliveries are made in vehicles. Often testable amounts of controlled substances delivered in such a fashion can be found in said vehicles.
- Persons who traffic in controlled substances conceal quantities of the controlled substance and cash proceeds that they may have on hand for sale at any given time for the purpose of avoiding police detection of these illegal activities. I know that these controlled substances and cash may be easily moved from location to location.
- I also know through my training and experience that controlled substances can be concealed in small containers as small as bindles one inch by one inch in size and the thickness of two pieces of paper. I also know that methamphetamine is and can be sold in one tenth gram amounts and is often packaged in small plastic/cellophane baggies as small as one inch by one inch in size and that these packages are often concealed on the person of those present.
- I am familiar with records, property or evidence usually found at the site of illegal controlled substance activity, and the equipment used by individuals involved in the manufacture and delivery of controlled substances. Those items, include but are not limited to scales, packaging materials such as paper bindles, plastic bags, heat sealed plastic containers, glass or plastic vials, grinding equipment and cutting agents. These items are frequently found in the homes, vehicles, work areas, other areas controlled by, and on the persons of individuals involved in the illegal activity. I have personally found such evidence in areas described in previous investigations. I also have knowledge and have watched drugs and the above mentioned items transported in various types of vehicles some registered and some not registered to the subjects transporting the illegal items.
- Through training and experience, I know individuals who manufacture and distribute controlled substances will often have evidence and records of criminal activity found at the residence, homes, businesses, properties, rental properties, rental storage units, backpacks, and/or in vehicles. Many of these items have value to the criminally inclined individual and are retained for many years. Items such as written records, photographs, hotel/ motel receipts, purchase receipts, videotapes, and drug equipment (scales, packaging materials, etc.) are good examples of items frequently retained by persons involved in drug activity.

- Through my training and experience I also have learned that individuals involved in drug related criminal activity usually retain records of their drug dealings. These records, sometimes coded, usually describe in some detail, drug purchases, sales or exchanges. These records, involving the illegal drug trade are often found concealed in the homes, vehicles, safe deposit boxes, backpacks, and rented rooms or on the persons of the involved individuals.
- I know from my training and experience that these drug records are valuable to the drug dealer and are not normally discarded. Based on my training and experience, I know that drug dealers keep these records in protected places, such as their residence, on their person, in their vehicle, or in backpacks and that these records are evidence of the delivery of controlled substances.
- Based upon my training and experience as a police officer, I know that persons involved with the possession and sales of controlled substances commonly keep in their possession the names and/or telephone numbers of other persons involved with the use and/or sales of controlled substances. I know that these names and/or numbers usually consist of both sources of supply to the drug dealer and customers of the drug dealer. I know based on my training and experience that cellular phones are commonly used to set up illegal drug transactions. I know the names of drug dealers and drug users and the telephone numbers of drug dealers and drug users are commonly stored in cellular phones. I also know text messages are commonly used between drug dealers and drug users for communication purposes. I know evidence of drug transactions are commonly stored on drug dealers and drugs users cellular phones. I know based upon my training and experience as a police officer that these records are evidence of a continual criminal enterprise and the conspiracy to deliver and possess controlled substances.
- Further, my training and experience in narcotic investigations has taught me that persons are involved in conspiracies to possess, deliver and manufacture controlled substances. I know that the conspiracies are comprised of separate acts over periods of days, week, months, and at times, years. That evidence of the conspiracies remains after the acts may have been completed. This evidence includes notes, correspondence, phone bills, and receipts for items used in the conspiracy or in the furtherance of the conspiracy, equipment used in the conspiracy, proceeds of the conspiracy, and other items used in the conspiracy. I know that these items, as well as the controlled substances themselves, or evidence thereof, may be found weeks and months after the conspiracy has taken place.
- People who deal in controlled substances typically have cell phones. I know that the cellular phones are used extensively to facilitate a person's unlawful enterprise involving controlled substances. I know that checking the memory of a cellular phone will sometimes identify customers and co-conspirators involved in the possession and distribution of controlled substances.

