

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHAD HANSMEIER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX A – OPINION OF THE SEVENTH CIRCUIT

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In the
United States Court of Appeals
For the Seventh Circuit

No. 16-3070

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHAD HANSMEIER,

Defendant-Appellant.

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

No. 15-cr-30024 — **Sue E. Myerscough**, *Judge*.

ARGUED MAY 16, 2017 — DECIDED AUGUST 14, 2017

Before BAUER, FLAUM, and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. Police officers searched Chad Hansmeier's home based on a search warrant and found various drug-dealing paraphernalia. He was arrested and charged. After the district court denied Hansmeier's motions to suppress the evidence of the search, he pled guilty to conspiracy to distribute methamphetamine, heroin, and marijuana, while reserving the right to appeal the court's denial of his motions to suppress.

On appeal, Hansmeier argues that the evidence must be suppressed because the affidavit filed in support of the search warrant did not establish probable cause and contained material falsehoods and omissions. We disagree and affirm.

I. BACKGROUND

Illinois law-enforcement officers arrested Jason Walker after making two controlled buys of methamphetamine from him. During an interview the night of his arrest, Walker told West Central Illinois Agent Nicholas Hiland that Hansmeier was his drug source; that Hansmeier lived in Missouri; and that Hansmeier dealt large quantities of methamphetamine, heroin, and marijuana.

At about 1:15 in the morning, after Walker was arrested, Agent Hiland called Special Agent Michael Murphy of the Northeast Missouri Narcotics Task Force. Agent Murphy and Agent Austin Snow (another member of the Task Force) then drove to Illinois to talk to Walker. They were familiar with Hansmeier and were interested in any information that Walker could give them.

Walker told Agent Murphy and Agent Snow that he had bought large quantities of methamphetamine from Hansmeier over the past several months. Walker agreed to show the agents where Hansmeier lived and successfully directed the officers to Hansmeier's house. The agents then dropped off Walker back at the Illinois police station and returned to their offices in Missouri.

There, Agent Murphy continued his investigation by running background checks on Walker and Hansmeier on a website called case.net. Although case.net provides only a "snapshot" of a person's criminal history, Agent Murphy learned

that both men were on parole and that Hansmeier had several criminal convictions, including one for a drug-distribution-related offense.

Agent Murphy then began drafting an affidavit in support of a no-knock search warrant for Hansmeier's house, relying heavily on the information that Walker had provided. In the affidavit, Agent Murphy included the following facts:

- Walker had directed the agents to Hansmeier's house;
- Walker had been to Hansmeier's house eighteen times over the previous six months and had been buying methamphetamine from Hansmeier for several months;
- Walker had been buying four ounces of methamphetamine from Hansmeier at least once and usually twice a week and had bought methamphetamine from Hansmeier just a few days earlier;
- Walker knew the prices that Hansmeier charged, including that Hansmeier would occasionally front the drugs;
- Hansmeier kept a supply of methamphetamine, marijuana, and heroin in his house and always had methamphetamine for Walker;
- Hansmeier had a large stack of drug money at his house the last time that Walker was there; and
- Hansmeier recently told Walker that he had received a large shipment of methamphetamine because he was going on vacation in a few weeks.

Agent Murphy also noted that he was familiar with Hansmeier from previous investigations and that another confidential informant had told him about Hansmeier's drug-dealing scheme. Finally, Agent Murphy included in the affidavit

the little information that he had on Hansmeier's criminal history.

In support of the no-knock aspect of the warrant, Agent Murphy informed the court that Walker had told the agents that Hansmeier had video surveillance at his house. Agent Murphy also reported that, during a previous investigation, Hansmeier had flushed drugs down the toilet when officers knocked and announced their intent to search his home.

A Missouri state-court judge signed the warrant at 9:05 the morning after Walker had been arrested. When executing the warrant, officers found a loaded gun, marijuana, a large amount of cash, drug paraphernalia, and about 200 grams of a powdery substance that they believed to be either a cutting agent or methamphetamine mixed with a cutting agent. Officers subsequently arrested Hansmeier.

The government charged Hansmeier, which generated a case numbered 13-cr-30042 ("2013 case"). A grand jury returned an indictment against Hansmeier, charging him with conspiracy to distribute methamphetamine, heroin, and marijuana in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(A)–(b)(1)(D).

Hansmeier moved to suppress the evidence discovered during the search of his house. Among other arguments, Hansmeier claimed that the affidavit did not support probable cause because Agent Murphy had relied on an untested, newly arrested confidential informant's uncorroborated statements. The district court denied the motion, holding that the affidavit supported probable cause. The court alternatively held that, even if the affidavit did not support probable cause, the officers had relied on the warrant in good faith.

Hansmeier then filed an amended motion to suppress. After two evidentiary hearings, the court denied that motion for the same reasons it had denied Hansmeier's first motion.

After the court dismissed Hansmeier's motions, Hansmeier and the government entered a plea agreement. Under the agreement, the government charged Hansmeier of the same crime as in the 2013 case, omitting only the penalty provision in § 841(b)(1)(A). This created a second case, numbered 15-cr-30024 ("2015 case").

Hansmeier pled guilty in the 2015 case under a written plea agreement, but he reserved the right to appeal the court's denial of his motions to suppress in the 2013 case. At sentencing, the court dismissed the 2013 case and entered judgment in the 2015 case. This appeal followed.

II. ANALYSIS

A. Probable-Cause Analysis

We first address Hansmeier's claim that the affidavit did not support probable cause to search his home. Hansmeier argues that Agent Murphy relied on information from Walker—an untested, newly arrested confidential informant—without adequately corroborating his story. That lack of corroboration, Hansmeier contends, dooms the search warrant.

In cases where a warrant has issued, as here, we give great deference to the issuing judge's decision that "the facts add up to 'probable cause.'" *United States v. McIntire*, 516 F.3d 576, 578 (7th Cir. 2008); *see also Illinois v. Gates*, 462 U.S. 213, 239 (1983) ("An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause"). We will affirm if "substantial evidence in the record"

supports the issuing judge's conclusion. *United States v. Sutton*, 742 F.3d 770, 773 (7th Cir. 2014) (quoting *United States v. Sims*, 551 F.3d 640, 644 (7th Cir. 2008)).

When an affidavit is the only evidence presented to a judge in support of a search warrant, "the validity of the warrant rests solely on the strength of the affidavit." *United States v. Bell*, 585 F.3d 1045, 1049 (7th Cir. 2009). And when an informant serves as the source of information in an affidavit, the probable-cause determination turns on the informant's credibility. *Id.* To evaluate an informant's credibility, we consider "the level of detail, the extent of firsthand observation, the degree of corroboration, the time between the events reported and the warrant application, and whether the informant appeared or testified before the magistrate." *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014).

To start, Agent Murphy corroborated more of Walker's story than Hansmeier is willing to admit. For instance, Walker told the officers that he had bought methamphetamine from Hansmeier at Hansmeier's house. Walker then successfully directed the officers to where Hansmeier lived.¹ This did not verify Walker's claim that Hansmeier was dealing drugs, but

¹ Hansmeier also argues that a better investigation of the house during the drive-by would have shown Walker to be unreliable: there were no surveillance cameras at Hansmeier's house like Walker claimed there were. A probable-cause determination is based on the facts as they stand at the time the decision is made. Facts later discovered cannot support probable cause; nor can they detract from it. See *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). If Agent Murphy intentionally or recklessly included Walker's false statement about the cameras in the affidavit, Hansmeier should have raised that issue in his *Franks* argument discussed in Part B below. *Franks v. Delaware*, 438 U.S. 154 (1978).

it is important in gauging Walker's overall credibility as an informant. See *United States v. Dismuke*, 593 F.3d 582, 588 (7th Cir. 2010), *abrogated on other grounds by United States v. Miller*, 721 F.3d 435 (7th Cir. 2013).

Agent Murphy also corroborated Walker's story in three other ways. First, Agent Murphy stated that he was familiar with Hansmeier from previous investigations. Second, Agent Murphy's background check on Hansmeier uncovered that Hansmeier had been convicted of at least one drug-distribution-related offense in the past; although the record check does not corroborate Walker's story alone, "it does retain some corroborative value." *United States v. Olson*, 408 F.3d 366, 372 (7th Cir. 2005). And third, Agent Murphy included in the affidavit a detailed recollection of Hansmeier's drug dealing from an unnamed confidential informant, which counts as "slight" corroboration. See *id.* at 371.

Admittedly, those facts are not enough alone to find Walker credible. But they are, to an extent, indicators of credibility. And any additional steps that Agent Murphy could have taken to corroborate Walker's story do "not in any way detract from what was done." *United States v. Jones*, 208 F.3d 603, 607 (7th Cir. 2000).

In any event, Hansmeier's emphasis on corroboration alone is misplaced: no one factor is determinative in weighing an informant's credibility. A weakness in one may be offset by the strength of others. *Bell*, 585 F.3d at 1049.

And here, the other factors strongly support Walker's credibility. Walker's information was detailed: he knew the type of drugs that Hansmeier dealt, the quantity that he could get from Hansmeier, and the price that Hansmeier charged.

Walker's information was based on firsthand knowledge. And Walker's information was based on recent observation: he had seen drugs and drug money in Hansmeier's house and bought methamphetamine from Hansmeier just a few days before he spoke with Agent Murphy (to say nothing of the fact that Walker bought drugs from Hansmeier weekly, who always had a supply).

Still more facts bolster Walker's credibility. His statements were unimmunized and against his penal interest: he admitted buying 4 ounces of methamphetamine twice a week from Hansmeier, far more than the sixty-eight grams that police caught him with. *United States v. Leidner*, 99 F.3d 1423, 1429–30 (7th Cir. 1996). And although Walker was a newly arrested informant, which subjects him to greater scrutiny, see *Olson*, 408 F.3d at 370, the issuing judge was entitled to conclude that Walker's recent arrest gave him an incentive to supply the police with accurate information in hopes of receiving lenient punishment for his own crimes. See *Koerth*, 312 F.3d at 870. Finally, the issuing judge was aware that the officers knew who Walker was (that is, he was a confidential informant as opposed to an anonymous tipster), meaning that the officers could find him and hold him responsible if he gave misleading information—yet another check on credibility. *Id.* at 871.

The only factor that doesn't favor Walker's credibility is that he didn't appear before the issuing judge. But that is the absence of just one of many factors used to evaluate an informant's credibility; the others all tend to favor Walker.

Thus, substantial evidence in the record supports the issuing judge's probable-cause determination.²

B. Franks Suppression

Hansmeier next contends that the evidence must still be suppressed because the affidavit contained material falsehoods and omissions. In *Franks v. Delaware*, the Supreme Court held that defendants may challenge the truthfulness of statements made in an affidavit supporting a search warrant. 438 U.S. 154, 155–56 (1978). Evidence will be suppressed if “(1) the affidavit contained material false statements or omissions; (2) these false statements or omissions were made with deliberate or reckless disregard for the truth; and (3) these false statements or omissions were necessary to a finding of probable cause.” *United States v. Gregory*, 795 F.3d 735, 743 (7th Cir. 2015) (citing *Franks*, 438 U.S. at 155–56).

After a *Franks* evidentiary hearing, we review a district court's factual findings and decision to deny a defendant's motion to suppress for clear error. *Id.* at 741.

Hansmeier relies on two facts for his argument. First, Walker told Agent Murphy that he had been to Hansmeier's house eighteen times over the previous six months, and Agent Murphy included that fact in the affidavit. As the government concedes, that statement is at best misleading. Both Hansmeier and Walker had been out of jail and on parole for less than six months. Walker's claim that he had been to Hansmeier's house over a six-month period thus overstated the length of their relationship. Had Agent Murphy done a more

² Because the affidavit here established probable cause, we don't need to address Hansmeier's argument that the officers could not have relied on the warrant in good faith.

detailed background check on Hansmeier and Walker, he would have discovered the discrepancy in Walker's timeframe.

Second, in support of the no-knock aspect of the warrant, Agent Murphy stated that Hansmeier had flushed drugs down the toilet when officers knocked and announced their presence while executing a search warrant years earlier. Agent Murphy obtained that information from Captain Patti Talburt. But Captain Talburt's memory of that incident, which occurred in 2004, was flawed. What actually happened was that, during a search of Hansmeier's house, officers found drug residue in his toilet and drug paraphernalia and bags in a sewer that only Hansmeier's house was connected to. Hansmeier wasn't home when the officers executed the warrant. Had Agent Murphy checked the report instead of relying only on Captain Talburt's memory, he would have discovered what had actually happened.

Although the affidavit contained false information, we need not suppress the evidence. "[A]n affiant acts with reckless disregard for the truth when he or she 'in fact entertained serious doubts as to the truth of his allegations.'" *United States v. Lowe*, 516 F.3d 580, 584 (7th Cir. 2008) (quoting *United States v. A Residence Located at 218 Third Street, New Larus, Wis.*, 805 F.2d 256, 258 (7th Cir. 1986)). Negligence is not enough to justify suppressing evidence. *Id.* Moreover, "a *Franks* violation based on an omission requires a showing that the material information was omitted deliberately or recklessly to *mislead* the issuing magistrate." *Williams*, 718 F.3d at 650.

There is nothing in the record to support the conclusion that Agent Murphy entertained serious doubts about the

truth of the affidavit or deliberately or recklessly attempted to mislead the issuing judge.