- During search warrants co-conspirators involved in the possession and delivery of controlled substances will make phone calls to the residence being searched. I know that by answering the phone or cell phone used by the suspects will often identify co-conspirators involved in the unlawful criminal enterprise of controlled substance.
- I know from my training and experience that people who use **Methamphetamine** normally use or possess the following: smoking tubes, razors, mirrors, syringes, spoons, tin foil, a heat source, and other similar items.
- I know based on my training and experience that people who use controlled substances will sometimes break into businesses, residences, or other private property in order to steal items they can either sell to purchase those controlled substances or to steal the controlled substances themselves. I know in my training and experience that these stolen items are sometimes located and identified in or around the area of the original search for drugs and drug related crimes.
- Persons that engage in the sales of controlled substances do so for profit. Evidence of the commercial nature of such an operation may include financial records, bank statements, tax records, cash money, safe deposit records and keys, correspondence or written records of sales transactions and lists of drug purchases or sellers. When police seize sales operations of this nature, large sums of cash from several hundred to several thousand dollars are frequently located.
- Further, because of the economic value of controlled substances, as well as profits generated by its distribution, individuals engaged in this business often arm themselves with weapons, including firearms, to protect themselves, their business, their controlled substances and assets, from competitors and potential thieves, as well as law enforcement officers.
- In my training and experience I have learned that people who are involved in the crimes associated with the possession, manufacture and delivery of controlled substances often trade in stolen property, or receive stolen property for controlled substances. This property includes but is not limited to firearms, jewelry, stereo equipment, televisions, tools, vehicles, and computers, and that people involved in crime will often keep this property for their own personal use and that this stolen property is kept in their residence, outbuildings or vehicles for long periods of time so that it is readily available for sale or trade.
- I know from my training and experience that most people, including most people involved in the manufacturing, delivery, and possession of controlled substances, possess items of identification, including but not limited to, driver's licenses, rent receipts, bills and address books. I also know these items are relevant to the

identity of the possessor of the controlled substances, possessors of other items seized, and occupants of the premises or items searched. It is therefore more likely than not those items of identification will be found during the search.

- Since my employment with the City of Bend Police Department I have used, and continue to use on a daily basis, several computer databases for investigative purposes. I have found these computerized databases, including but not limited to the law enforcement data system (LEDS), the national crime information center (NCIC), the AEGIS Records Management System, the Deschutes County 911 dispatch files (hiterm), and the Department of Motor Vehicle (DMV), to be accurate and reliable sources of information. On hundreds of occasions I have retrieved information from one or more of these databases and then later confirmed the validity of the information by further investigative techniques.
- Evidence or fruits of drug activity can often be found in the vehicles and residences of persons involved in such activity in the form of: cash, bank records, precious metals or gems, illegal drugs, proof of residency in the form of: identification, receipts, correspondence, tape recordings including telephone answering machine tapes, fingerprints, paraphernalia for use and packaging of drugs such as: scales, testing equipment, cutting agents, records of income in the form of ledgers, records of purchases made in false names, actual records-corresponding to false records covering a money laundering operation, records of ownership of a business, records indicating partnership in a business, computer records, computer systems, check registers, methamphetamine, cocaine, and other controlled substances.
- I have also found it common for those involved with the manufacturing and distribution of controlled substances to turn profits or proceeds from illegal activity into assets other than monies, to include real estate, precious metals, stocks, bonds, trading cards, collectibles, etc., to avoid the federal cash transaction reporting requirements. These assets are then easily accessible and therefore can be easily liquidated into cash money.
- I also know based on my training and experience that persons involved in illegal drug activity, generating money, more often than not, combine those funds with other money that they generate from other sources, even legitimate sources. I have never observed an operation wherein a person involved in drug activity keeps their drug funds completely separate from their other income. Therefore, they utilize the drug funds in their everyday life for items such as food, rent/mortgage, entertainment and transportation.
- I know from my training and experience how to identify controlled substances, narcotics, dangerous drugs, hallucinogens and delirants such as, marijuana, heroin, cocaine, methylenedioxymethamphetamine (mdma/ecstasy), gama-hydroxybutyrate (ghb), and I have successfully identified these substances and I also know from my training and experience that people that deliver methamphetamine commercially also

sell other controlled substances as previously listed in conjunction with their methamphetamine operation;

- I am aware that ORS 133.535(2) specifically authorizes the seizure of the fruits of the crime, and that ORS 133.535(3) specifically authorizes the seizure of the property that has been used or is possessed for the purpose of being used to commit an offense. I also know that these sections specifically authorize the seizure of the above described items pursuant to a criminal search warrant.