Based on the limited background check from case.net, Agent Murphy knew that both Walker and Hansmeier were on parole; he had no reason to believe that they had been released within the previous six months. And he did not try to hide the limited nature of the background check from the issuing judge: he stated that Hansmeier had been released “within the past year”; that Hansmeier had “at least one prior conviction for distribution of a controlled substance”; and that he used case.net, which omitted at least one prior conviction. (App. R. 15-2 at 140, 142.) At no point did Agent Murphy embellish the information that he had.

Nor did Agent Murphy entertain serious doubts about Captain Talburt’s story that Hansmeier had tried to flush drugs when officers executed a search warrant nine years earlier. In related situations, we have held that an officer is “entitled to rely on the collective knowledge of all the investigating officers in making out his warrant request.” *Suarez v. Town of Ogden Dunes, Ind.*, 581 F.3d 591, 597 (7th Cir. 2009).

And even more to the point on suppression, Hansmeier cannot show that information about the flushing incident was necessary to the probable-cause finding. *See Gregory*, 795 F.3d at 743. Hansmeier contends that, because the incident related to a different drug investigation, it likely altered the issuing judge’s probable-cause determination. Maybe. But the only inaccuracy in the affidavit was the timing of when Hansmeier flushed the drugs. The underlying events all occurred. At worst, the warrant would have issued anyway but without the no-knock allowance. And evidence is not suppressed

when officers violate the knock-and-announce rule. *Hudson v. Michigan*, 547 U.S. 586, 599 (2006).

Thus, Hansmeier has not met his burden for suppression under *Franks*.

III. CONCLUSION

For those reasons, the district court's decision is AFFIRMED.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHAD HANSMEIER,

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**APPENDIX B – COLLECTED DISTRICT COURT ORDERS
DENYING MOTIONS TO SUPPRESS**

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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13-30042-2
	)	
CHAD HANSMEIER,	)	
	)	
Defendant.	)	

OPINION

SUE E. MYERSCOUGH, U.S. District Judge.

Defendant Chad Hansmeier filed a Motion to Suppress Evidence (d/e 20) and Supplemental Motion to Suppress Evidence (d/e 33). Hansmeier moves to suppress evidence seized from his residence on the morning of May 15, 2013 and statements he made subsequent to his arrest. Hansmeier also requests a full evidentiary hearing to determine whether the affidavit submitted in support of the search warrant was properly submitted.

The Motions are DENIED. The affidavit in support of the search warrant provided sufficient reliable information to support

issuance of the search warrant. Even if the affidavit were deficient, the officers acted in good-faith reliance on the affidavit. Hansmeier is not entitled to an evidentiary hearing because he has failed to make a substantial preliminary showing that the officer intentionally or recklessly made false statements or misleading omissions in the affidavit or that probable cause would not have existed without the false statements or omissions.

I. BACKGROUND

On the morning of May 15, 2013, Michael Murphy, a special agent with the Northeast Missouri Narcotics Task Force, executed an Affidavit for No-Knock Search Warrant ("Affidavit"). The Affidavit provides the following information.

West Central Illinois Drug Task Force Agent Nick Hiland contacted Agent Murphy at approximately 1:15 a.m. on May 15, 2013. Agents Murphy and Hiland had worked together on several previous narcotics investigations.

Agent Hiland told Agent Murphy that the West Central Illinois Drug Task Force had a suspect (the “Confidential Source”¹) in custody at the Quincy Police Department. The Confidential Source had been arrested while in the possession of approximately 68 grams of methamphetamine. Agent Hiland reported that the Task Force had previously made two controlled purchases of methamphetamine from the Confidential Source. Agent Murphy was familiar with the Confidential Source, who had previously lived in Lewis County, Missouri.

Agent Hiland told Agent Murphy that the Confidential Source was cooperating with law enforcement and wanted to share information about subjects living in Canton, Lewis County, Missouri, who were dealing in large quantities of methamphetamine, marijuana, and heroin. The male subject was identified as Defendant Chad Hansmeier.

Agent Murphy was familiar with Hansmeier from previous investigations. Agent Murphy had also received information from

¹ Defendant Hansmeier asserts that the Confidential Source is Defendant’s co-defendant, Jason Walker. Supp. Mot., d/e 33, p. 2 ¶ 8.

another reliable source that Hansmeier was a multi-ounce methamphetamine dealer. Agent Murphy was aware that Hansmeier had been released from prison within the past year and was living at 1304 Wyaconda Avenue, Canton, Missouri, with his girlfriend, Kristina Ridgeway, who was the mother of one of Hansmeier's children.

After receiving the information from Agent Hiland, Agent Murphy contacted Special Agent Austin Snow of the Northeast Missouri Narcotics Task Force. Agent Snow had previously investigated Hansmeier and was familiar with him. Agents Murphy and Snow drove to the Quincy Police Department to speak to the Confidential Source.

The Confidential Source told Agents Murphy and Snow that for several months he had been receiving large quantities of methamphetamine from Hansmeier. Either the Confidential Source picked up the drugs from Hansmeier's residence or else Hansmeier or Ridgeway delivered the drugs to the Confidential Source in Quincy, Illinois. The Confidential Source agreed to point out Hansmeier's residence.

Agents Snow and Murphy transported the Confidential Source to Canton, Missouri. When they arrived in Canton, the Confidential Source directed them to Hansmeier's residence at 1304 Wyaconda Avenue. While driving there and back, the Confidential Source gave the Agents additional information about Hansmeier and Ridgeway.

The Confidential Source had been buying methamphetamine from Hansmeier for several months. Recently, the Confidential Source had been buying quarter pounds (4 ounces) of methamphetamine at least once a week and usually twice a week. Also recently, Hansmeier had been delivering a quarter-ounce of heroin each time he brought the Confidential Source a quarter-pound of methamphetamine.

Hansmeier charged the Confidential Source \$2,000 per ounce for the methamphetamine. The Confidential Source currently owed Hansmeier between \$3,500 and \$4,500 because Hansmeier would deliver the methamphetamine and heroin without requiring payment until later.

The Confidential Source told Agents Snow and Murphy that he had been to Hansmeier's residence about 18 times in the past six

months. The Confidential Source reported that Hansmeier always kept methamphetamine, marijuana, and, the Confidential Source believed, heroin at his residence in Canton. Approximately one month earlier, the Confidential Source was in Hansmeier's residence and saw 30 pounds of marijuana. The Confidential Source saw shrink-wrapped drugs in a room in Defendant's house on more than one occasion. Every time the Confidential Source went to Hansmeier's residence, Hansmeier had methamphetamine to deliver to him. When the Confidential Source was at Hansmeier's home recently, he saw a large stack of money. The Confidential Source stated that that was money Hansmeier had made selling large quantities of drugs.

Hansmeier told the Confidential Source that he had recently received a large supply of methamphetamine and was going on a 30-day vacation within the next couple of weeks. Hansmeier told the Confidential Source that he (Hansmeier) would be able to bring the Confidential Source at least half a pound of methamphetamine prior to leaving on that vacation.

The Confidential Source last received a quarter-pound of methamphetamine and a quarter-ounce of heroin from Hansmeier a couple of days earlier. The Confidential Source believed Hansmeier had more than two pounds of methamphetamine at that time. Hansmeier told the Confidential Source that he (the Confidential Source) was the only person Hansmeier was delivering ounces of methamphetamine to in Quincy, Illinois but that Hansmeier had several people to whom he was dealing similar quantities in Hannibal, Missouri.

The Confidential Source stated that Hansmeier had two cameras set up at his residence. One of the cameras was inside the entry door of the house and the other faced outside the entry door of the house. The Confidential Source believed Hansmeier monitored the cameras so that he could see who was coming to his front door.

The Confidential Source told the officers there were three children between the ages of 2 and 11 years living in the home. The Confidential Source stated that both Hansmeier and Ridgway used drugs in front of the children, particularly marijuana.

The Affidavit also provides that during a previous investigation, another confidential informant (“CI 648”) reported to Agent Snow that CI 648 had seen Hansmeier deliver “ice,” or crystal methamphetamine, to Cary Singleton at his residence in Palmyra. CI 648 reported he was present when Hansmeier delivered a full gallon-size Ziploc bag of methamphetamine and six or seven bricks of marijuana. The methamphetamine was purportedly worth \$7,000.

Agent Murphy believed Hansmeier was currently on parole from the Missouri Department of Corrections and that Craig Tallman was Hansmeier’s parole officer. Hansmeier had at least one prior conviction for distribution of a controlled substance. Hansmeier’s criminal history showed arrests for Unlawful Use of a Weapon in 1997, as well as numerous drug-related arrests and convictions. “Case net” showed Hansmeier was convicted of Resisting Arrest for a Felony on November 3, 2009 and sentenced to three years in the Missouri Department of Corrections but that the conviction did not show up on Hansmeier’s criminal history.

Agent Murphy stated that, based on the information provided by the Confidential Source, Agent Murphy believed that Hansmeier and Ridgeway kept large quantities of methamphetamine, marijuana, and heroin at their residence. Based on the quantities Agent Murphy had been told about, he believed Hansmeier was a large dealer, not a street-level dealer, of narcotics. Based on his training and experience, Agent Murphy believed that large dealers in narcotics almost always keep a supply on hand for their customers. Based on the information from the Confidential Source, Agent Murphy believed the drugs were being kept at the residence located at 1304 Wyaconda Street.

The Affidavit also contains the following statement in support of the request for a no-knock warrant:

During a previous search warrant at a residence where Hansmeier was an occupant, Hansmeier flushed drugs and drug paraphernalia after Law Enforcement Officers knocked and announced that they had a search warrant. Hansmeier has also resisted arrest by law enforcement in the past. According to Capt. Patti Talbert, since 1998 there have been three search warrants served on residences where Chad Hansmeier has resided. Due to the installation of cameras, Hansmeier's history of resisting arrest and attempting to destroy evidence, a no[-]knock search warrant is requested.

See Aff., d/e 20-1, pp. 5-6.

After Agent Murphy drafted the Affidavit, he took the Affidavit to Lewis County Prosecuting Attorney Jules DeCoster for his review. DeCoster, a commissioned Notary Public in Lewis County, notarized the Affidavit. DeCoster also prepared the warrant application.

The associate judge who typically reviews search warrant applications in Lewis County was unavailable on May 15, 2013. Therefore, the Lewis County Clerk's Office notified the Missouri Supreme Court. On May 15, 2013, Chief Justice Richard B. Teitelman entered an order temporarily transferring the Honorable Rick R. Roberts, associate Circuit Judge of the 1st Judicial Circuit (Clark County), to the 2nd Judicial Circuit (Lewis County) for the period of Wednesday, May 15, 2013.

At either 7:41, 8:00, or 8:10 a.m., depending on whether one looks at the facsimile time-stamp on the Search Warrant, the handwritten time on the Affidavit, or the handwritten time on the Request for No Knock Search Warrant ("Request"), the Circuit Clerk in Lewis County, Missouri, faxed the Request and Affidavit to Judge

Roberts on behalf of the Lewis County Prosecutor. (The Affidavit and Request contain a facsimile time stamp of 7:06 and 7:07 a.m. from the “NEMO TASK FORCE.” See d/e 20-1; see also No Knock Search Warrant, d/e 20-2 (containing a facsimile time stamp from “NEMO TASK FORCE” of 7:07 a.m. and from the “LEWIS CO CIRCUIT CLK” of 7:41 a.m.). At 9:05 a.m., according to the date handwritten on the Warrant, Judge Roberts issued the No Knock Search Warrant.

The search warrant was executed the morning of May 15, 2013. According to the Government, the officers found marijuana, a loaded firearm, large amounts of currency, zipper bags containing numerous smaller sandwich bags, drug paraphernalia, and 200 grams of a white, powdery substance that appeared to be either a cutting agent or methamphetamine mixed with a cutting agent. Resp., d/e 24, p. 4. After being arrested and Mirandized, Hansmeier made statements to the police.

In September 2013, a federal grand jury charged Defendant Hansmeier by Superseding Indictment with conspiracy to distribute 500 grams or more of mixtures or substances containing

methamphetamine and mixtures or substances containing heroin.

See d/e 8.

II. ANALYSIS

Hansmeier moves to suppress everything seized from his residence the morning of May 15, 2013, as well as the statements he made subsequent to his arrest. In support thereof, Hansmeier argues (1) Judge Roberts did not have the authority to issue the warrant; (2) Judge Roberts did not comply with Federal Rule of Criminal Procedure 4.1, which requires placing under oath the applicant and person on whose testimony the application for a search warrant is based if the application is made by electronic means; (3) the Affidavit failed to set forth sufficient facts to establish probable cause; and (4) the good-faith exception does not apply.

A. Judge Roberts Had the Authority to Issue the Warrant

Hansmeier first argues that Judge Roberts did not have authority under Missouri law to issue the search warrant. Mot., d/e 20, p. 2.

Under Missouri law, a search warrant may be issued by “any judge of a court having original jurisdiction of criminal offenses

within the territorial jurisdiction where the person, place, or movable or immovable thing to be searched is located at the time of the making of the application.” Mo. Rev. Stat. § 542.266(2).

Hansmeier’s residence is located in Lewis County, which is Circuit Two. Mo. Rev. Stat. § 478.077 (Lewis County is in Circuit Two).

Judge Roberts is a judge in Clark County, which is Circuit One.

See Mo. Rev. Stat. § 478.075 (Clark County is in Circuit One).

However, the Missouri Constitution provides the Missouri Supreme Court with the authority to “make temporary transfers of judicial personnel from one court or district to another as the administration of justice requires.” Mo. Const., art. V, § 6; see also Mo. Sup. Ct. R. 11.01 (providing that the supreme court may make temporary transfers of judicial personnel from one court or district to another); Mo. Sup. Ct. R. 11.02 (a transferred judge has the same powers and responsibilities as a judge of the court to which he is transferred during the period designated); see also Buchanan v. Buchanan, 167 S.W.3d 698, 700 (Mo. 2005). As noted above, Chief Judge Teitleman of the Missouri Supreme Court entered an

order temporarily transferring Judge Roberts to Lewis County for the period of May 15, 2013.

Hansmeier argues that the order temporarily transferring Judge Roberts was not entered until after the Missouri Supreme Court office opened, presumably at 8:00 a.m. Hansmeier asserts that the “time of the making of the application” occurred at 7:06 a.m., the facsimile time stamp from the Task Force. Therefore, according to Hansmeier, Judge Roberts lacked the authority to issue the warrant.

Chief Justice Teitleman’s order transferred Judge Roberts for the period of May 15, 2013—the entire day. Moreover, Agent Murphy’s Affidavit was sworn at 8:00 a.m. and notarized at 8:10 a.m., and the warrant itself was issued at 9:05 a.m. Assuming the transfer order was entered at 8:00 a.m. after the courthouse opened, Judge Roberts had been temporarily transferred to Lewis County at the “time of making the application,” which occurred at least after the Affidavit was notarized at 8:10 a.m. Therefore, Judge Roberts had the authority to issue the warrant.

B. Federal Rule of Criminal Procedure 4.1 Does Not Apply

Hansmeier next argues that no one testified or appeared before the judge who issued the warrant. Mot., d/e 20, p. 5.

Hansmeier cites to Federal Rule of Criminal Procedure 4.1, which permits a judge to consider information communicated by telephone or other reliable electronic means when deciding whether to issue a warrant or summons. Fed. R. Crim. P. 4.1(a). If, however, the judge decides to proceed under Rule 4.1, the judge must place under oath the applicant and any person on whose testimony the application is based. Fed. R. Crim. P. 4.1(b)(1). The court may also examine the applicant or the person on whose testimony the application is based. Fed. R. Crim. P. 4.1(b)(1); see also Fed. R. Crim. P. 41(d)(3) (“In accordance with Rule 4.1, a magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means”).

The warrant in this case was issued by a state judge at the request of a state law enforcement officer arising out of a state investigation. The officers proceeded under Missouri law, which allows an application for a search warrant to be submitted by

facsimile or other electronic means. Mo. Rev. Stat. § 542.276(3) (also providing that “[o]ral testimony shall not be considered”). The Federal Rules of Criminal Procedure “do not govern the actions of state law enforcement officers when, at least at the time of the action in question, there was no federal involvement in the investigation.” United States v. Taylor, --- F. Supp. 2d ---, 2013 WL 5817246, at *3 (S.D. Ind. Oct. 29, 2013) (citing cases). Hansmeier has presented no evidence of federal involvement in the investigation. Therefore, Rule 4.1 does not apply.

To the extent Hansmeier asserts that Agent Murphy did not make the statements under oath, the Affidavit itself contradicts such an assertion. The Affidavit contains the language “first being duly sworn” and is notarized. See United States v. Brooks, 285 F.3d 1102, 1106 (8th Cir. 2002) (noting that “a person may be under oath even though that person has not formally taken an oath by raising a hand and reciting formulaic words” and finding that even if the officer was not under oath, “it is plain that his affidavit contained at the very least an affirmation of the truth of the statements in it, because it included a number of formal assertions

that he was telling the truth”). Therefore, Agent Murphy made the statements under oath.

C. The Affidavit Provided Sufficiently Reliable Information to Support Issuance of the Search Warrant

Hansmeier argues that the Request and Affidavit in support of a search warrant failed to set forth sufficient facts which would lead a neutral and detached judge to reasonably conclude that there was probable cause to believe that evidence of drug offenses would be found at the residence. Hansmeier asserts that the Affidavit only reveals that an untested and newly arrested informant claimed at some unspecified date that he had been in Hansmeier’s home and observed illegal drugs.

When a search is authorized by a warrant, the reviewing court defers to the issuing judge’s finding of probable cause “if there is ‘substantial evidence in the record’ that supports that decision.” United States v. Sims, 551 F.3d 640, 644 (7th Cir. 2008) (noting, however, that a judge may not rely on “conclusory allegations” or a “bare bones” affidavit). Because the Affidavit was the only evidence presented to the judge in support of the search warrant, “the

validity of the warrant rests solely on the strength of the affidavit.”

United States v. Peck, 317 F.3d 754,755 (7th Cir. 2003). An affidavit establishes probable cause when, based on the totality of the circumstances, the affidavit sets forth sufficient evidence that would cause a reasonable person to believe that a search will uncover evidence of criminal activity. See United States v. Mykytiuk, 402 F.3d 773, 776 (7th Cir. 2005); United States v. Hicks, 650 F.3d 1058, 1065 (7th Cir. 2011).

When the affidavit is supported by information from an informant, the probable cause determination turns on the informant’s credibility. United States v. Bell, 585 F.3d 1045, 1049 (7th Cir. 2009); United States v. Olson, 408 F.3d 366, 370 (7th Cir. 2005). To assess whether the informant’s information is sufficiently reliable to support issuance of the warrant, a court considers: (1) the degree to which the informant acquired knowledge of the events through firsthand observation;(2) the amount of detail provided; (3) the extent to which the police corroborated the informant’s statements; (4) the interval between the dates of the events and the application for the search warrant; and (5) whether the informant

appeared before the judge in person and filed his own affidavit. See United States v. Sutton, 742 F.3d 770, 773 (7th Cir. 2014); United States v. Koerth, 312 F.3d 862, 866 (7th Cir. 2002). No one factor is dispositive. United States v. Brack, 188 F.3d 748, 756 (7th Cir. 1999) (“a deficiency in one factor may be compensated for by a strong showing in another or by some other indication of reliability”).

In this case, several of the factors provide strong indicia of the credibility of the Confidential Source. The Confidential Source acquired knowledge of the events through firsthand observation. The Confidential Source told Agent Murphy that he had been purchasing methamphetamine from Hansmeier for several months and recently began purchasing quarter-pounds of methamphetamine and quarter-ounces of heroin from Hansmeier on a weekly basis. See United States v. Mitten, 592 F.3d 767, 774 (7th Cir. 2010) (noting that “the fact that each informant claimed to have purchased the crack himself describes the basis for his knowledge”).

In addition, the Confidential Source provided specific details, including the amount of drugs he bought each time, the number of times a week he had recently purchased drugs from Hansmeier, and how much Hansmeier charged the Confidential Source. Sometimes the purchases took place at Hansmeier's home and other times Hansmeier or Ridgeway delivered the drugs to the Confidential Source. The Confidential Source also told Agent Murphy what he personally observed on some of the occasions the Confidential Source was in Hansmeier's home, including marijuana (observed a month before issuance of the search warrant) and a stack of money ("recently"). The Confidential Source also stated that every time he went to Hansmeier's house, Hansmeier had methamphetamine to sell to him.

Agent Murphy corroborated some of the information received from the Confidential Source. Agent Murphy knew where Hansmeier lived. Agent Murphy drove the Confidential Source to Canton, Missouri, and then had the Confidential Source direct Agent Murphy to Hansmeier's house, which the Confidential Source did successfully. Agent Murphy checked Hansmeier's criminal

history, which showed at least one prior conviction for distribution of a controlled substance. Agent Murphy also noted that Hansmeier was currently on parole. See Olson, 408 F.3d at 372 (a criminal history check of the accused has some corroborative value); but see Peck, 317 F.3d at 757 (a record search of the accused is insufficient alone to corroborate a confidential informant's statement).

The information from the Confidential Source was also somewhat corroborated by information Agent Snow received from CI 648. However, the Court does not give that corroboration any weight because Agent Murphy did not provide any details about this informant or the age of the information received. See, e.g., Bell, 585 F.3d at 1051 (statements in the affidavit that other unnamed persons implicated the defendant were insufficient where the affidavit provided no additional details regarding the other informants, how they obtained the information, their relationship to the defendant, or the date of the reports). Similarly, the Court gives no weight to Agent Murphy's statement that he received information from "a reliable source that Hansmeier was a multi-ounce

methamphetamine dealer,” (Aff., d/e 20-1, p. 3), because such statement is wholly conclusory. See United States v. Lowe, 389 F. App’x 561, 562-63 (7th Cir. 2010) (unpublished) (“wholly conclusory assertions of reliability are not entitled to any weight”).

The interval between the date of the events the Confidential Source described and the application for the search warrant also supports the Confidential Source’s reliability. The age of the information is only one factor used to determine whether probable cause exists. United States v. Spry, 190 F.3d 829, 836 (7th Cir. 1999). Where the affidavit refers to facts that show ongoing, continuous criminal activity, the passage of time is less critical. Id.

The information from the Confidential Source spanned a six-month period, but the Confidential Source described continuous criminal activity. Specifically, the Confidential Source told Agent Murphy that he had been purchasing methamphetamine from Hansmeier for several months and had recently purchased methamphetamine and heroin from Hansmeier once or twice a week. The Confidential Source last received methamphetamine and heroin from Hansmeier a couple of days earlier, and Hansmeier still

had two pounds of methamphetamine at that time. In addition, while some of his observations were a month old (e.g., the observation of 30 pounds of marijuana in Hansmeier's home), the Confidential Source also told Agent Murphy that when he was at the house "recently" he saw a large stack of money. The interval between the events described by the Confidential Source and the application for the search warrant was not so long as to dispel a reasonable belief that a search of the house would uncover evidence of illegal drug activity.

A few of the factors used to assess whether the informant's information is sufficiently reliable to support issuance of a warrant weigh against the credibility of the Confidential Source. The Affidavit contains no indication that the Confidential Source had provided reliable information in the past. But see Koerth, 312 F.3d at 867-68 (noting that "[s]tatements from an informant of unknown reliability may in certain instances serve to establish probable cause if, under the totality of the circumstances, a reasonable person might consider that the statements are worthy of credence") (citing Illinois v. Gates, 462 U.S. 213, 238 (1983)). Also, the

Confidential Source did not prepare his own affidavit or appear before Judge Roberts.

Another factor weighing against the Confidential Source's credibility is that he was newly arrested. The fact that an informant was newly arrested merits "a greater dose of skepticism when assessing his credibility." Olson, 408 F.3d at 370 (citing cases for the proposition that a newly arrested informant has an incentive to try to mitigate his own culpability).

Even so, when an informant makes a statement against penal interests, that fact carries a presumption of reliability. Id. at 371. The Confidential Source's statements here were against his penal interest. The Confidential Source told Agent Murphy that he had been purchasing methamphetamine from Hansmeier for several months and had recently been purchasing quarter-pounds of methamphetamine and quarter-ounces of heroin from Hansmeier once or twice a week. Mitten, 592 F.3d at 774 ("Statements against penal interest have also been viewed as carrying some indicia of reliability"—the fact that the informant is motivated by a desire to lessen the consequences of his own crime does not make the

information inherently unreliable). This information increased the level of the Confidential Source's culpability and exposed him to a higher sentencing range because of the quantity of drugs he described purchasing. These statements against penal interest do carry some indicia of reliability.

Viewing the totality of the circumstances, the Court finds that the issuing judge had a substantial basis for determining that probable cause existed. The factors support finding the Confidential Source reliable. The Confidential Source described a course of criminal conduct and provided facts supporting a nexus between the illegal drugs and Hansmeier's residence. The Confidential Source purchased illegal drugs from Hansmeier for a period of months, and some of the deliveries occurred at Hansmeier's residence. While in the residence, the Confidential Source observed evidence of drug trafficking, including the stack of money and marijuana. The Confidential Source also indicated that Hansmeier had methamphetamine to sell to him every time the Confidential Source went to Hansmeier's house. Therefore, the

information in the affidavit was sufficient to establish probable cause.

D. Even Lacking Probable Cause, the Good-Faith Exception Applies

Even lacking probable cause, the good-faith exception applies. The Fourth Amendment exclusionary rule does not apply to bar evidence seized in good-faith reliance on a search warrant that is later found defective. United States v. Leon, 468 U.S. 897, 905 (1984).

An officer's decision to obtain a warrant is prima facie evidence of good faith. Peck, 317 F. 3d at 757. To rebut the prima facie evidence of good faith, a defendant must show that: (1) the judge issuing the warrant abandoned his judicial role and merely served as a rubber stamp for the police; (2) the affidavit submitted was so lacking in probable cause that no officer could have an objectively reasonable belief in the existence of probable cause; or (3) the officers seeking the warrant were dishonest or reckless in preparing the affidavit in support of the warrant. United States v.

Dumes, 313 F.3d 372 (7th Cir. 2002) (citing Leon, 468 U.S. at 914-15).

Hansmeier argues that each of these grounds defeats the good-faith exception. Hansmeier also argues that Agent Murphy's Affidavit, clarified by the disclosure of withheld materials and in light of the exaggerations and inaccuracies, no longer demonstrates probable cause and that a Franks hearing is mandated. See Franks v. Delaware, 438 U.S. 154, 155-56 (1978) (holding that "where a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request").

1. Judge Roberts Did Not "Rubber-Stamp" the Request

Hansmeier first argues that the process used to obtain the warrant—transmitting the Affidavit electronically without any testimony—in conjunction with the "bare bones" Affidavit, amounts to the judge's rubber-stamp of the application. Original Motion, p.

7. An officer may not rely on a search warrant if he knows or has reason to know that the judge did not “meaningfully and critically evaluate the evidence presented at the probable cause hearing.”

Koerth, 312 F.3d at 868.