Conclusion:

Based on the above information I believe there is probable cause to believe, and I do believe, **Ronald Wayne Thrasher DOB 08/28/1969** has committed the crimes of **Unlawful Delivery of Methamphetamine and Unlawful Possession of Methamphetamine and Frequenting a Place where Controlled Substances are Used** and that evidence of these crimes will be located within:

The residence located at 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon. The residence is further described as being a single story manufactured home. The primary color is white with light blue in color trim. The front door is white and faces to the south. The numbers 8109 are posted in white on a green sign that is posted directly to the west of the residence driveway at Deschutes Drive.

Any person frequenting the listed address at the time of warrant service.

All vehicles registered to or under the direct control of **Ronald Wayne Thrasher DOB 08/29/1969**.

Any and all vehicles registered to or under the direct control of the occupants frequenting the premises to be searched at the time of warrant service.

To search for, seize, and analyze;

1. Methamphetamine, a schedule I controlled substance
2. Concealment devices such as pill bottles, metal containers, safes, lock boxes, candy tins, or any other such concealable devices or locked containers, packaging materials such as paper bindles, tin foil and foil bindles, plastic bags, heat sealed plastic containers, glass or glass vials, grinding equipment, cutting agents and scales, digital scales, bucket scales, materials used to package controlled substances, safes, lockboxes, and any locked or unlocked container capable of containing controlled substances;
3. Implements for the ingestion, sales, and/or manufacture of controlled substances, such as hypodermic needles, pipes, snort tubes, razor blades, mirrors and other paraphernalia,

precursor chemicals, reagent chemicals and solvents for the manufacture of controlled substances;

4. All monies, financial records, bank records, cash, precious metals or gems, electronic records and statements such as records of drug purchases and/or sales, transactions and purchases, names of customers and sources, proof of residency to include motel/ hotel receipts and ownership of vehicles, correspondence, audio tape and digital recordings including those found on answering machines, other digital recordings, video tape recordings, false identification, false book keeping records, records of real estate purchases in true or false names, records of ownership or hidden ownership of businesses or partnerships, fingerprints, photographs, photo albums, diaries, electronically stored computer records and cellular phones and memories for data related to the unlawful possession of methamphetamine, computer systems, electronic notebooks, caller identification equipment that relates to the purchase and/or sale of controlled substances;

5. Officers are authorized to answer cell phone calls and converse with callers who appear to be calling in regards to narcotics sales or drug transactions without revealing their true identity. Authorization is granted for officers to note and record phone numbers or other electronic messages received (text messages, social media messages and emails) for the purpose of calling those persons, sending electronic messages to determine if the electronic messages were regarding an intended drug purchase or delivery of narcotics;

6. Firearms, knives and other weapons that relate to the protection, purchase, or sale of controlled substances;

7. Other controlled substances, narcotics, dangerous drugs, hallucinogens and delirants such as, marijuana, heroin, cocaine, methylenedioxymethamphetamine (mdma/ecstasy), gama-hydroxybutyrate (ghb);

8. Any other means, instrumentalities, fruits and evidence of the crimes of:

Unlawful Delivery of Methamphetamine and Unlawful Possession of Methamphetamine and Frequenting a Place where Controlled Substances are Used

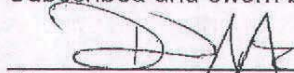
Due to the time this affidavit is being submitted I pray the court authorize this warrant to be issued any time of the day or night. Further, it is not known exactly who might have access to the residence, vehicles and persons in question and the evidence being sought may be removed without an authorization to execute the warrant day or night.

Therefore, I pray that the court authorize a warrant to search the aforementioned location as described within this affidavit for the evidence of the named crimes, such evidence as having formerly been described in this affidavit and to allow the search, seizure, and analysis of any items seized pursuant to this warrant.



Detective Richard C. Bigelow (affiant)

Subscribed and sworn before me this 19 day of May, 2017.



Signature of Magistrate

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JEFFERSON

IN THE NAME OF THE STATE OF OREGON

SEARCH WARRANT

To Any Police Officer of the State of Oregon, Greetings:

Upon information given under oath to me by an affidavit signed and sworn to by Richard C. Bigelow of the Bend Police Department, this Court finds probable cause to believe that **Ronald Wayne Thrasher DOB 08/28/1969 has committed the crimes of Unlawful Delivery of Methamphetamine, Unlawful Possession of Methamphetamine and Frequenting a Place where Controlled Substances are Used** and the items described below are presently located in the area described.