However, both Missouri and federal law allow for the electronic transmittal of warrant applications. See Fed. R. Crim. P. 4.1; Fed. R. Crim. P. 41(d)(3); Mo. Rev. Stat. § 542.276(3) (allowing submission of the application by electronic means and barring the consideration of oral testimony). Therefore, submitting the Request and Affidavit by facsimile was not improper. Hansmeier has not shown that Judge Roberts failed to meaningfully and critically evaluate the evidence before issuing the warrant.

2. The Affidavit Was Not So Lacking In Probable Cause that No Reasonable Officer Could Have an Objectively Reasonable Belief in the Existence of Probable Cause

Hansmeier next argues that the Affidavit was so lacking in probable cause that no officer could have an objectively reasonable belief in the existence of probable cause.

To determine whether an officer could have objectively relied in good faith on the judge’s decision to issue the warrant, the court

considers whether the officer could have reasonably believed that the material presented to the judge was sufficient to establish probable cause. Koerth, 312 F.3d at 869. Generally, the court will admit the evidence unless: (1) a court has previously found a materially similar affidavit insufficient to establish probable cause under indistinguishable facts; or (2) the affidavit is so plainly deficient that a reasonably trained officer would have known that the affidavit failed to establish probable cause and that he should not have applied for the warrant. Koerth, 312 F.3d at 869 (quotations and citations omitted).

In this case, Hansmeier has not cited to a case holding that an affidavit materially similar to Agent Murphy's failed to establish probable cause. See, e.g., United States v. Searcy, 664 F.3d 1119, 1125 (7th Cir. 2011) (noting that the defendant failed to cite any cases holding that a materially similar affidavit failed to meet the test of establishing probable cause). The cases cited by Hansmeier are not materially similar.

For example, in Owens v. United States, 387 F.3d 607, 608 (7th Cir. 2004), the affidavit only stated "that three months earlier

an informant had bought ‘a quantity of crack’ from [the defendant] at a house believed to be [the defendant’s residence.]” The affidavit did not identify the actual quantity of the crack or the reliability of the informant. Id. Therefore, the court found the affidavit was insufficient to establish probable cause to believe that the search of the premises would turn up contraband or evidence of a crime. Id.

In contrast, the Affidavit here described numerous sales over a period of months, the most recent being two to three days before the request for the warrant. The Confidential Source also provided details, including the amount of drugs sold to him and what he observed in the residence. The other cases cited by Hansmeier are similarly distinguishable. See United States v. Hython, 443 F.3d 480, 486 (6th Cir. 2006) (government conceded that the affidavit that described one controlled buy at an unknown time from a residence did not support probable cause to believe that the residence was the “operational base for an ongoing drug enterprise” and the court found the good faith exception did not apply); United States v. Zimmerman, 277 F.3d 426, 432-35 (3rd Cir. 2002) (finding no probable cause to search the defendant’s home for adult or child

pornography where the affidavit contained no information that the defendant ever purchased or possessed child pornography, and information in the affidavit that the defendant had one video clip of adult pornography 10 months earlier was insufficient to support probable cause).

The Court also finds that, even if the Affidavit did not establish probable cause, the Affidavit is not so plainly deficient that a reasonably trained officer would have known that the affidavit failed to establish probable cause and that he should not have applied for the warrant. The information provided by the Confidential Source included statements that Hansmeier, at the very least, sold methamphetamine and kept methamphetamine at his home. The Confidential Source provided specific details, including the price charged for the methamphetamine and the amount purchased. In addition, the Confidential Source—who was arrested with 68 grams of methamphetamine and from whom the Task Force had previously made two controlled purchases of methamphetamine—made the statements against his penal interest. Agent Murphy attempted to corroborate the Confidential Source’s information by

confirming that the Confidential Source did, in fact, know where Hansmeier lived and by viewing Hansmeier's criminal history. All of these facts indicate that Agent Murphy did not act unreasonably in relying on the Confidential Source's information.

3. Hansmeier Has Not Made a Substantial Preliminary Showing that Agent Murphy Deliberately or Recklessly Made Materially False Statements or Omissions

Finally, Hansmeier argues that Agent Murphy deliberately or recklessly omitted material information from the Affidavit or made misleading statements. Hansmeier contends that he is entitled to an evidentiary hearing. In support thereof, Hansmeier submitted the testimony of Agent Murphy and Captain Talbert from the motion to suppress hearing held in state court. See Transcript, d/e 20-4.

Under Franks v. Delaware, 438 U.S. 154 (1978), a search warrant is not valid if the officer obtains it by deliberately or recklessly presenting false, material information to the judge issuing the warrant. The rationale of Franks also applies to material omissions. See United States v. Williams, 737 F.2d 594, 604 (7th Cir. 1984); United States v. McMurtrey, 704 F.3d 502, 508

(7th Cir. 2013) (noting that a defendant must also show the omission was “designed to mislead or was made in reckless disregard of whether it would mislead”). An evidentiary hearing on the veracity of the affidavit is required when the defendant requests a hearing and makes a substantial preliminary showing that a false statement or misleading omission was made deliberately or with reckless disregard for the truth and that probable cause would not have existed without the false statements or misleading omissions. McMurtrey, 704 F.3d at 508-09 (noting that “[i]t is relatively difficult for a defendant to make the ‘substantial preliminary showing’ required under Franks”); United States v. Prideaux-Wentz, 543 F.3d 954, 962 (7th Cir. 2008).

To make a substantial preliminary showing, the defendant must point to specific intentional or reckless misrepresentations or omissions. See McMurtrey, 704 F. 3d at 509. The defendant must support the claim with the sworn statements of witnesses. Id.; see also Franks, 438 U.S. at 171 (noting that the defendant must point out the portion of the affidavit claimed to be false and provide sworn statements of witnesses or explain the absence of such sworn

statements). It is not sufficient for a defendant to allege negligent or innocent mistakes or to make conclusory allegations. McMurtrey, 705 F. 3d at 509.

Hansmeier first argues that Agent Murphy omitted from his Affidavit any mention of the Confidential Source's extensive criminal record, which includes drug convictions and convictions for burglary and theft. Mot. p. 6, ¶ 16; Supp. Mot. p. 2 paragraph 8. Hansmeier also asserts that Agent Murphy did not disclose that the Confidential Source was looking to help himself with his own charges. Mot. p. 6 ¶ 16.

Even if Agent Murphy knew the Confidential Source's criminal history and intentionally failed to include the history in the Affidavit,² the information was not material. The Affidavit indicated that the Confidential Source had been arrested with 68 grams of methamphetamine and that the Task Force had made two controlled buys from the Confidential Source. The Affidavit also

² Agent Murphy testified at the state court hearing that he "did not know his exact criminal history" but knew the Confidential Source was on parole for a narcotics violation. Tr., d/e 20-4, p. 28.

contained the Confidential Source's admission that he had been buying methamphetamine from Hansmeier for several months and more recently had also been buying heroin. This information was sufficient for Judge Roberts to weigh the Confidential Source's credibility. See United States v. Hanhardt, 157 F. Supp. 2d 978, 994-95 (N.D. Ill. 2001) (finding that the officer included enough of the criminal histories of the informants to permit the court to weigh their reliability); see also, e.g., United States v. LaMorie, 100 F.3d 547, 555 (8th Cir. 1996) (finding the omission that the informant was a convicted felon was not material where the officer disclosed that the informant confessed to participating in a burglary, arson, and a scheme to validate and cash stolen money orders and noting "[t]he judge could hardly have been under the impression that [the informant] was a model citizen"). Even if the Confidential Source's full criminal history had been included in the Affidavit, the Affidavit would still have been supported by probable cause.

Similarly, Agent Murphy's failure to disclose that the Confidential Source was looking to help himself with his own charges—even if deliberately and recklessly omitted with the intent

to mislead the judge—is not material. The Affidavit indicated that the Confidential Source was recently arrested and was cooperating with law enforcement. This would have put the judge on notice that the Confidential Source was likely looking to help his own case. See Molina v. Cooper, 325 F.3d 963, 970 (7th Cir. 2003) (“[C]ourts are aware that informants are frequently facing charges and hoping for deals”); United States v. Thompson, 139 F. App’x 724, 732 (7th Cir. 2005) (unpublished) (“[T]he fact that [the informant] was facing charges and hoping for a deal would not surprise the judge or be likely to upset his probable cause finding since informants are often facing charges and hoping for deals”) (internal quotation marks and citation omitted); Peck, 317 F.3d at 758 (noting that most confidential informants have something to gain by giving their statements and finding that the officer’s use of the informant’s statement was not unreasonable even when the officer knew she was biased).

Hansmeier also argues that Agent Murphy did not disclose that heroin was found with the informant. Mot. p. 6, ¶ 16.

Hansmeier does not explain why the omission of this information

was material. The inclusion of this information would not have affected the determination that the Affidavit was supported by probable cause.

Hansmeier further argues that Agent Murphy failed to disclose that the information in the Affidavit regarding CI 648 had occurred two to three years earlier. Mot, p. 7, ¶ 17; Supp. Mot. p. 3, ¶ 10; but see State Ct. Tr., d/e 20-4, p. 37 (Murphy testified that the information received from CI 648 was “[a] little over a year” old). Specifically, Hansmeier notes that Agent Murphy referred to information received from Special Agent Snow about a previous investigation and information received from CI 648. However, Hansmeier criticizes Agent Murphy’s failure to reveal that the information “may have been given to Snow 2-3 years prior to May 15, 2013 and never resulted in a prosecution against Hansmeier.” Supp. Mot. p. 3, ¶ 10.

As noted above, this Court gave no weight to the information received from CI 648 when determining whether the decision to issue the warrant was supported by substantial evidence. Agent Murphy provided no details about CI 648 or when the information

was received. However, even without considering the information received from CI 648, this Court found sufficient evidence supported the probable cause determination. Therefore, the information Hansmeier claims was omitted was not material.

Additionally, Hansmeier claims that Agent Murphy makes reference in his Affidavit to Hansmeier flushing drugs and drug paraphernalia down a toilet when law enforcement served a search warrant on his residence but words the assertion as if Agent Murphy had been present. Mot. p. 7, ¶ 18; Supp. Mot. p. 3, ¶ 11. However, Agent Murphy testified at the suppression hearing that the information came from Captain Talbert. See Tr., d/e 20-4, p. 38. Captain Talbert testified that she gave the information to Agent Murphy but could not recall when the incident occurred. See Tr., d/e 20-4, p. 53.

The Court does not interpret the statement in the Affidavit as an assertion that Agent Murphy personally observed the incident when Hansmeier purportedly tried dispose of drugs and drug paraphernalia down the toilet. In any event, the information provided was not false because another law enforcement officer is a

reliable source. See United States v. Johnson, No. 11 CR 290, 2011 WL 4396919, at *5 (N.D. Ill. Sept. 20, 2011) (“It is well-settled that another law enforcement officer is a reliable source and that an affiant need not make a special showing of reliability regarding information that he obtained from other officers”).

Finally, Hansmeier argues that the Confidential Source’s statement that he had been to Hansmeier’s house to buy methamphetamine 18 times in the past six months must be questioned because Hansmeier had only been out of prison for three months. Supp. Mot. p. 2, ¶ 8.

However, it is not enough to show that the informant lied and that the officer included the lie in the affidavit. United States v. Johnson, 580 F.3d 666, 670 (7th Cir. 2009). The officer must have perjured himself or acted recklessly, meaning that he “seriously doubted or had obvious reason to doubt the truth of the allegations.” Id. Hansmeier has not made any showing that Agent Murphy knew or should have known the statement was false.

Moreover, the statement is not material. Whether the Confidential Source had been buying drugs from Hansmeier for

three months or six months prior to the application for the search warrant, the information shows a continuous course of dealing drugs and provided a basis for the Confidential Source's statement that he observed a stack of money in Hansmeier's home "recently" and 30 pounds of marijuana a month earlier.

Hansmeier has not made a substantial preliminary showing that Agent Murphy intentionally or recklessly included materially false statements or made material omissions. Therefore, the request for an evidentiary hearing is denied.

III. CONCLUSION

For the reasons stated, Defendant Hansmeier's Motion to Suppress Evidence [20] and Supplemental Motion to Suppress Evidence [33] are DENIED. Defendant Hansmeier's request for an evidentiary hearing under Franks v. Delaware, 438 U.S. 154 (1978) is also DENIED.

ENTER: May 8, 2014

FOR THE COURT:

s/Sue E Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13-30042-2
	)	
CHAD HANSMEIER,	)	
	)	
Defendant.	)	

OPINION

SUE E. MYERSCOUGH, U.S. District Judge.

This matter is before the Court on Defendant Chad Hansmeier's Amended Supplemental Motion to Suppress Evidence (d/e 54). The Motion raises a number of claims already raised by Hansmeier in his two previous motions to suppress, which the Court denied in its May 8, 2014 Opinion (d/e 38).

On November 7 and November 12, 2014, this Court held a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978). Following the hearing, the Court took the matter under advisement. After a careful review of the motion, the Government's response, the

Court's May 8, 2014 Opinion, and the evidence presented at the hearing, the Amended Supplemental Motion to Suppress Evidence is DENIED.

I. BACKGROUND

The facts are set forth in this Court's May 8, 2014 Opinion. To summarize, on the morning of May 15, 2013, Michael Murphy, a special agent with the Northeast Missouri Narcotics Task Force, executed an Affidavit for a No-Knock Search Warrant. The information in the Affidavit was primarily supported by information received from a confidential source. The Confidential Source had just been arrested while in the possession of approximately 68 grams of methamphetamine. See Opinion, d/e 38, for a full recitation of the contents of the Affidavit.

After Murphy drafted the Affidavit, he took it to Lewis County, Missouri, prosecuting attorney Jules DeCoster. DeCoster notarized the Affidavit and prepared the warrant application. The documents were faxed to Judge Rick R. Roberts, who issued the No-Knock Search Warrant.

The search warrant was executed on May 15, 2013 by Agent Murphy and other officers. The Government asserts that officers found marijuana, a loaded firearm, large amounts of currency, zipper bags containing numerous smaller sandwich bags, drug paraphernalia, and 200 grams of a white, powdery substance that appeared to be either a cutting agent or methamphetamine mixed with a cutting agent. After being arrested and given his Miranda warnings, Hansmeier made statements to the police.

Hansmeier was originally charged in Missouri state court with two counts of possession of a controlled substance and unlawful possession of a firearm. On April 30, 2014, the prosecuting attorney, DeCoster, requested dismissal of the case.

Seven months earlier, in September 2013, Defendant Chad Hansmeier was charged in federal court with conspiracy to distribute 500 grams or more of mixtures or substances containing a detectable amount of methamphetamine and heroin in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A), and (b)(1)(C). See Superseding Indictment (d/e 8). On May 8, 2014, a Second Superseding Indictment amending the dates of the charged conspiracy was filed.

See Second Superseding Indictment (d/e 39) (alleging a conspiracy occurring no later than March 1, 2013 and continuing no later than August 27, 2013).

A. Hansmeier Files and the Court Denies the First Two Motions to Suppress

In January 2014, Hansmeier filed a Motion to Suppress, which he supplemented in March 2014. See d/e 20, 33. Hansmeier argued: (1) Judge Roberts did not have the authority to issue the warrant; (2) Judge Roberts did not comply with Federal Rule of Criminal Procedure 4.1; (3) the Affidavit failed to set forth sufficient facts to establish probable cause; and (4) the good-faith exception did not apply, in part because Agent Murphy deliberately or recklessly made materially false statements or omissions in the Affidavit.

In May 2014, this Court denied the First Motion to Suppress. See Opinion, d/e 38. In sum, the Court found Judge Roberts had the authority to issue the warrant and was not required to comply with Federal Rule of Criminal Procedure 4.1. The Court further found that the Affidavit in support of the search warrant contained

sufficiently reliable information to support issuance of the search warrant. The Court noted that because the Affidavit was supported by information from a Confidential Source, the probable cause determination turned on the Confidential Source's credibility.

While some of the factors weighed against finding the Confidential Source credible (including the fact that there was no indication that he had provided reliable information in the past, he did not prepare an affidavit or appear before the judge, and the Confidential Source was recently arrested), the Court found that the totality of the circumstances supported the Confidential Source's credibility. The relevant factors included that the Confidential Source's information was based on first-hand observation, he gave specific details, the agent was able to corroborate some of the information (Hansmeier's criminal history and where Hansmeier lived), the Confidential Source described ongoing criminal activity, some of which had occurred within a few days, and the Confidential Source made statements against his own interest.

The Court also found that, even if probable cause were lacking, the good-faith exception applied. In particular, the Court

found no evidence that the issuing judge abandoned his judicial role and served as a rubber stamp for the police or that the affidavit was so lacking in probable cause that no officer could have an objectively reasonable belief in the existence of probable cause.

Moreover, the Court found that Hansmeier did not make a substantial preliminary showing that Agent Murphy deliberately or recklessly made materially false statements or omissions. The Court found that the information Hansmeier claimed was either false or recklessly omitted—including the Confidential Source’s criminal history, that the Confidential Source was looking to help himself with his own charges, and that the Confidential Source was found with heroin—were not material. The Court also found that the references to Hansmeier purportedly trying to dispose of drugs and drug paraphernalia down the toilet were not false because that information came from another police officer. Finally, the Court found that it was not enough to show that the informant lied about how long he had been buying methamphetamine from Hansmeier (the Confidential Source said he had purchased methamphetamine 18 times in the past six months but Hansmeier had only been out

of prison for three months) because Hansmeier did not make any showing that Agent Murphy knew or should have known the statement was false. The Court also found that the statement was not material.

B. Hansmeier Files the Amended Motion to Suppress Evidence

In July 2014, Hansmeier filed his Amended Motion to Suppress Evidence (d/e 54). The new Motion raises some of the same arguments raised in the original motion but also raises some new arguments. Hansmeier argues that (1) the prosecuting attorney, Jules DeCoster, had a conflict of interest at the time the warrant was submitted to the state court judge because DeCoster represented Hansmeier in a civil matter; (2) the Affidavit failed to set forth sufficient facts to establish probable cause because (a) the information was stale, (b) Agent Murphy performed no corroboration, (c) no one appeared before Judge Roberts, (d) the Affidavit did not contain information that the Confidential Source had provided reliable information in the past, and (e) Agent Murphy included information received from Confidential Informant 648 (CI

648) without any indication that CI 648 was reliable; (3) the Court should reconsider its decision in light of United States v. Glover, 755 F.3d 811 (7th Cir. 2014); and (4) Agent Murphy deliberately or recklessly included false material information or omitted material information from the Affidavit by (a) omitting information about Agent Murphy's disciplinary record; (b) omitting information that the Confidential Source was an addict and by his own admission had injected himself with methamphetamine on May 14, 2013; (c) including false information about an incident where Hansmeier allegedly flushed drugs down a toilet when law enforcement served a search warrant on Defendant's residence when Defendant lived in Monroe County, Missouri; and (d) including information that the Confidential Source told him that Hansmeier had two cameras, one inside and one outside the front door, but that only one non-functioning camera was found inside the front door.

II. ANALYSIS

As an initial matter, the Court notes that Agent Murphy is a Missouri officer and the warrant was executed in Missouri. The parties barely address whether Seventh Circuit or Eighth Circuit

law applies, although the Government notes the issue without much elaboration. The Court, therefore, will apply Seventh Circuit law. Neither party points to an Eighth Circuit case to show either that Agent Murphy relied on Eighth Circuit precedent or lacked good faith because an Eighth Circuit case put him on notice that the Affidavit was insufficient. See, e.g., Davis v. United States, 131 S. Ct. 2419 (2011) (holding that “evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule”); United States v. Koerth, 312 F.3d 862, 870 (7th Cir. 2002) (finding the officers acted in good faith and noting that the defendant failed to cite to any cases holding that a materially similar affidavit failed to establish probable cause).

A. Hansmeier Has Not Shown that the Alleged Conflict of Interest Warrants Suppression of the Evidence

Hansmeier argues that the evidence must be suppressed because Attorney DeCoster still represented Hansmeier in another case when, on May 15, 2013, DeCoster notarized the Affidavit and prepared the warrant application. Hansmeier asserts that DeCoster, in an effort to “cover his tracks,” drafted a letter

essentially terminating the representation and back-dated the letter to May 13, 2013.

Specifically, DeCoster, in addition to serving as Lewis County prosecuting attorney, had a private law practice in Monticello, Missouri. On July 17, 2012, DeCoster filed an Entry of Appearance and Motion to Set Aside Judgment and Decree of Modification on behalf of Hansmeier in Marion County, Missouri, Case number 12-MR-CF00539. DeCoster billed Hansmeier for DeCoster's services.

On April 12, 2013, Hansmeier paid \$600, leaving \$954 still due and owing. On May 16, 2013, while Hansmeier was in the Lewis County, Missouri, Jail, Hansmeier received via hand delivery a letter from Attorney DeCoster, bearing the date of May 13, 2013. The letter advised Hansmeier and Kristina Ridgeway (Hansmeier's girlfriend) as follows:

Please be advised that I have decided to accept the cash payment which you made to my office as full settlement of your account. There is no remaining balance due at this time and as I was no longer representing you, I had closed my file.

Defendant's Exhibit 10.

Hansmeier testified at the hearing that DeCoster had told him that they would return to court once Hansmeier had paid him. Hansmeier also testified that he was consulting with DeCoster about some concerns Hansmeier had about “some false statements and false accusations” relating to a previous arrest on parole violations.

Hansmeier does not provide any citation or argument explaining why suppression is required. The Government interprets Hansmeier’s statements as an argument that DeCoster violated the rules of professional conduct and, as such, the evidence should be suppressed. The Government argues that there was no conflict of interest and, even if a conflict existed, the entire issue has no bearing on the issues before the Court because DeCoster was not the affiant or the judge weighing probable cause. The Government further argues that even if DeCoster had a conflict that violated the rules of professional conduct, that is not an adequate basis for the court to suppress evidence that is otherwise admissible.

Even if the Court were to assume that DeCoster committed an ethical violation, suppression is not required. In United States v.

Olson, 450 F.3d 655 (7th Cir. 2006), the defendant argued that his statements should be suppressed because the prosecutor obtained the statements in violation of Wisconsin Supreme Court Rule 3.8(b). Wisconsin Supreme Court Rule 3.8(b) required that prosecutors undertake “reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.” Wis. Sup. Ct. R. 20:3.8(b). The Seventh Circuit expressed doubt that the prosecutors violated any ethical rules. Id. at 682. The Seventh Circuit further noted that, even if an ethical violation occurred, suppression was not required because the record did not indicate a willful or egregious act, the conduct did not result in a constitutional violation, and there was no clear authority that they were under an obligation to do more than they did. Id.

Similarly, in United States v. Williams, 698 F.3d 374, 380 (7th Cir. 2012), the defendant attempted to have his attorney give a letter to the defendant’s cousin in which the defendant asked the cousin to provide a false alibi. The attorney withdrew as defendant’s counsel, turned the letter over to the government, and

agreed at the government's request to testify at the defendant's trial.

Id. The Seventh Circuit found the attorney did not violate the lawyer-client privilege and did not act unethically. The Court further noted that, even if the attorney had acted unethically, it did not follow that the testimony was inadmissible:

Exclusionary rules, which protect the guilty, are no longer favored. "Suppression of evidence ... has always been our last resort, not our first impulse. The exclusionary rule generates substantial social costs which sometimes include setting the guilty free and the dangerous at large." Hudson v. Michigan, 547 U.S. 586, 591, 126 S.Ct. 2159, 165 L. Ed. 2d 56 (2006); see also Sanchez-Llamas v. Oregon, 548 U.S. 331, 343–50, 126 S.Ct. 2669, 165 L. Ed. 2d 557 (2006); Trammel v. United States, 445 U.S. 40, 50–51, 100 S.Ct. 906, 63 L. Ed. 2d 186 (1980). "Only communications subject to the attorney-client privilege cannot be disclosed under judicial compulsion," Newman v. State, 384 Md. 285, 863 A.2d 321, 332 (2004)—and the privilege doesn't extend to a client's asking his lawyer to help him commit a crime. See also United States v. Zolin, 491 U.S. 554, 563, 109 S.Ct. 2619, 105 L. Ed. 2d 469 (1989); In re Grand Jury, 475 F.3d 1299, 1305–06 (D.C.Cir.2007).

Id. at 382.

In this case, even assuming a conflict of interest existed (a matter the Court does not decide), suppression would not be the appropriate remedy. Agent Murphy testified DeCoster did not make

any corrections to his Affidavit, had no input on the Affidavit, and provided no information to him regarding Hansmeier. DeCoster merely notarized the Affidavit. The Court finds Agent Murphy credible. The alleged conflict did not make it more or less likely that the issuing judge would find probable cause and no evidence was obtained because of Attorney DeCoster's involvement or the alleged conflict. See, e.g., United States v. Ward, 895 F. Supp. 1000, 1008 (N.D. Ill. 1995) (wherein the attorney had contact with individual who was represented by counsel outside of counsel's knowledge in violation of the ethical rules; the court found that while suppression was a possible remedy, suppression was not appropriate in this case).

B. The Affidavit Sets Forth Sufficient Facts to Establish Probable Cause

In the Amended Supplemental Motion to Suppress Evidence, Hansmeier again challenges whether the Affidavit set forth sufficient facts to establish probable cause.

An affidavit establishes probable cause when, based on the totality of the circumstances, the affidavit sets forth sufficient

evidence that would cause a reasonable person to believe that a search will uncover evidence of criminal activity. See United States v. Mykytiuk, 402 F.3d 773, 776 (7th Cir. 2005); United States v. Hicks, 650 F.3d 1058, 1065 (7th Cir. 2011). When the affidavit is supported by information from an informant, the probable cause determination turns on the informant's credibility. United States v. Bell, 585 F.3d 1045, 1049 (7th Cir. 2009); United States v. Olson, 408 F.3d 366, 370 (7th Cir. 2005). To assess whether the informant's information is sufficiently reliable to support issuance of the warrant, a court considers: (1) the degree to which the informant acquired knowledge of the events through firsthand observation; (2) the amount of detail provided; (3) the extent to which the police corroborated the informant's statements; (4) the interval between the dates of the events and the application for the search warrant; and (5) whether the informant appeared before the judge in person and filed his own affidavit. See United States v. Sutton, 742 F.3d 770, 773 (7th Cir. 2014); Koerth, 312 F.3d 862 at 866. No one factor is dispositive. United States v. Brack, 188 F.3d 748, 756 (7th Cir. 1999) ("a deficiency in one factor may be

compensated for by a strong showing in another or by some other indication of reliability”).

Hansmeier challenges the Affidavit on a number of grounds. First, Hansmeier argues that the information in the Affidavit was stale. Also, in a related argument, Hansmeier argues that the Affidavit did not contain information indicating how recently the Confidential Source had been in Hansmeier’s residence.