You are hereby authorized to search:

The residence located at 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon. The residence is further described as being a single story manufactured home. The primary color is white with light blue in color trim. The front door is white and faces to the south. The numbers 8109 are posted in white on a green sign that is posted directly to the west of the residence driveway at Deschutes Drive.

Any person frequenting the listed address at the time of warrant service.

All vehicles registered to or under the direct control of **Ronald Wayne Thrasher DOB 08/28/1969**.

Any and all vehicles registered to or under the direct control of the occupants frequenting the premises to be searched at the time of warrant service.

To search for, seize, and analyze:

1. Methamphetamine, a schedule I controlled substance
2. Concealment devices such as pill bottles, metal containers, safes, lock boxes, candy tins, or any other such concealable devices or locked containers, packaging materials such as paper bindles, tin foil and foil bindles, plastic bags, heat sealed plastic containers, glass or glass vials, grinding equipment, cutting agents and scales, digital scales, bucket scales, materials used to package controlled substances, safes, lockboxes, and any locked or unlocked container capable of

containing controlled substances;

3. Implements for the ingestion, sales, and/or manufacture of controlled substances, such as hypodermic needles, pipes, snort tubes, razor blades, mirrors and other paraphernalia, precursor chemicals, reagent chemicals and solvents for the manufacture of controlled substances;

4. All monies, financial records, bank records, cash, electronic records and statements such as records of drug purchases and/or sales, transactions and purchases, names of customers and sources, proof of residency to include motel/ hotel receipts and ownership of vehicles, correspondence, audio tape and digital recordings including those found on answering machines, other digital recordings, video tape recordings, false identification, false book keeping records, records of real estate purchases in true or false names, records of ownership or hidden ownership of businesses or partnerships, fingerprints, photographs, photo albums, diaries, electronically stored computer records and cellular phones and memories for data related to the **Unlawful Possession of Methamphetamine**, computer systems, electronic notebooks, caller identification equipment that relates to the purchase and/or sale of controlled substances;

5. Officers are authorized to answer cell phone calls and converse with callers who appear to be calling in regards to narcotics sales or drug transactions without revealing their true identity. Authorization is granted for officers to note and record phone numbers or other electronic messages received regarding drug sales (text messages, social media messages and emails) for the purpose of calling those persons, sending electronic messages to determine who is making contact and nature of the electronic messages regarding an intended drug purchase or delivery of controlled substances; *During the time period the warrant is being executed. DAA 5/19/17*

6. Firearms, knives and other weapons that relate to the protection, purchase, or sale of controlled substances;

7. Other controlled substances, narcotics, dangerous drugs, hallucinogens and delirants such as, marijuana, heroin, cocaine, methylenedioxymethamphetamine (mdma/ecstasy), gama-hydroxybutyrate (ghb);

8. Any other means, instrumentalities, fruits and evidence of the crimes of:

- **Unlawful Delivery of Methamphetamine, Unlawful Possession of Methamphetamine and Frequenting a Place where Controlled Substances are Used.**

This warrant may be executed at any time of the day or night

DAA

You are directed to execute this warrant within ten (10) days from the date signed. DM

You are further authorized to photocopy any and all records pertaining to the search, to analyze any of the above listed items and make a return of this warrant to me within five days of its execution.

Issued over my hand on the 19 day of May,
2017, at 10:31 ~~am~~ pm.

DM
Signature of Magistrate
DANIEL J. AHERN.

Circuit Court Judge
Title of Magistrate

003 Supplemental Narrative, Jason Wall

Report By: Detective Jason Wall

Attachments:

None.

Narrative:

On 05/19/17, I was on duty as a plain clothes detective, assigned to the Central Oregon Drug Enforcement (CODE) Team.

During the course of this shift I was involved in the buy/bust of a ¼ pound of Methamphetamine in the city of Bend. As a result of the operation the CODE Team located and subsequently seized ¾'s of a pound of Methamphetamine. The subject who was contacted and found to be in possession of the ¾'s of a pound of Methamphetamine stated he/she was willing to provide information about their source of supply.

The subject further advised he/she had worked for the CODE Team in the past for consideration of pending charges. I contacted Deschutes County Sheriff's Office Deputy Dustin Miller and inquired about the subject I was speaking to. I specifically contacted Deputy Miller, as the person I was speaking to stated he/she had worked for him in the past while Dep. Miller was assigned to the CODE Team.

Dep. Miller advised the subject was a confidential reliable informant who was in good standing and provided information that led to several arrest, and seizures of controlled substances which eventually led to federal prosecution.

CODE Detective R.C. Bigelow and I de-briefed the subject, herein referred to as CRI. During the de-brief of CRI, he/she provided information regarding CRI's source of supply. CRI was seeking consideration towards his/her own criminal case. CRI advised Ronald Thrasher was the source of supply and lived in the Madras area. CRI was unsure of the exact address, however stated he/she could drive us to the residence as he/she had been there in the last 12 hours. CRI further advised Thrasher had made several trips to the southern California area to purchase large quantities of Methamphetamine and transport it back to the Central Oregon area. CRI advised he/she had obtained 3 ounces of methamphetamine from Thrasher on 05/18/17 for a series of customers in the Redmond area. CRI stated he/she had received a second order for 4 ounces from another person on this date and re-contacted Thrasher to obtain the 4 ounces. CRI stated he/she went to Thrasher's residence to pick up the 4 ounces. During this meeting CRI stated he/she witnessed what CRI believed to be 15 pounds of methamphetamine. CRI stated Thrasher had the estimated 15 pounds in gallon zip lock style bags, inside a black bag, that he had retrieved from under his bed inside his bedroom.

For specific details of the de-brief of CRI, refer to Detective Bigelow's report.

City of Bend Police Officer Josh Spano and I made arrangements to accompany CRI to Madras so that CRI could definitively show us the residence Thrasher was residing at. CRI drove his/her own vehicle to Madras and parked it at the Safeway. CRI then got into my un-marked vehicle, and together with Officer Spano, CRI showed us the residence where he/she had purchased methamphetamine earlier on this date from Thrasher. CRI identified Thrasher as living at 8109 NW Deschutes Drive within the unincorporated area of Madras, Jefferson County, Oregon.

Based on CRI's account Thrasher was not at the residence as his vehicle was not present in the driveway or on the property. CRI stated Thrasher routinely drove a Pontiac sedan that was "sporty".

I contacted Detective Bigelow and advised him of the site description for the affidavit he was writing based on the information CRI had provided. I also advised Det. Bigelow that according to CRI, Thrasher was not currently at the residence.

During this time CRI attempted to contact Thrasher via text messages and phone calls. Both Officer Spano and I were present during these attempts and witnessed all text messages prior to them being sent and listened to the phone calls placed to Thrasher. The text messages went largely un-answered, however CRI was able to contact Thrasher via a voice call.

During one of the phone calls CRI and Thrasher had a conversation, during this conversation CRI asked Thrasher if he/she could "meet him" or if he/she could "come see him". Thrasher advised he was driving from Prineville, OR towards Madras and was almost to the Terrebonne area. Thrasher advised CRI could meet him at his residence.

CRI had previously explained that he/she would use code to speak to Thrasher, and never spoke of the actual controlled substances, prices, or amounts in plain language. CRI explained the code word he/she used during the conversation myself and Officer Spano listened to, referred to him/her attempting to obtain more methamphetamine.

Based on my training and experience, I know and have been present during phone conversations when subjects involved in the distribution of controlled substances will use "code" words or phrases to make reference to quantities and prices to avoid detection by Law Enforcement.

Detective Bigelow obtained a search warrant for the residence where Thrasher was living, as well as any vehicle owned, operated, or in his control at the time of the search warrant execution.

Thrasher was located by the Oregon State Police; a subsequent traffic stop resulted in Thrasher being taken into custody.

After Thrasher was in custody, I responded to the residence and assisted with the execution of the search warrant. Upon arrival at the residence, Ofcr. Spano and I contacted Robert Greene. I learned Greene was the homeowner, and he consented to a search of the residence. Greene was able to describe that Thrasher rented a room, and where specifically that room was located inside the residence. Greene read and signed the CODE Consent to Search form. I explained to Greene we were only searching the residence for officer safety purposes and looking only for people. I further explained we would not be entering any rooms other than common areas. Greene stated he understood. I also explained to Greene he could revoke consent at any time. I remained with Greene during the initial search. I provided a copy of the consent form to Greene for his records. The original was entered into evidence at the Deschutes County Sheriff's Office.

CODE Detective Levi Dowty, and Ofcr. Spano conducted an officer safety search of the residence for persons only.

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Exhibit 2 - Page 1 of 2

Appendix 49

THR_0000823