There is no “bright line” rule for determining when information is stale. Sutton, 742 F.3d at 774. The Seventh Circuit holds that the age of the information received from a Confidential Source is considered with the rest of the factors. Id. Moreover, when the affidavit refers to facts that show ongoing, continuous criminal activity, the passage of time is less critical. United States v. Spry, 190 F.3d 829, 836 (7th Cir. 1999).

In the last Opinion, the Court considered all of the factors and found that “the interval between the events described by the Confidential Source and the application for the search warrant was not so long as to dispel a reasonable belief that a search of the house would uncover evidence of illegal drug activity.” Opinion, p.

23 (d/e 38). Moreover, the Affidavit indicates that the Confidential Source stated he was in Hansmeier's residence a month earlier and saw 30 pounds of marijuana; he was at Hansmeier's house "recently" and saw a large stack of money; and he had last received methamphetamine and heroin from Hansmeier a few days earlier. See Affidavit, Defendant's Exhibit One.

Given the ongoing, continuous criminal activity, the information is not stale. Moreover, the Confidential Source's observations when he was in the house 30 days earlier and "recently" were sufficiently tied to the ongoing criminal activity to support a reasonable belief that a search of the house would uncover evidence of illegal drug activity.

Hansmeier also argues that Agent Murphy conducted no corroboration other than driving by Hansmeier's residence. See, e.g., Draine v. Bauman, 708 F. Supp. 2d 693, 702 (N.D. Ill. 2010) (citing cases from other circuits that hold that corroboration of innocent details, like where a suspect lives, does not necessarily establish probable cause). Hansmeier raised this argument in the first two motions. As the Court found at that time, Agent Murphy

also checked Hansmeier's criminal history, which showed at least one prior conviction for distribution of a controlled substance. Agent Murphy also noted that Hansmeier was currently on parole. A criminal history check has some corroborative value. See Olson, 408 F.3d at 327 (a criminal history check of the accused has some corroborative value); but see United States v. Peck, 317 F.3d 754, 757 (7th Cir. 2003) (a record check alone does not corroborate an informant's account).

Next, Hansmeier argues that the Confidential Source never appeared in front of the judge and neither did Attorney DeCoster or Agent Murphy. However, Missouri law (where the affidavit was executed) does not even permit oral testimony when applying for a search warrant. Mo. Rev. Stat. § 542.276(3). Moreover, testifying before the issuing judge is just one of the relevant factors in the totality of the circumstances analysis. United State v. Taylor, 471 F.3d 832, 840 (7th Cir. 2006).

Hansmeier challenges the Affidavit on the ground that it did not contain any information that the Confidential Source had previously provided information to law enforcement. However,

“police are not limited to relying only on informants with proven track records of providing truthful information.” United States v. Mitten, 592 F.3d 767, 773-74 (7th Cir. 2010). The reliability of an informant can be shown by evidence that he provided truthful information before, but that is not the only way to show that an informant is reliable. Id. at 774. An informant’s reliability and veracity can be shown by corroboration, the fact that the statement is contrary to his own penal interests, and where the information is based on personal observation. Id. Therefore, the fact that the Affidavit omitted any information about the Confidential Source’s track record does not detract from the Court’s earlier finding that the Affidavit set forth sufficient facts to establish probable cause.

Hansmeier also challenges Agent Murphy’s inclusion of information Agent Murphy received from an additional confidential informant (CI 648) without any indication that the informant was reliable. However, in the Opinion on the first two motions to suppress, this Court did not give any weight to CI 648’s information because Agent Murphy did not provide any details about the informant or the age of the information

received. The Court, nonetheless, found that the issuing judge had a substantial basis for determining that probable cause existed even without the information from CI 648.

The Court finds no reason for changing the Court's earlier determination that, viewing the totality of the circumstances, the issuing judge had a substantial basis for determining that probable cause existed. See Opinion (d/e 38) p. 25.

C. The Court Finds Glover Distinguishable

In his Amended Motion to Suppress, Hansmeier also argues that this Court should reconsider its earlier decision in light of United States v. Glover, 755 F. 3d 811 (7th Cir. 2014).

In Glover, an officer submitted a state court probable cause affidavit based on information received from a "Doe" informant. Doe reported that a felon known as "T.Y." was a member of the Traveler's Vice Lords gang and part of a stick-up crew who robbed people carrying large amounts of drugs or money. Glover, 755 F.3d at 814-15. Doe told the officer that T.Y. was in the possession of two handguns and lived at 905 Kedvale in Chicago, that Doe had

seen the guns while in the house the day before and many times over the past six weeks, and that T.Y. needed the guns because he had a “dope spot” (a street level point of sale) for heroin. Id.

The affidavit also described the officer’s corroboration of several facts. The officer showed Doe a photo lineup and Doe identified the defendant as T.Y. The officer confirmed the defendant had two felony convictions and had lived at the address in question. Finally, the officer took Doe to the area of the residence, and Doe was able to identify the defendant’s house. Id. at 815.

The affidavit did not, however, contain any available information on Doe’s credibility. Id. In fact, Doe had been an informant for the Chicago police for six years and had been affiliated with a gang. Doe had fourteen criminal convictions, four of which were incurred while Doe was working as an informant. Id. Doe had on two occasions used aliases when questioned by police officers. Id. Doe had also received payment for providing information to the police in the past. Id.

The officer filed the affidavit and took Doe with him to appear before a state court judge. Id. There was no record that Doe

provided any testimony. Id. The state court judge issued the search warrant. A team of officers executed the warrant and recovered guns and heroin. Doe was paid \$450 based on the result of the search. Id.

The defendant was arrested and eventually charged in federal court. Id. The defendant moved to suppress the evidence, arguing that the affidavit was insufficient because the affidavit (1) omitted any information about the informant's credibility; (2) showed minimal corroboration; (3) lacked detail; (4) provided no basis for the informant's knowledge of the alleged drug crimes and robberies; and (5) was not supplemented with testimony when the informant appeared before the state court judge. Id. at 16. The Seventh Circuit focused only on the first argument and found that the "complete omission of information regarding Doe's credibility is insurmountable, and it undermines the deference we would otherwise give the decision of the magistrate to issue the warrant." Id.

Specifically, the Seventh Circuit noted that evidence about an informant's credibility or potential bias was crucial. Id. However,

known, highly relevant, and damaging information about Doe's credibility was completely omitted from the affidavit. The Court found that the omission of the information, in light of the additional fact that the tip was minimally corroborated and the affidavit provided little detail, undermined Doe's credibility. Id. at 817-18. Without the credibility information, the state court judge "had no meaningful opportunity to exercise his or her discretion to draw favorable or unfavorable inferences." Id. at 818.

The Seventh Circuit was careful to note that where information about credibility is not available, other factors "may overcome the doubt inherent in relying on an informant without a track record." Id. (noting that extensive corroboration or other factors could salvage the warrant). Nonetheless, the Court found "[i]n this case, however, the issuing magistrate should not have been forced to rely on other factors because vital credibility information was omitted from the affidavit." Id.

The Seventh Circuit also agreed with the defendant's argument that he was entitled to a hearing on whether, for purposes of the good-faith analysis, the officer acted with reckless

disregard for the truth by omitting from the affidavit important information about the informant's credibility. Id. at 819. The Court found that the defendant had made a substantial preliminary showing that the omitted credibility information was material. Id. at 820. The court also found that the credibility omissions themselves provided sufficient evidence to support a reasonable inference of reckless disregard for the truth. Id. Therefore, the Seventh Circuit remanded the case for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), to determine if the good-faith exception to the exclusionary rule should apply.

To the extent Hansmeier is arguing that the Affidavit is insufficient in light of Glover, the Court finds Glover distinguishable. In Glover, the affidavit did not give the issuing judge any information about Doe's credibility. In contrast, here the Affidavit gave Judge Roberts a great deal of information about the Confidential Source's criminal nature and his motivations. The Affidavit reflects that the Confidential Source had just been arrested for possession of about 68 grams of methamphetamine, the Confidential Source admitted to repeatedly purchasing

methamphetamine and heroin from Hansmeier, that the West Central Illinois Drug Task Force had previously made two controlled purchases of methamphetamine from the Confidential Source, and that the Confidential Source was cooperating with law enforcement. As the Court noted when ruling on the last two Motions to Suppress, this information was sufficient for Judge Roberts to weigh the Confidential Source's credibility.

D. Hansmeier Has Not Shown that Agent Murphy Deliberately or Recklessly Included False Material Information or Omitted Material Information

Hansmeier also argues that Agent Murphy deliberately or recklessly included false information or omitted material information in the Affidavit. Hansmeier requested a Franks hearing.

Under Franks v. Delaware, 438 U.S. 154, a search warrant is not valid if the officer obtains it by deliberately or recklessly presenting false, material information to the judge issuing the warrant. The rationale of Franks also applies to material omissions. See United States v. Williams, 737 F.2d 594, 604 (7th Cir. 1984); United States v. McMurtrey, 704 F.3d 502, 508 (7th Cir.

2013). An evidentiary hearing on the veracity of the affidavit is required when the defendant requests a hearing and makes a substantial preliminary showing that a false statement or misleading omission was made deliberately or with reckless disregard for the truth and that probable cause would not have existed without the false statements or misleading omissions. McMurtrey, 704 F.3d at 508-09 (noting that “[i]t is relatively difficult for a defendant to make the ‘substantial preliminary showing’ required under Franks”); United States v. Prideaux-Wentz, 543 F.3d 954, 962 (7th Cir. 2008). As noted, this Court held a Franks hearing on November 7 and November 12, 2014.

At a Franks hearing, the defendant must demonstrate, by a preponderance of the evidence, that (1) the affidavit contained material false statements or material omissions; (2) the false statements were made or the information omitted intentionally or with reckless disregard for the truth; and (3) the false statements were necessary to the finding of probable cause. United States v. Williams, 718 F.3d 644, 650 (7th Cir. 2013). When the claim is that the officer deliberately or reckless omitted information, the

defendant must show that the material was omitted deliberately or recklessly to mislead the judge. Williams, 718 F.3d at 650.

An affiant acts with reckless disregard if he “in fact entertained serious doubts as to the truth of his allegations.” United States v. A Residence Located at 218 Third Street, New Glarus, Wisconsin, 805 F.2d 256, 258 (7th Cir. 1986). The inquiry is subjective and focuses on the officer’s state of mind. Williams, 718 F.3d at 650 n.2 (also noting that the issue is whether the affiant lied or acted with reckless disregard for the truth, not whether other officers who provided information did so). Reckless disregard may be “proved from circumstances showing obvious reasons for the affiant to doubt the truth of the allegations.” Id. If the defendant meets his burden, the Court examines the affidavit, eliminating any false statements and adding any omitted material facts, and determines whether probable cause exists. United States v. Harris, 464 F.3d 733, 738 (7th Cir. 2006); see also, e.g., Williams, 718 F.3d 644 (finding it was not clearly erroneous for the district court to determine, after a Franks hearing, that the false statement was negligently as opposed to recklessly included where the

affidavit was prepared in haste, there was no evidence that the officer knew there was a mistake in the affidavit when he still had time to correct it, and the police excluded from the affidavit evidence potentially favorable to the police).

a. Omission of Agent Murphy's Disciplinary Information Was Not Material

Hansmeier argues that Agent Murphy deliberately and recklessly omitted information about prior discipline: (1) that Agent Murphy was fired in 2003 from his position as a police officer in Springfield, Missouri, because he stole beer from an evidence room that had been seized by his department and was supposed to be destroyed; and (2) that Agent Murphy had been suspended twice, once for paying two informants for making drug purchases after being told not to and again for failing to make a request to a crime lab to perform an analysis on evidence in a Monroe County, Missouri, investigation. (At the hearing, Agent Murphy testified that he was fired for taking home beer that was supposed to be destroyed, was suspended once for forgetting to send two pills to

the state crime lab, and suspended once for being alone with a female confidential informant).

The Government argues that Agent Murphy's work infractions have no bearing on the warrant's validity, on Agent Murphy's truthfulness or ability to execute a search warrant, or on whether there was probable cause to search Hansmeier's home. According to the Government, Agent Murphy's credibility is relevant only insofar as he accurately recounts what the source told him.

The Court finds that the information is not material. Even had the information been included in the Affidavit, the Affidavit still set forth sufficient facts that would cause a reasonable person to believe that a search would uncover evidence of criminal activity. Mykytiuk, 402 F.3d at 776 (setting forth the standard). Further, Agent Murphy adequately explained the infractions as unintentional mistakes on his part.

b. Hansmeier Failed to Show that Agent Murphy Deliberately or Recklessly Omitted Information About the Confidential Source's Extensive Criminal History and, in any Event, the Information Was Not Material in Light of the Information Contained in the Affidavit

Hansmeier complains that the Affidavit omitted any mention of the Confidential Source's extensive criminal record, which included drug convictions and convictions for burglary and theft. Agent Murphy testified that he knew the Confidential Source was a convicted felon and was on parole in Missouri. Agent Murphy knew the Confidential Source was on parole because Agent Murphy receives a monthly list of individuals who are supervised in the district. Agent Murphy did not run a full criminal history check on the Confidential Source.

Agent Murphy did not include in the Affidavit that the Confidential Source had been convicted of an offense or that he was on parole. Agent Murphy testified that he did not know the Confidential Source's entire history but did include in the Affidavit that the Confidential Source had recently been arrested with a large amount of methamphetamine and that two previous buys had been conducted with the Confidential Source. Agent Murphy also testified that the person the Confidential Source was with when the Confidential Source was arrested was released. Agent Murphy expressed concern that this person might tell others about the

Confidential Source's arrest and that this information would get back to Hansmeier. Agent Murphy did not want Hansmeier to have time to deliver or get rid of the drugs allegedly in his home. Agent Murphy wanted to get into Hansmeier's home as soon as possible so he could prevent the possible destruction or hiding of evidence. When asked whether he was working under a time crunch, Agent Murphy testified that he put in the Affidavit what he thought he needed to put in that was relevant to probable cause. He denied trying to hide information from the judge.

The Court finds Agent Murphy credible and does not believe that he deliberately or recklessly omitted that the Confidential Source was a convicted felon and on parole. Moreover, as the Court found in the Opinion on the first two Motions to Suppress, the information about the Confidential Source's criminal record was not material even if Agent Murphy intentionally failed to include the information in the Affidavit. As noted, the Affidavit indicated that the Confidential Source had been arrested with approximately 68 grams of methamphetamine and that the Task Force had made two controlled buys from the Confidential Source. The Affidavit also

contained the Confidential Source's admission that he had been buying methamphetamine from Hansmeier for several months and had more recently been buying heroin. This information was sufficient for Judge Roberts to weigh the Confidential Source's credibility. United States v. Hanhardt, 157 F. Supp. 2d 978, 994-95 (N.D. Ill. 2001) (finding that the officer included enough of the criminal histories of the informants to permit the court to weigh their reliability); United States v. LaMorie, 100 F.3d 547, 555 (8th Cir. 1996) (finding the omission that the informant was a convicted felon was not material where the officer disclosed that the informant confessed to participating in several crimes and noting that "[t]he judge could hardly have been under the impression that [the informant] was a model citizen"); Taylor, 471 F.3d at 840 ("an informant's criminality does not in itself establish unreliability").

Therefore, even if the Affidavit included that the Confidential Source was a convicted felon and on parole, the information would not have detracted from a finding of probable cause. See also United States v. Allen, 297 F.3d 790, 796 (8th Cir. 2002) (finding the record did not clearly show that the omissions were intentionally or

recklessly made where the affiant testified that while he knew that the confidential informant had a criminal history, he did not know its exact nature; the court also found that the criminal history did not add much to the affidavit because the other information contained in the affidavit provided sufficient information for the magistrate judge to weigh the informant's credibility).

c. The Omission of Information that the Confidential Source Was an Addict and Had Injected Himself with Methamphetamine on May 14, 2013 Was Not Material

Hansmeier also challenges the Affidavit on the basis that Agent Murphy omitted information that the Confidential Source was an addict and had, by his own admission, injected himself with methamphetamine on the day he provided the information.

However, Hansmeier has not shown that the information was deliberately or recklessly omitted. See United States v. Garey, 329 F.3d 573, 577-78 (7th Cir. 2003) (finding the defendant failed to show that the officer deliberately or reckless omitted information about the informant's drug use).

Agent Murphy testified that he knew the Confidential Source was a methamphetamine user. He did not include in the Affidavit

that the Confidential Source was an addict or a user but did indicate that the Confidential Source was in custody for possession of 68 grams of methamphetamine and that two previous buys had been made from him. Agent Murphy also testified that he assessed the Confidential Source's competence to determine whether the Confidential Source was under the influence. He did not observe any indication that the Confidential Source was under the influence and, therefore, did not include such information in his Affidavit.

As noted above, the Court finds Agent Murphy credible and concludes that Agent Murphy did not deliberately or recklessly omit information that the Confidential Source was a user, addict, or had recently injected methamphetamine. Also, because Agent Murphy did not observe any indication that the Confidential Source was under the influence, he did not omit material information. See United States v. Scott, 610 F.3d 1009, 1015 n.2 (8th Cir. 2010) (finding that the defendant made no showing that the drug use of the informants "affected their ability to provide accurate information or otherwise impacted the probable cause finding"); United States v. Wilson, 324 F. App'x 546 (8th Cir. 2009) (Franks hearing not

required where the confidential informant's cocaine use or knee injection affected the informant's ability to relay accurate information to police); Allen, 297 F.3d at 795-96 (finding no plain error where the affidavit did not disclose that the informant was under the influence of methamphetamine because the affiant testified that the informant was lucid and coherent and that persons under the influence of methamphetamine are generally functional).

Moreover, the Confidential Source's drug addiction is not material given the other information contained in the Affidavit, including the Confidential Source's first-hand knowledge of the events, the length of time the Confidential Source was purchasing drugs from Hansmeier, and the specific details provided. See, e.g., United States v. Martin, 866 F.2d 972, 979 (8th Cir. 1989) ("In light of the extensive information set forth in the affidavit, we believe it beyond peradventure that the omission of facts concerning the [informant's] drug addiction was of no consequence to the determination of probable cause").

d. Agent Murphy Did Not Deliberately or Recklessly Include False Information About the 2004 Incident When Hansmeier Allegedly Flushed Drugs Down the Toilet and the Evidence in this Case Would Have Been Discovered Even if the Officers Had Knocked

Hansmeier also challenges Agent Murphy's inclusion of information that Hansmeier had allegedly flushed drugs down a toilet when law enforcement served a previous search warrant on Hansmeier's residence. This information purportedly came from Captain Patti Talbert. The Affidavit provided:

During a previous search warrant at a residence where Hansmeier was an occupant, Hansmeier flushed drugs and drug paraphernalia after Law Enforcement Officers knocked and announced that they had a search warrant. Hansmeier has also resisted arrest by law enforcement in the past. According to Capt. Patti Talbert, since 1998 there have been three search warrants served on residences where Chad Hansmeier has resided. Due to the installation of cameras, Hansmeier's history of resisting arrest and attempting to destroy evidence, a no[-]knock search warrant is requested.

See Affidavit, Defendant's Exhibit One.

In support of his Amended Supplemental Motion to Suppress Evidence, Hansmeier submitted deposition testimony from a June 27, 2005 deposition in which Talbert testified about the raid on Hansmeier's residence in Monroe County in 2004. During that

deposition, she acknowledged that she and a group of officers intercepted Hansmeier and Kristin Bush on a highway some distance from their home and took them into custody. The deposition of another member of the Northeast Missouri Drug Task Force, Tim Forney, confirms that Hansmeier and Bush remained in custody outside their residence while the police searched the residence.

The Government responds that the Affidavit was “inartfully worded” but that the incident did occur and supported the request for a no-knock warrant. The Government also argues that the affidavit’s description of the incident was immaterial to the probable cause analysis.

At the hearing, Agent Murphy testified that he included in the Affidavit the information he received from Captain Talbert. He later learned that drugs had been flushed, but that Hansmeier had not been in the house when the officers arrived. Agent Murphy believes that he either received misinformation or the information was given to him in the wrong manner by Captain Talbert.

Captain Talbert testified that it had been nine years since that earlier incident had occurred when she spoke to Agent Murphy. What actually happened in 2004 is that Hansmeier was stopped on the roadway by officers while other officers executed the search warrant. In the bathroom, the officers found marijuana residue on the rim and in the bowl of the toilet and a bag with marijuana residue in the trash can. Officers went down to the lagoon and cleaned out the end of the sewer pipe where drug paraphernalia and bags were found. Hansmeier's house was the only one that filtered into the lagoon. Captain Talbert believed Hansmeier had been tipped off about the search, flushed drugs down the toilet, and left the house.

The Court finds that Agent Murphy included the information he received from Captain Talbert, which was incorrect. However, Agent Murphy did not know, or have reason to know, that the information was incorrect. Therefore, the Court finds that Agent Murphy did not deliberately or recklessly include false information. See Williams, 718 F.3d at 650 n.2 (also noting that the issue is

whether the affiant lied or acted with reckless disregard for the truth, not whether other officers who provided information did so).

Moreover, even if the no-knock entry would not have been justified absent the information about the prior incident, the officers relied on the warrant in good faith and the evidence would still have been discovered. In United States v. Carter, 999 F.2d 182, 186-87 (7th Cir. 1993), the Seventh Circuit held that a warrant issued without adequate cause to justify a no-knock entry does not mean that the evidence must be suppressed. Id. citing United States v. Moore, 956 F.2d 843, 851 (8th Cir. 1992). Instead, the evidence is admissible unless the affidavit was so lacking in probable cause that the officer would not have reasonably believed that the affidavit was sufficient. Id. Other courts have applied the “inevitable discovery” doctrine to find that suppression is not warranted if the police would have discovered the evidence if they had knocked before entering. See United States v. Langford, 314 F.3d 892 (7th Cir. 2002); see also United States v. Brown, No. 00-CR-112-C, 2001 WL 34373161 (W.D. Wis. March 16, 2001) (finding that although the no-knock warrant should not have been issued,

suppression was not warranted where the agents would inevitably have seized the evidence even if they had announced their presence—the warrant was otherwise valid and officers acted in good faith), aff'd 333 F.3d 850 (7th Cir. 2003); United States v. Jones, 214 F.3d 836, 838 (7th Cir. 2000) (the defendant could not argue that he would have destroyed the evidence but for the officer's unreasonable manner of entry).

e. Omitting Information that the Confidential Source was Looking for Leniency in Exchange for His Cooperation is Immaterial

Hansmeier argues that Agent Murphy deliberately or recklessly omitted from the Affidavit the fact that the Confidential Source was looking for a reduction of any time he might have to serve in exchange for his cooperation. Hansmeier supported this argument by attaching Agent Murphy's testimony from the July 25, 2013 hearing where Agent Murphy admits that the Confidential Source was looking for a reduction in exchange for his cooperation.

This Court previously found that Agent Murphy's failure to disclose that the Confidential Source was looking to help himself with his own charges, even if deliberately and recklessly omitted

with the intent to mislead the judge, was not material. The Affidavit indicated that the Confidential Source was recently arrested and cooperating with law enforcement. That would have put the judge on notice that the Confidential Source was likely looking to help his own case. Molina v. Cooper, 325 F.3d 963, 970 (7th Cir. 2003) (“[C]ourts are aware that informants are frequently facing charges and hoping for deals”). The Court finds no reason to change its previous ruling.

f. Including Information that the Confidential Source Had Been Buying Methamphetamine from Hansmeier for Six Months When Both the Confidential Source and Hansmeier Had Been Out of Prison Less than Six Months Was Not Material

Hansmeier also argues that Agent Murphy falsely stated that the Confidential Source had been buying methamphetamine from Hansmeier for six months when both the Confidential Source and Hansmeier had been out of prison less than six months.

As the Court noted in the last Opinion, it is not enough to show that the informant lied and the officer included the lie in the affidavit. United States v. Johnson, 580 F.3d 666, 670 (7th Cir. 2009). The officer must have perjured himself or acted recklessly,

meaning he “seriously doubted or had obvious reason to doubt the truth of the allegations.” Id. The Court found that Hansmeier had not made any such showing. The Court also found the statement was not material. Whether the Confidential Source had been buying drugs from Hansmeier for three or six months, the information showed a continuous course of dealing and provided a basis for the Confidential Source’s statement that he observed a stack of money in Hansmeier’s home “recently” and 30 pounds of marijuana a month earlier. Hansmeier has not presented any evidence to cause the Court to reconsider its earlier decision.

g. Fact That a Camera Was Not Found Outside the Residence is Not Material

Finally, Hansmeier argues although the Confidential Source told Agent Murphy that Hansmeier had two cameras, one inside and one outside the front door of the residence, Agent Murphy only observed (at the time the search warrant was executed) one non-functioning camera inside the front door. Motion (d/e 54, p. 9).

Hansmeier's argument is not entirely clear. Hansmeier presented no evidence that Agent Murphy knew or should have known, when he completed the Affidavit, that the information about two cameras was false. Moreover, Agent Murphy testified that when the officers executed the search warrant, he saw wiring going outside but that there was no camera, which tends to support what the Confidential Source told Agent Murphy. Further, to the extent the information about the cameras supported the issuance of a No-Knock warrant, the Court finds that suppression is not warranted because the evidence would still have been discovered had the officers knocked. Therefore, Hansmeier's argument about the cameras does not support suppression of the evidence.

III. CONCLUSION

For the reasons stated, Defendant Hansmeier's Amended Supplemental Motion to Suppress (d/e 54) is DENIED. This case is currently set for a Final Pretrial Conference on November 21, 2014 at 10:00 a.m. The parties shall submit the following documents and motions by noon on November 19, 2014: (1) witness lists,

exhibit lists, and stipulations; (2) one copy of proposed jury instructions that the parties have agreed upon; (3) separate copies from each party of any disputed jury instructions; (4) an agreed statement of the case; (5) any non-routine voir dire questions; and (6) any motions in limine. The witness lists shall be filed under seal. The parties shall bring their marked exhibits to the Final Pretrial Conference. Objections to witnesses, exhibits, and jury instructions, as well as responses to pretrial motions, shall be made in writing, with citation to legal authority, by noon on November 20, 2014.

ENTER: November 14, 2014

FOR THE COURT:

s/Sue E Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13-30042-2
	)	
CHAD HANSMEIER,	)	
	)	
Defendant.	)	

OPINION

SUE E. MYERSCOUGH, U.S. District Judge.

The Court held a Final Pretrial Conference on April 10, 2015. At the hearing, the Court GRANTED IN PART and DENIED IN PART the Government's Motion in Limine (d/e 94); DENIED the Defendant Chad Hansmeier's second Motion for Bill of Particulars (d/e 102); and DENIED the Defendant's Motion for Reconsideration of Decisions Regarding Suppression (d/e 109). The Court sets forth the basis for those rulings herein. This matter is set for a continued Final Pretrial Conference on April 17, 2015 at 1:30 p.m.

I. MOTION IN LIMINE

In the Motion in Limine, the Government seeks an Order from the Court to: (1) require that defense counsel only impeach cooperating witnesses with those prior felony convictions which occurred within the past 10 years, consistent with Rule 609; (2) prohibit defense counsel from eliciting references to Detective Mike Murphy's work records; (3) prohibit defense counsel from submitting as evidence a letter Defendant wrote several days after his arrest; and (4) prohibit defense counsel from referencing any prior communications between Defendant's attorney, Bruce Locher, and Defendant's co-defendant, Jason Walker.

"Evidence should be excluded in limine only where [the evidence] is clearly inadmissible on all potential grounds." United States v. Lillie, 669 F.Supp.2d 903, 905 (N.D. Ill. 2009). The party moving for exclusion of the evidence bears the burden of establishing that the evidence is not admissible for any purpose. Id. If the motion in limine is denied, the Court addresses the objections as they arise at trial. Id. at 906.

A. Defense Counsel May Not Impeach Walker With an Ordinance Violation Charge, and the Court Will Determine at Trial the Admissibility of the Other Conviction for Impeachment Purposes

The Government asks that defense counsel be limited to impeaching each cooperating witness with only those prior felony convictions which occurred within the past ten years, consistent with Rule 609. For example, the Government is concerned that defense counsel is going to try to impeach co-defendant Jason Walker with a pending charge for a city ordinance violation for “interference.” The Government argues that a city ordinance violation is not appropriate for impeachment because (1) it is a charge, not a conviction; and (2) even if Walker is convicted of that ordinance violation prior to trial, that conviction would be improper impeachment material because it is only a city ordinance violation and does not involve a dishonest act or false statement because it stems from Walker’s refusal to submit to a search, which has nothing to do with dishonesty. See United States v. Miles, 207 F.3d 988, 993-94 (7th Cir. 2000) (finding that the witness’s city ordinance conviction for failing to register a gun did not involve

fraud or dishonesty and, therefore, was not admissible under Federal Rule of Evidence 608(b)).

Federal Rule of Evidence 609 governs the admission of criminal convictions for purposes of impeachment. Fed.R.Evid. 609. Under Rule 609, a criminal conviction for a crime punishable by death or by imprisonment for more than one year must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect. Fed.R.Evid. 609(a)(1)(B). In addition, a criminal conviction for any crime may be admitted for impeachment if the court “can readily determine that establishing the elements of the crime required proving—or the witness’s admitting—a dishonest act or false statement.” Fed. R. Evid. 609(a)(2). If more than 10 years have passed since the conviction or the witness’s release from confinement, whichever is later, the conviction may be admitted only if (1) its probative value substantially outweighs its prejudicial effect, and (2) the proponent gives the adverse party reasonable notice of the intent to use the conviction. Fed. R. Evid. 609 (b)(1), (2).

Additionally, Federal Rule of Evidence 608(b) prohibits the admission of specific instances of misconduct to attack or support a witness's character for truthfulness, with the exception of a criminal conviction under Rule 609. Fed. R. Evid. 608(b). The court may allow inquiry into specific acts of misconduct on cross-examination if the specific acts of misconduct are probative of the character for truthfulness or untruthfulness of the witness or another witness whose character the witness being cross-examined testified about. Id.

The Court agrees with the Government that Defendant cannot use the ordinance violation charge to impeach Walker. It is not a felony conviction and does not involve an act of misconduct probative of Walker's character for truthfulness or untruthfulness. Moreover, any other convictions Defendant intends to use as impeachment against any of the witness who testify at trial must comply with the requirements of the Federal Rules of Evidence. Specific objections to the use of those convictions will be addressed at trial. Therefore, the Government's Motion in Limine is granted as

to Walker's alleged ordinance violation and denied with regard to any other convictions, subject to being raised again at trial.

B. Defendant May Not Elicit References to Detective Mike Murphy's Work Records and May Not Call Him to Testify Unless Defendant Demonstrates Detective Murphy Has Relevant Information

The Government indicates that it does not intend to call Detective Murphy to testify at trial. The Government asks that defense counsel be precluded from referencing Detective Murphy's work record or questioning other witnesses about it, as it is wholly irrelevant to anything to be addressed at trial.

Detective Murphy is the special agent with the Northeast Missouri Narcotics Task Force who executed an Affidavit for No-Knock Search Warrant which uncovered drugs in Defendant's home. In his Amended Supplemental Motion to Suppress Evidence (d/e 54), Defendant argued that Detective Murphy deliberately and recklessly omitted information about prior discipline he had received. The Court found that the information was not material and, even if the information had been included in the Affidavit, the Affidavit still set forth sufficient facts that would cause a reasonable

person to believe that a search would uncover evidence of criminal activity. See Opinion (d/e 67).

Defense counsel asserts that he intends to call Detective Murphy to testify about what Detective Murphy put in the Affidavit in support of the search warrant and what happened during the search of Defendant's home. Defense counsel asserts that, if not for Detective Murphy, the search would not have occurred.

The Court finds that the proposed testimony Defendant intends to elicit from Detective Murphy is not relevant. The Court previously denied Defendant's motion to suppress raising the argument about the omission of Detective Murphy's disciplinary record. Therefore, the Court grants the Government's motion in limine on this issue unless defense counsel can provide a basis for why Detective Murphy should testify. See, e.g., United States v. Giles, 246 F.3d 966, 974 (7th Cir. 2001) (noting that it is "clear that a party may not call a witness for the sole purpose of impeaching him").

C. Defendant's Letter Written Several Days After His Arrest is Not Admissible

The Government notes that Defendant gave a statement to Captain Patti Talburt and Inspector Nick Hiland after Defendant was arrested on May 15, 2013. In that statement, Defendant admitted to trafficking narcotics on credit and to being in substantial debt to his drug suppliers. The Government argues that this statement is admissible under Federal Rule of Evidence 801(d)(2) as a statement of a party opponent. See Fed.R.Evid. 801(d)(2) (providing that a statement offered against an opposing party is not hearsay if it was made by the party in an individual or representative capacity).

The Government seeks to exclude a subsequent letter written by Defendant a few days later in which Defendant claimed he did not remember anything from the night of his arrest and that any statement he made on that night should not be used against him because he was high when he made the statement. The Government argues that the letter is hearsay and no exception to the hearsay rule applies. Defendant does not object to the Court

barring admission of the letter. Therefore, the Government's motion is granted with regard to the letter Defendant wrote a few days after his arrest.

D. Walker's Communications With Defendant's Attorney, Bruce Locher, are Not Admissible

Finally, the Government seeks to exclude any reference to prior communications between Defendant's attorney, Bruce Locher, and co-defendant Walker or to the fact that Walker attempted to hire Locher because such evidence is irrelevant. The Government also argues that Attorney Locher should be prohibited from questioning Walker on any matters that Locher may have learned about during his conversations with Walker if those matters are not already part of the record from other sources (such as police reports). Defendant does not object.

The motion in limine is granted. Defense counsel cannot question Walker about prior communications between Attorney Locher and Walker or the fact that Walker attempted to hire Attorney Locher because such evidence is irrelevant. Moreover, defense counsel cannot question Walker on any matters Attorney

Locher learned from Walker during his prior conversations without first requesting a sidebar to ensure that the information is part of the record from other sources.

II. SECOND MOTION FOR BILL OF PARTICULARS

Defendant filed a second Motion for Bill of Particulars. The only differences between Defendant's first Motion for Bill of Particulars and the second Motion for Bill of Particulars are Defendant's assertions that: (1) the Third Superseding Indictment significantly expanded the dates of the conspiracy; (2) the discovery the Government provided to Defendant leaves open the question of who Defendant's alleged co-conspirators are, besides Walker, and whether the Government is attempting to combine multiple conspiracies into a single count; (3) Defendant could be convicted on the basis of facts not found by or even presented to the grand jury which indicted him, citing United States v. Roman, 728 F.2d 846 (7th Cir. 1984); (4) it "is not sufficient for the Government to make a 'document dump' of hundreds of pages of discovery and tell the defense to go figure it out"; and (5) "What makes an individual a 'conspirator' as opposed to simply a seller or purchaser of a

controlled substance?” Mot. ¶¶ 10, 11 (d/e 102); Mem. A3, B, F (d/e 103).

Federal Rule of Criminal Procedure 7(f) provides that a court may, in its discretion, order the Government to provide the defendant with a bill of particulars. Fed. R. Crim. P. 7(f); United States v. Canino, 949 F.2d 928, 929 (7th Cir. 1991). Whether a bill of particulars is necessary depends on whether the indictment “sufficiently apprises the defendant of the charges to enable him to prepare for trial.” Canino, 949 F.2d at 929.

As this Court found when denying the first Motion for Bill of Particulars, an indictment charging a conspiracy under § 846 and § 841(a)(1) need only allege a conspiracy to distribute drugs, the time frame of the alleged conspiracy, and the statute violated. United States v. Dempsey, 806 F.2d 766, 769 (7th Cir. 1986); see also United States v. Vaughn, 722 F.3d 918, 927 (7th Cir. 2013) (noting that a bill of particulars is not necessary where the indictment includes the elements of the charged offense, the time and place of the alleged criminal conduct, and a citation to the relevant statute), cert. denied 134 S.Ct. 541 (2013). The indictment

need not allege any specific overt act in furtherance of the conspiracy. United States v. Sweeney, 688 F.2d 1131, 1140 (7th Cir. 1982). Moreover, a bill of particulars is unnecessary where the information the defendant seeks is available through alternative means such as discovery. Vaughn, 722 F.3d at 927 (7th Cir. 2013); see also United States v. Redd, 167 F. App'x 565, 568 (7th Cir. 2006) (unpublished) (finding that the district court did not abuse its discretion in denying a motion for a bill of particulars where the indictment set out the elements of the offenses charged, the defendant had access to the criminal complaint, and the defendant was allowed to conduct discovery).

The Third Superseding Indictment alleges a conspiracy to distribute drugs, the time frame of the alleged conspiracy, and the statute violated. The only difference between the Third Superseding Indictment and the Superseding Indictment at issue in the last Motion for Bill of Particulars is that the Third Superseding Indictment does not name any of the alleged co-conspirators (the previous ones named Jason Walker). However, the Government represents that the discovery is not large and is easily searchable.

The discovery includes statements from the alleged co-conspirators who are identified in the discovery. The statements include the dates their dealings with Defendant began, the amounts of drugs they distributed on his behalf, and the prices Defendant charged. Moreover, the discovery includes Defendant's own statement in which he admitted being a major methamphetamine trafficker, having a drug source in Kansas City, fronting drugs to others for resale and eventual repayment, and being in significant drug debt. See Govt. Resp. to First Motion (d/e 31); see also Govt. Resp. to Second Motion (d/e 105).

Further, the case cited by Defendant does not support his position. In Roman, the defendant argued that he may have been convicted on the basis of facts not found by or presented to the grand jury that indicted him. Roman, 728 F.2d at 849. That defendant relied on a Southern District of New York case which held that the Indictment Clause of the Fifth Amendment requires that an indictment contain "some amount of factual particularity to ensure that the prosecution will not fill in elements of its case with facts other than those considered by the grand jury." Id. at 854,

quoting United States v. Abrams, 539 F. Supp. 378, 384 (S.D.N.Y. 1982).

The Seventh Circuit distinguished Abrams, however, on the ground that Abrams involved a substantive offense and not a conspiracy. Roman, 728 F. 2d at 854-55. An indictment for a conspiracy does not need to be as specific as an indictment for a substantive count. Id. at 855.

The Third Superseding Indictment alleges a conspiracy to distribute drugs, the time frame of the alleged conspiracy, and the statute violated. Moreover, the Government represents that it has provided discovery to Defendant that contains the information Defendant seeks, and asserts that the discovery is not large and is easily searchable. Therefore, the Second Motion for Bill of Particulars is DENIED.

III. MOTION TO RECONSIDER DECISIONS REGARDING MOTIONS TO SUPPRESS

Defendant asks the Court to reconsider its previous decisions on the Motions to Suppress. See Opinions 38 and 67.

In the Motion to Reconsider, Defendant essentially argues: (1) the no-knock warrant should not have been issued because the justifications for it (the installation of cameras, Defendant's history of resisting arrest, and a previous alleged attempt to destroy evidence) were insufficient to support a no-knock warrant; and (2) Agent Murphy was not credible.

The Government responds that the Court should strike the motion as slanderous and redundant. The Government further argues that the motion offers no substance and should be denied.

The Court finds no reason to reconsider its previous rulings. The Court observed Detective Murphy testify and found him credible. Moreover, even if the no-knock aspect of the warrant were improperly permitted, exclusion is not an appropriate remedy. See Hudson v. Michigan, 547 U.S. 586, 598 (2006) (finding the "cost of applying the exclusionary rule to knock-and-announce violations is considerable," and the "extant deterrences against them are substantial" such that "[r]esort to the massive remedy of suppressing evidence of guilt is unjustified"); United States v. Collins, 714 F.3d 540, 543 (7th Cir. 2013) (citing Hudson for the

proposition that “exclusion is not an appropriate remedy for violations of the knock-and-announce rule”). Therefore, the Motion is denied, and the evidentiary hearing scheduled is vacated.

IV. CONCLUSION

For the reasons stated, the Government’s Motion in Limine [94] is GRANTED IN PART. Defendant’s Second Motion for Bill of Particulars [102] is DENIED. Defendant’s Motion for Reconsideration of Decisions Regarding Suppression [109] is DENIED. This matter is set for a continued Final Pretrial Conference on April 17, 2015 at 1:30 p.m.

ENTERED: April 14, 2015

FOR THE COURT:

s/Sue E Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE