No. 25-____

In the Supreme Court of the United States

STEVEN J. HECKE,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Franks v. Delaware*, 438 U.S. 154 (1978), this Court held that a criminal defendant is entitled to seek an evidentiary hearing to challenge a sworn affidavit submitted in support of a search warrant. Such a hearing must be granted where the defendant "makes a substantial preliminary showing" that (i) a swearing officer made "a false statement knowingly and intentionally, or with reckless disregard for the truth"; and (ii) "the allegedly false statement [was] necessary to the finding of probable cause." 438 U.S. at 155-56. This Court has never addressed whether *Franks* applies to material evidence that is intentionally or recklessly *omitted* from a search warrant affidavit. Nor has it explained how lower courts should assess such omissions when considering the credibility of the swearing officer.

The questions presented are:

1. Whether, and how, *Franks* applies to material information that is omitted from a search warrant affidavit.

2. Whether omissions from a search warrant affidavit can so undermine the credibility of the affiant that a *Franks* hearing is necessary even if probable cause would otherwise exist.

RELATED PROCEEDINGS

United States v. Hecke, No. 20-cr-7, United States District Court for the Northern District of Indiana, Fort Wayne Division (judgment entered June 21, 2023).

United States v. Hecke, No. 23-2384, United States Court of Appeals for the Seventh Circuit (judgment entered August 6, 2025).

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PETITION FOR WRIT OF CERTIORARI

The government charged Steven Hecke with various drug-trafficking and firearm offenses. Prior to trial, Hecke requested a hearing under *Franks v. Delaware*, 438 U.S. 154 (U.S. 1978), to challenge the veracity of several warrant affidavits that were based on information obtained from a confidential informant (CI). Although the district court recognized that the affidavits omitted important credibility information about the CI, it denied Hecke's request. At trial, the government presented evidence derived from the challenged warrants. The jury convicted Hecke on all charges, and he was sentenced to life in prison plus 25 years. The Seventh Circuit affirmed.

This Court should grant certiorari to clarify how *Franks* applies to material omissions—as distinct from misrepresentations—in a search warrant affidavit. The Court has never decided that *Franks* applies to omissions. And lower courts are divided on how to evaluate omissions-based *Franks* challenges.

The Court should also grant review because the Seventh Circuit's decision threatens to undermine the constitutional safeguards required by *Franks*. The Seventh Circuit did not consider the impact of the affiant's omissions on his own credibility. And under the decision below, courts may simply assume that a warrant-issuing judge is aware of omitted credibility information whenever an informant has an incentive to cooperate. That assumption is both wrong and dangerous; it encourages affiants to omit troubling information about their sources. Review is needed.

OPINIONS BELOW

The district court's opinions are unreported and reproduced at pages 25a-65a of the appendix. The Seventh Circuit's opinion is reported at 147 F.4th 742 and reproduced at pages 1a-24a of the appendix.

JURISDICTION

The Seventh Circuit issued its opinion on August 6, 2025. 1a-24a. On October 24, 2025, Justice Barrett extended Hecke's time to file a petition for writ of certiorari until January 3, 2026. Under Rule 30, the petition became due on January 5, 2026 because January 3 was a Saturday. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides:

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

STATEMENT OF THE CASE

A. The defective search warrants

Steven Hecke was a resident of Fort Wayne, Indiana. From 2019 to 2020, both state and federal

officials conducted an investigation into Hecke for drug-related activities. Darren Compton, a detective in the Allen County Police Department, led the investigation of Hecke along with the Allen County Drug Task Force, a unit of federal and local investigators. 2a-3a.

On November 12, 2019, Detective Compton submitted a pair of largely identical affidavits to the Allen County Superior Court in Fort Wayne, seeking two state search warrants. According to the affidavits, a CI told the investigators that he had met Hecke through the girlfriend of the CI's former supplier; that the CI previously purchased methamphetamine from Hecke; and that Hecke had claimed he was being "supplied by the Mexican Cartel." 2a. The CI also gave investigators information about Hecke's address, phone, and pickup truck. 3a.

Detective Compton's affidavits failed to include a number of critical facts about the CI. The affidavits did not disclose that the CI had entered into an agreement with the police to inform on Hecke in return for their promise to refrain from pursuing pending charges against the CI. 5a. The affidavits also omitted the CI's extensive criminal history, including three prior convictions for crimes of dishonesty. *Id.*

The affidavits alleged that authorities had obtained information during a separate investigation that corroborated some of the CI's statements, but they did not reveal the nature or source of this information. At the end of his affidavits, Detective Compton claimed that he received more information about Hecke through "surveillance" conducted by the Allen County Drug Task Force. 3a. The affidavits did

not identify the form of the "surveillance," but evidence at Hecke's trial suggested that the police had been surveilling Hecke via a GPS device placed on Hecke's vehicle before any warrants had issued. 14a.

Detective Compton's affidavits concluded that the information above collectively "indicate[d] the ongoing use and distribution of illegal narcotics by [Hecke]," and asked the Allen Superior Court to issue two warrants: one for the placement of a GPS tracker on Hecke's truck for thirty days, and the other to allow investigators to collect a wide variety of cellular data from Hecke's phone. Relying on Detective Compton's affidavits, the court determined that there was probable cause to support Detective Compton's requests, and issued both warrants on the day they were submitted. 32a-33a. The warrants were renewed twice over the course of the investigation. 33a.

The government continued its investigation aided by the GPS tracking information and phone records. *Id.* The CI assisted investigators by conducting controlled buys of methamphetamine on November 13 and December 5, 2019. 35a-38a. On the second occasion, the CI claimed that he observed drugs, cash, and a firearm in Hecke's bedroom. 37a.

On January 13, 2020, investigators obtained federal warrants to search various places that they believed were connected to Hecke, including his home and truck. 4a. The federal warrants were based in part on information from Detective Compton's affidavits and evidence that the state search warrants had generated. *Id.* The search warrants were executed that same day, and investigators found Hecke transporting three buckets of methamphetamine from

his truck to his house. *Id.* Inside Hecke's house, investigators found more methamphetamine, in addition to other drugs and drug paraphernalia. *Id.*

Hecke was charged with distributing methamphetamine; operating his home for the purpose of distributing a controlled substance; possessing methamphetamine and fentanyl with intent to distribute; possessing a firearm in furtherance of the drug possession charge; and possessing a firearm while a felon.

B. Hecke's motion for a *Franks* hearing

Hecke filed a pretrial motion requesting a *Franks* hearing, challenging the affidavits that Detective Compton submitted to obtain the initial state search warrants. 5a. In his motion, Hecke argued that Detective Compton's affidavits had omitted all credibility information about the CI, including the CI's criminal history and the fact that the CI had struck an agreement to cooperate with investigators. *Id.* The district court denied Hecke's request for a *Franks* hearing, acknowledging that Detective Compton's affidavits had omitted details bearing on the CI's credibility, but concluding that these omissions were immaterial to the issuing judge's determination of probable cause. 6a. The district court also found that Hecke had not shown that Detective Compton's omissions were intentional or reckless. *Id*.

Hecke's case went to trial on June 21, 2022, and the government presented evidence derived from Detective Compton's affidavits that had been the subject of Hecke's *Franks* motion. Hecke was

convicted on all charges and sentenced to life imprisonment plus twenty-five years.

C. The Seventh Circuit's decision

Hecke appealed on several grounds, including the *Franks* issue. The Seventh Circuit affirmed. 24a.

The court agreed with Hecke that Detective Compton's affidavit "omitted [] information" that was "relevant to the CI's credibility." 9a. But it agreed with the district court that the omitted information would not have affected the issuing judge's probable-cause finding. 13a. The court reasoned that the CI had "firsthand knowledge of Hecke's drug activities," his "descriptions of his dealings with Hecke were quite detailed," and "the police independently corroborated the information through surveillance." 12a.

The Seventh Circuit then opined that information about the CI's credibility would not have been especially significant to the issuing court:

> Detective Compton's affidavits were not devoid of information undermining the CI's credibility. On the contrary, the affidavits informed the judge that the CI had provided the information in question after being caught in illegal drug activity. Accordingly, we expect that the magistrate judge realized that the CI had a criminal history and assumed that he had struck a deal with law enforcement to obtain some leniency.

13a.

REASONS FOR GRANTING THE PETITION

I. The Court should grant review to address whether, and how, *Franks* applies to omissions from a search warrant affidavit.

In *Franks*, this Court held that a defendant is entitled to an evidentiary hearing when an officer deliberately or recklessly misleads a magistrate through affirmative representations in a search warrant affidavit. Specifically, *Franks* requires such a hearing where the defendant "makes a substantial preliminary showing" that (i) a swearing officer made "a false statement knowingly and intentionally, or with reckless disregard for the truth"; and (ii) "the allegedly false statement [was] necessary to the finding of probable cause." 438 U.S. at 155-56. The Court was not confronted with, and did not address, a situation where a magistrate is misled through material omissions from a search warrant.

The Court has seldom revisited *Franks* in the 47 years since it was decided. In the meantime, every federal Court of Appeals has extended *Franks* to material omissions.[1] The circuit courts are split,

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[1] *See, e.g.*, *United States v. Owens*, 917 F.3d 26 (1st Cir. 2019); *United States v. Thomas*, 788 F.3d 345 (2d Cir. 2015); *United States v. Pavulak*, 700 F.3d 651 (3d Cir. 2012); *United States v. Moody*, 931 F.3d 366 (4th Cir. 2019); *United States v. Danhach*, 815 F.3d 228 (5th Cir. 2016); *United States v. Brown*, 857 F.3d 334 (6th Cir. 2017); *United States v. Hanswmeier*, 867 F.3d 807 (7th Cir. 2017); *United States v. Reed*, 921 F.3d 751 (8th Cir. 2019); *United States v. Perkins*, 850 F.3d 1109 (9th Cir. 2017); *United States v. Ruiz*, 664 F.3d 833 (10th Cir. 2012); *United States v. Whyte*, 928 F.3d 1317 (11th Cir. 2019); *United States v. Dorman*, 860 F.3d 675 (D.C. Cir. 2017).

however, on *how* the *Franks* test applies in the case of material omissions.

For example, the First Circuit has held in omissions cases that "[r]ecklessness may be inferred from circumstances evincing obvious reasons to doubt the veracity of the allegations," *United States v. Arias*, 848 F.3d 504, 511 (1st Cir. 2017), or "where the omitted information was critical to the probable cause determination," *United States v. Gifford*, 727 F.3d 92, 99 (1st Cir. 2013). Similarly, the Seventh Circuit has held that "credibility omissions themselves, even in the absence of more direct evidence of the officer's state of mind, provide sufficient circumstantial evidence to support a reasonable and thus permissible inference of reckless disregard for the truth." *United States v. Glover*, 755 F.3d 811, 820 (7th Cir. 2014).

The Eighth Circuit's standard is more restrictive. It permits courts to infer recklessness "*only* when the material omitted would have been *clearly* critical to the finding of probable cause." *United States v. Hansen*, 27 F.4th 634, 637 (8th Cir. 2022) (emphases added). The Fourth Circuit has gone further, expressing "doubts about the validity of inferring bad motive . . . from the fact of omission alone," and suggesting that this approach "collapses into a single inquiry the two elements—'intentionality' and 'materiality'—which *Franks* states are independently necessary." *United States v. Colkley*, 899 F.2d 297, 301 (4th Cir. 1990).

These divergent approaches are important. Whether a defendant must present evidence of an affiant's subjective intent or mental state—in addition to showing that the omitted evidence was critical to

probable cause—depends on the jurisdiction of the reviewing court. This Court should grant review to clarify these basic questions about the *Franks* test.

II. The Court should grant review to clarify that material omissions about an informant's credibility also undermine the credibility of the affiant.

A. The Seventh Circuit erred by failing to consider the impact of an affiant's omissions on his own credibility.

In its decision below, the Seventh Circuit acknowledged that Detective Compton omitted important credibility information about the CI from his affidavits. 9a. The court also recognized that, "where a warrant is obtained based on an informant's tip, information about the informant's credibility or potential bias is crucial, because omitting this information deprives the magistrate of important data in the probable-cause calculus." 10a (quotation marks and alteration omitted) (citing *United States v. Clark*, 935 F.3d 558, 565 (7th Cir. 2019)). Nevertheless, the court affirmed the denial of the *Franks* hearing, reasoning that the CI had "fresh and firsthand knowledge of Hecke's drug activities," that the information he provided was "quite detailed," and that the CI's testimony was corroborated by the police. 12a.

There are several problems with this rationale. Here, the most relevant problem is that Detective Compton's omissions would naturally cast doubt on his *own* credibility with the issuing judge. These omissions "permit[ted] an inference that [Detective Compton] was not being honest and careful with the

issuing court." *Clark*, 935 F.3d at 567. The Seventh Circuit did not address this point, even though Hecke asserted it throughout his appellate briefs and the court's own case law emphasized it. *See id.*

The Seventh Circuit's reliance on police corroboration (supplied by the same officer whose credibility was subject to challenge) is inconsistent with this Court's reasoning in *Franks*. As this Court explained, "[i]t is the magistrate who must determine independently whether there is probable cause"; it would be "an unthinkable imposition upon his authority if a warrant affidavit, revealed after the fact to contain a deliberately or reckless false statement, were to stand beyond impeachment." 438 U.S. at 165.

Detective Compton decided to omit, or recklessly omitted, critical facts about the CI's criminal history and incentive to cooperate against Hecke. In doing so, he cast doubt on the reliability of *all* information he supplied to the issuing court. The issuing court was therefore deprived of the ability to make an independent finding of probable cause—the exact situation contemplated in *Franks*.

B. The decision below, if adopted, will have far-reaching consequences.

The question presented in Hecke's appeal is not whether his warrants are invalid, but whether he should have been given a *hearing* to determine their validity. The Seventh Circuit's decision threatens both (i) the ability of defendants to vindicate their Fourth Amendment rights and (ii) the ability of issuing courts to make independent findings of probable cause.

That is especially true because of the Seventh Circuit's analysis of Detective Compton's omissions. The court did not just fail to assess the impact of these omissions on his own credibility. It also suggested that the omissions would not have affected *the CI's* credibility with the issuing judge. The court reasoned in part that because the CI had been "caught in illegal drug activity," the issuing judge would have "realized that the CI had a criminal history and *assumed* that he had struck a deal with law enforcement to obtain some leniency." 13a (emphasis added).

That is a dangerous precedent. Although the issuing court may have assumed that the CI had some criminal history, or some incentive to cooperate with law enforcement, the *extent* of damaging credibility information naturally bears on probable cause. The CI did not simply have "a criminal history"; he had three prior convictions for crimes of dishonesty, along with several other criminal offenses. The CI did not merely have a deal with law enforcement "to obtain some leniency"; on the very day of his interview with the police, the police had agreed to refrain from pursuing *all* of the pending charges against the CI. Those are critical facts that cannot be replaced by an issuing court's generic assumptions about a CI's character, criminal history, or motivations to cooperate.

The Seventh Circuit's opinion stands for the proposition that a warrant affiant can omit any and all damaging credibility information about confidential informants, safe in the knowledge that the issuing court will infer or assume that the

informants' credibility is suspect. That approach could turn *Franks* into dead letter.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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January 5, 2026

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED AUGUST 6, 2025

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-2384

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STEVEN J. HECKE,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division.
No. 1:20-cr-7 – **Holly A. Brady**, *Chief Judge.*

Argued September 5, 2024 – Decided August 6, 2025

Before Sykes, *Chief Judge*, and St. Eve and Lee, *Circuit Judges.*

Lee, *Circuit Judge.* Based on tips from a confidential informant, police obtained search warrants as part of an investigation into Steven Hecke's sale of methamphetamine and fentanyl. Hecke was eventually charged with drug and firearm offenses. A jury convicted Hecke of all counts, and the district court sentenced him to life imprisonment.

Hecke presents three arguments on appeal. First, he challenges the district court's denial of his request for a *Franks* hearing to probe affidavits that supported the initial search warrants. Second, he claims that the district court permitted the government to constructively amend his indictment by presenting evidence beyond the scope of his firearm possession charge. Third, he argues that the district court erred by applying three enhancements when fashioning his sentence. Because we find no error, we affirm on all grounds.

I

We recount the events leading up to the initial search warrants, the resulting investigation that led to the federal search warrant and ultimately the indictment, Hecke's request for a *Franks* hearing, and his sentencing.

A

On November 12, 2019, Detective Darren Compton submitted identical affidavits to the Allen County Superior Court in Indiana to obtain two search warrants: one to place a GPS tracker on Hecke's truck, and another to obtain Hecke's cell phone records. The affidavits relied on information gleaned from a confidential informant (CI), who was interviewed by investigators after a search of the CI's apartment revealed illegal drugs and firearms. The CI told the investigators that he had previously purchased methamphetamine from Hecke and that Hecke had shared he was being "supplied by the Mexican Cartel."

Other information in the affidavits that was obtained from the CI, such as Hecke's address, as well as the make, model, and license plate number of Hecke's truck, was confirmed by Detective Compton through physical surveillance. The Allen County Drug Task Force also observed a meeting between Hecke and the driver of a Lexus at Hecke's address, where the driver carried a backpack into Hecke's home and Hecke unloaded something from the Lexus into a large tote that he brought into the house. Hecke then returned an empty tote to the trunk of the Lexus, after which the driver of the Lexus drove away. Detective Compton stated in his affidavits that, based on his training and experience, it was common for large-quantity drug traffickers to utilize couriers to transport drugs and money to and from their suppliers.

Based on the information provided by Detective Compton in his affidavits, the state magistrate judge determined that there was probable cause to support Detective Compton's search warrant requests. The warrants were issued that same day and renewed twice over the course of the investigation.

Aided by the GPS tracking information and phone records obtained pursuant to these search warrants, the government continued its investigation into Hecke's drug-related activities. The CI, who agreed to cooperate in the investigation, assisted law enforcement by conducting controlled buys on November 13 and December 5, 2019. For each controlled buy, the CI contacted Hecke on his cell phone and arranged to purchase half a pound

of methamphetamine. After each transaction, officers debriefed the CI, had the CI identify Hecke from a photo array, verified the CI's story against recordings of his meeting with Hecke, and confirmed that the substance he received from Hecke tested positive for methamphetamine.

During the second controlled buy, which took place at Hecke's residence, Hecke had the CI wait in his apartment while he walked to a stash house up the street. A few minutes later, Hecke returned and gave the CI the half-pound of methamphetamine. While he was waiting, the CI observed drugs, cash, and an Uzi gun with a 30-round magazine in Hecke's bedroom.

Officers obtained federal search warrants on January 13, 2020, to search Hecke's truck, his cell phone, his house, his nearby stash house, and two storage units that he frequently visited during the course of the investigation. The federal search warrants were based, in part, on information in Detective Compton's affidavits and evidence that the state search warrants had generated.

When the warrants were executed that same day, police found Hecke transporting three buckets—each containing what was later confirmed to be methamphetamine— from his truck to his house. Inside Hecke's bedroom, police found more methamphetamine in addition to fentanyl, cocaine, a couple of digital scales, as well as plastic bags and gloves. Police also found three guns in Hecke's bedroom closet and ledgers from Hecke's bookshelf that recorded tens of thousands of dollars in drug sales and outstanding debts.

Hecke was charged with distributing methamphetamine during the controlled buys on November 13 (Count 1) and December 5, 2019 (Count 2); operating his home for the purpose of distributing a controlled substance (Count 5); possessing methamphetamine and fentanyl on January 13, 2020, with intent to distribute (Count 6); possessing a firearm on January 13, 2020, in furtherance of the drug charge "alleged in Count 6" (Count 7); and possessing a firearm while a felon (Count 8).[1]

B

Hecke filed a pretrial motion requesting a *Franks* hearing, challenging the veracity of Detective Compton's affidavits that were submitted to obtain the initial state search warrants.[2] According to Hecke, Detective Compton's affidavits had omitted "all credibility information about the CI," including "the CI's criminal history, which included multiple convictions for crimes of dishonesty," as well as the fact that the CI had "flipped" to cooperate with the investigators. Later, Hecke also moved to suppress evidence seized pursuant to the federal

1. Counts 3 and 4 were directed at Hecke's codefendant, Samuel Bat-tell, who later pleaded guilty and testified against Hecke at trial.

2. In *Franks v. Delaware*, the Supreme Court held that, "where the 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." 438 U.S. 154, 155-56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

search warrants on January 13, 2020, arguing that the federal warrants relied on "tainted information" obtained through the state warrants.

The district court denied Hecke's motions. Acknowledging that Detective Compton's state court affidavits had omitted details about the CI's criminal history, recent arrest, and agreement to cooperate with authorities, the court concluded that these omissions were immaterial to the determination of probable cause. In arriving at this determination, the court emphasized the "fresh and specific details" of the CI's tips, the corroboration of these details by investigators, and the reasonable inference the magistrate judge could draw about the CI's "generally unsavory character" and self-serving motivation from Detective Compton's affidavits. Additionally, the court held that Hecke had failed to show that the omissions in the affidavits were intentional or reckless—a prerequisite showing for a *Franks* hearing. *See Franks*, 438 U.S. at 155-56.

Relevant to this appeal, at trial, Hecke requested a unanimity instruction for Count 7 (having a firearm in furtherance of his drug possession with intent to distribute). Specifically, Hecke noted that the government's evidence included firearms seized from different locations, possibly attributable to different people, and believed that the jury should be required to unanimously agree on "which guns are attributable to the specific drugs" found on January 13 before convicting him of Count 7. The district court denied this request.

Ultimately, the jury convicted Hecke on all counts, and the case proceeded to sentencing. In its presentence investigation report (PSR), the Probation Office recommended three enhancements that Hecke challenges on appeal: (1) two levels under the United States Sentencing Guidelines § 2D1.1(b)(2) for making credible threats of violence toward multiple individuals; (2) two levels under § 3B1.1(c) for managing or supervising Battell; and (3) two levels under § 3C1.1 for attempting to obstruct or impede the administration of justice. Hecke challenged each enhancement, but the district court rejected his arguments and calculated a total offense level of 46.

Then, applying the Guidelines direction that "[a]n offense level of more than 43 is to be treated as an offense level of 43," the court determined that Hecke's total offense level was 43. U.S.S.G. ch. 5, pt. A, cmt. n.2. And, after considering the statutory sentencing factors, the court imposed a life sentence, explaining that the sentence was within the Guidelines range and that it was "the sentence the Court would have imposed, even if it had ruled differently on the defendant's ... objections."

II

On appeal, Hecke argues that the district court erred by (1) denying his request for a *Franks* hearing to investigate misrepresentations in Detective Compton's state warrant affidavits, (2) permitting the government to constructively amend Count 7 of the indictment, and (3)

applying the three sentencing enhancements to his offense level during sentencing. We address each argument in turn.

A

Hecke first claims that Detective Compton's affidavits improperly (1) omitted damaging credibility information about the CI, (2) obscured information about a warrantless GPS search, and (3) suggested that there were two informants when there was only one. These reckless misrepresentations, Hecke argues, entitled him to a *Franks* hearing.

We review the district court's denial of a *Franks* hearing for clear error. *United States v. McGhee*, 98 F.4th 816, 821 (7th Cir. 2024). We give deference to the district court's factual findings, but any legal determinations underlying the ruling are reviewed *de novo*. *Id.* We will reverse the ruling only if, after reviewing the record as a whole, we are of "the definite and firm conviction that a mistake has been committed." *United States v. Whitley*, 249 F.3d 614, 621 (7th Cir. 2001) (internal quotation marks omitted). As Hecke sees it, the district court committed clear error when denying his request for a *Franks* hearing to probe into the affidavits Detective Compton submitted to obtain the state search warrants.

The Supreme Court has recognized that all warrants carry "a presumption of validity with respect to the affidavit supporting the search warrant." *Franks*, 438 U.S. at 171. However, if a defendant can make a "substantial preliminary showing" that a warrant affidavit included a

false statement, he is entitled to a hearing. *Id.* at 155-56. The false statement must have been made "intentionally or with reckless disregard for the truth," and must also be "material to the finding of probable cause." *United States v. Sanford*, 35 F.4th 595, 597 (7th Cir. 2022) (internal quotation marks omitted); *see also Franks*, 438 U.S. at 155-56. This showing "must be more than conclusory and must be supported by more than a mere desire to cross-examine." *Franks*, 438 U.S. at 171.

1

We begin with Hecke's complaint that Detective Compton's affidavits improperly omitted information about the CI's criminal history and cooperation agreement with the government. Hecke believes that the missing information "went directly to [the CI's] credibility," especially because the CI had three prior convictions for forgery. For its part, the government does not dispute that the affidavit omitted this information or that the information was relevant to the CI's credibility. We are left then to decide the omission's materiality—that is, whether the omission would have altered the probable cause determination. *See United States v. McMurtrey*, 704 F.3d 502, 508 (7th Cir. 2013) ("To obtain a hearing, the defendant must also show that if the deliberately or recklessly false statements were omitted, or if the deliberately or recklessly misleading omissions included, probable cause would have been absent.") (citing *Franks*, 438 U.S. at 171-72).

When an affidavit relies on information from an informant, we typically consider five factors to determine

materiality: "(1) the level of detail the informant provided; (2) the extent to which the informant's information is based on his or her own first-hand observations; (3) the degree to which police have corroborated the informant's information; (4) the time elapsed between the events reported and the warrant application; [and (5)] whether the informant appeared or testified before the magistrate." *United States v. Clark*, 935 F.3d 558, 564 (7th Cir. 2019) (citation modified). We have repeatedly stressed that "[n]one of these factors is determinative," and that "a deficiency in one factor may be compensated for by a strong showing in another or by some other indication of reliability." *United States v. Mullins*, 803 F.3d 858, 863 (7th Cir. 2015) (internal quotation marks omitted).

Generally, "where a warrant is obtained based on an informant's tip, 'information about the informant's credibility or potential bias is crucial.'" *Clark*, 935 F.3d at 565 (quoting *United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014)). This is because "[o]mitting this information deprives the magistrate of important data in the probable-cause calculus." *United States v. Bradford*, 905 F.3d 497, 504 (7th Cir. 2018). At the same time, we do not require a *Franks* hearing every time an affidavit omits credibility information about the informant. *Id.*; *Clark*, 935 F.3d at 565. Indeed, we have repeatedly affirmed a district court's denial of a *Franks* hearing where the informant's information was sufficiently corroborated by police or other indicators of reliability allowed a court to assess an informant's credibility. *See, e.g., Bradford*, 905 F.3d at 504-05; *United States v. Hancock*, 844 F.3d 702, 710 (7th Cir. 2016); *Mullins*, 803 F.3d at 863.

In *Bradford*, for example, the warrant application did not disclose that the informant had three felony convictions, was on probation, and was being paid for his help. 905 F.3d at 502. We nevertheless concluded that, because the informant's information was "fresh, firsthand, quite detailed, and corroborated," the magistrate judge could still find probable cause. *Id.* at 504. The informant had provided specific descriptions of the defendant's firearms, down to their precise locations within the home. *Id.* The defendant's girlfriend corroborated the reports that the defendant kept guns at home and even turned over a pistol that matched the serial-number tag that was recovered in an earlier search. *Id.* "Considering the warrant application as a whole," we noted, "the omission of facts bearing negatively on [the informant's] credibility was not fatal to the magistrate's probable-cause finding." *Id.* at 505.

We came to the same conclusion in *Hancock*. 844 F.3d at 709-10. There, the investigator also left out details about the informant's criminal record in the warrant affidavit. *Id.* at 706. Although the magistrate judge agreed with the defendant that the omission was reckless, the judge concluded that probable cause would exist even if the omitted facts had been incorporated in the affidavit. *Id.* at 706-07. In doing so, the court emphasized that, given the informant's "long-term, intertwined history as both a criminal and a snitch, a court considering the reliability of his information would have to be skeptical but receptive." *Id.* at 708. Furthermore, the informant had provided a "lengthy, richly detailed, first-hand report" of the defendant's activities, which was corroborated by text

messages, a separate report of assault to the police, and the defendant's own prior statements to an investigator. *Id.* at 708-09.

Because we encounter similar facts here, we likewise affirm the district court's denial of Hecke's request for a *Franks* hearing. The CI, whose information Detective Compton relied on for his warrant affidavits, had fresh and firsthand knowledge of Hecke's drug activities, having purchased multiple pounds of methamphetamine directly from Hecke himself. And, as in *Bradford* and *Hancock*, the CI's descriptions of his dealings with Hecke were quite detailed. The CI offered Hecke's street address, cell phone number, and vehicle details, as well as coded text messages regarding drug purchases that the CI deciphered for Detective Compton. The CI further admitted to purchasing varying quantities of methamphetamine from Hecke at certain prices and provided a specific description of how Hecke delivered the drugs: "vacuumed [sic] sealed, wrapped in black tape, covered with a red grease, then wrapped in cellophane." The "considerable detail" in these descriptions "bolsters [the CI's] credibility." *United States v. Taylor*, 471 F.3d 832, 839 (7th Cir. 2006). That the police independently corroborated the information through surveillance only reinforces this point. *See Bradford*, 905 F.3d at 504; *Hancock*, 844 F.3d at 709.

Urging a contrary result, Hecke likens this case to *Clark*, but the facts there are materially different from those here. In *Clark*, the informant "was the only source of information specifically about drug trafficking" yet lacked firsthand knowledge. Moreover, unlike here, there were

no controlled buys, and corroboration by the police was weak. *Id.* at 564-66; *see also United States v. Woodfork*, 999 F.3d 511, 517 (7th Cir. 2021) (omission of informant's criminal history was not material to the finding of probable cause where controlled-buy transactions made the informant's credibility less critical to the probable cause determination); *Glover*, 755 F.3d at 817-18 (*Franks* hearing required because the informant's tip was "minimally corroborated" and provided "little detail").

Furthermore, Detective Compton's affidavits were not devoid of information undermining the CI's credibility. On the contrary, the affidavits informed the judge that the CI had provided the information in question after being caught in illegal drug activity. Accordingly, we expect that the magistrate judge realized that the CI had a criminal history and assumed that he had struck a deal with law enforcement to obtain some leniency. *See Woodfork*, 999 F.3d at 517 ("We trust that warrant-issuing judges are aware that the individuals upon whom law enforcement relies to make drug purchases through controlled buys are likely to have criminal histories.").

For these reasons, even if the affidavits had contained the additional information about the CI's background, we do not think it would have altered the probable cause determination. Thus, the district court did not clearly err when denying Heke's request for a *Franks* hearing.[3]

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3. Although not necessary to our holding, we also note that Hecke offers neither "direct evidence of the affiant's state of mind or circumstantial evidence that the affiant had a subjective intent to deceive based on the nature of the omissions." *Glover*, 755 F.3d

Hecke also argues that evidence at trial uncovered purported falsehoods in Detective Compton's affidavits, which entitle him to a *Franks* hearing. First, he points to Detective Bryan Heine's testimony during trial that he had surveilled Hecke using a GPS tracking device on November 8, which would have been before the police had secured the warrant on November 12. Second, he argues that the affidavit misleadingly suggested that "two people had accused Hecke of dealing drugs" when in fact, it was only the CI who was the genesis of the investigation. Neither point is persuasive.

For starters, Hecke failed to preserve his first argument for appeal. Recall that, prior to trial, Hecke moved to suppress evidence stemming from the GPS tracker that was authorized by a state warrant—the same warrant that Hecke sought to quash based on purported deficiencies in Detective Compton's affidavit. After denying Hecke's motion to suppress (as well as his renewed motion on the first day of trial), the district court invited Hecke's counsel to alert it if counsel had a new basis for its motion. Though counsel objected to evidence throughout the trial based on the pretrial suppression motion, he never brought the issue of Detective Heine's

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at 820. Hecke's failure to show that Detective Compton's omission was motivated by a deliberate or reckless disregard for the truth is another reason why his appeal on this issue fails. *See McMurtrey*, 704 F.3d at 511; *United States v. Schultz*, 586 F.3d 526, 531 (7th Cir. 2009) ("The standard is not whether the affidavit contains a false statement, but whether the affiant knew or should have known that a statement was false.").

trial testimony to the court's attention. "[T]rial evidence bearing on a district court's ruling on a motion to suppress" may not be considered where the defendant did not request the court to "reevaluate its prior ruling in light of trial evidence." *United States v. Howell*, 958 F.3d 589, 596 (7th Cir. 2020) (citing, *inter alia*, *United States v. Hicks*, 978 F.2d 722, 725, 298 U.S. App. D.C. 225 (D.C. Cir. 1992) ("when evidence presented only at trial casts doubt on what would otherwise be a correct pre-trial denial of a suppression motion," the parties should "bring alleged errors to the trial court's attention by making a proper objection or filing a motion."")). Indeed, Hecke's counsel conceded this point during oral argument.

That said, because we will generally "construe waiver principles liberally in favor of the defendant," *United States v. Dridi*, 952 F.3d 893, 898 (7th Cir. 2020), we will treat Hecke's argument as forfeited rather than waived, permitting plain error review. *See United States v. Foy*, 50 F.4th 616, 625 (7th Cir. 2022). Under this rubric, Hecke must show that (1) there was an error; (2) the error was plain; and (3) the error affected his substantial rights. *See United States v. Hartleroad*, 73 F.4th 493, 501 (7th Cir. 2023) (citing *Rosales-Mireles v. United States*, 585 U.S. 129, 134, 138 S. Ct. 1897, 201 L. Ed. 2d 376 (2018)). If Hecke makes this showing, we will only correct the error if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (quoting *Rosales-Mireles*, 585 U.S. at 135).

Hecke contends that Detective Heine's testimony that he had surveilled Hecke with a GPS device on November 8, when the state court did not issue its first GPS warrant

until November 12, is "damning" because it "indicates that the police conducted a warrantless search of Hecke's vehicle" and "casts further doubt on Compton's candor." This is certainly one interpretation of Detective Heine's testimony, but the more likely one is that he simply mixed up his dates. When Heine was later asked whether the applicable warrant was in effect on November 8, the detective responded "yes" (even though the warrant was issued on November 12). From this, it appears that the detective confused November 8 with November 12 when recalling the events at trial. This does not satisfy Hecke's substantial burden to show plain error.[4]

We also reject Hecke's contention that Detective Compton's affidavits "suggested that *two* people had accused Hecke of dealing drugs." To be sure, the affidavits initially stated that Detective Compton "began [the] investigation" after he "received information" about Hecke's drug activities, and the CI is introduced later in the narrative. But this—even under a generous reading—does not suggest that two different individuals provided information to Detective Compton. Nor would it have been clear error for the district court to deny Hecke a *Franks* hearing on this basis.

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4. To the extent Hecke argues that police engaged in an unconstitutional warrantless search by tracking Hecke before the state warrant's issuance on November 12, that question was not raised before the district court and is not properly presented on appeal. *United States v. Payne*, 102 F.3d 289, 293 (7th Cir. 1996) ("We have repeatedly held that a party that fails to press an argument before the district court waives the right to present that argument on appeal.") (internal quotation marks omitted).

B

Hecke next contends that the government constructively amended Count 7, which accused him of having a firearm in furtherance of possessing drugs with the intent to distribute on January 13, 2020. Despite never having raised this argument before the district court, Hecke insists that his objection to the jury instruction on Count 7 preserved the constructive amendment argument for appeal, as the two arguments are "substantively similar." This is incorrect.

As his counsel acknowledged, Hecke's jury instruction objection "ha[d] to do with the doctrine of unanimity." Whether the government constructively amended Count 7 at trial is a fundamentally different question. Because Hecke "neither objected below to any relevant statement by the government nor raised the issue of constructive amendment to the indictment ... we review only for plain error." *United States v. Phillips*, 745 F.3d 829, 831-32 (7th Cir. 2014).

The Fifth Amendment's Grand Jury Clause "limits the available bases for conviction to those contained in the indictment." *United States v. Pigee*, 197 F.3d 879, 886 (7th Cir. 1999) (internal quotation marks omitted). A constructive amendment occurs "when either the government (usually during its presentation of evidence and/or its argument), the court (usually through its instructions to the jury), or both, broadens the possible bases for conviction beyond those presented by the grand jury." *United States v. Penaloza*, 648 F.3d 539, 546 (7th Cir. 2011) (internal quotation marks omitted).

As Hecke sees it, this is precisely what happened at his trial. Count 7 of the indictment alleged that Hecke's offense occurred on January 13, 2020, but, he argues, the district court impermissibly broadened the charge by (1) not specifying this date in its jury instructions and (2) allowing the government to present evidence that Hecke possessed firearms on a different date.

We start with the jury instructions. Although the instruction explaining the elements of Count 7 did not explicitly state that the offense must have occurred on January 13, 2020, it did state that the government had to prove beyond a reasonable doubt that Hecke had possessed a firearm in furtherance of the drug trafficking crime "as alleged in Count 6." And Count 6 charged Hecke with possession with intent to distribute methamphetamine or fentanyl on January 13, 2020. From this, the jury would have had little trouble understanding that, to convict on Count 7, it must find that Hecke possessed a firearm on January 13.

Moving on, to prove Count 2, the government presented evidence at trial that Hecke sold methamphetamine on December 5 and had an Uzi firearm at the time. According to Hecke, the jury may have impermissibly relied on the December incident to convict him of Count 7. But when defense counsel referred to the December events while discussing Count 7 during closing argument, the government was careful to explain to the jury on rebuttal that it "didn't charge him with having a gun in the first buy or in the second buy." Rather, Count 7 was limited to the events of January 13. We see no indications that the

government attempted to expand Count 7 beyond that date.[5]

In sum, because the challenged jury instruction and the government's representations at trial were "strictly confined to the charged offense," "[t]here was no constructive amendment of the indictment." *Penaloza*, 648 F.3d at 546. And, even if there were error, it was not so plain as to require vacating Hecke's conviction.

C

Finally, Hecke challenges three enhancements the district court applied to determine his sentence: (1) the role in the offense enhancement under § 3B1.1(c); (2) the obstruction of justice enhancement under § 3C1.1; and (3) the credible threats of violence enhancement under § 2D1.1(b)(2). "To determine whether a Guidelines enhancement was correctly imposed, we review the district court's legal conclusions *de novo* and its factual findings for clear error." *United States v. Tate*, 97 F.4th 541, 549 (7th Cir. 2024) (internal quotation marks omitted). We will reverse the district court's application of the enhancements "only if we are left with a definite and firm conviction that a mistake has been made." *United States v. Beechler*, 68 F.4th 358, 368 (7th Cir. 2023) (internal quotation marks omitted).

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5. Hecke also argues that the government constructively amended Count 7 by presenting evidence of firearms found at his stash house during the search on January 13. But that evidence would be relevant to whether Hecke had possessed those firearms to facilitate his distribution of methamphetamine on that same date.

Appendix A

1

Section 3B1.1 of the Sentencing Guidelines provides for a two-level enhancement if the defendant was "an organizer, leader, manager, or supervisor in any criminal activity," and the crime did not involve five or more participants and is not "otherwise extensive." U.S.S.G. § 3B1.1(c). Though the Guidelines do not explicitly define what constitutes an organizer, leader, manager, or supervisor, we have repeatedly observed that an organizer or leader must have "exercised some degree of control over others involved in the commission of the offense" or was "responsible for organizing others for the purpose of carrying out the crime." *United States v. Garcia*, 948 F.3d 789, 806 (7th Cir. 2020) (quoting *United States v. Wasz*, 450 F.3d 720, 730 (7th Cir. 2006) (collecting cases)). Our "practical, not formal" inquiry involves making a "commonsense judgment about the defendant's relative culpability given his status in the criminal hierarchy." *United States v. Lovies*, 16 F.4th 493, 506 (7th Cir. 2021) (internal quotation marks omitted).

Hecke believes that this enhancement is inapplicable because, as he sees it, he did not lead or supervise Battell at all. Rather, Hecke argues, he and Battell had a mere buyer-seller relationship. The record, however, reflects otherwise.

When asked at trial how he would describe his relationship with Hecke, Battell replied that Hecke would call him "his right hand man."[6] Battell also recounted how

6. Rather than looking to Battell's own testimony, the district court focused on a recording from the first controlled buy where

he would acquire vehicles, guns, and other merchandise for the cartel at Hecke's direction in exchange for credit on the amount he owed to Hecke. Moreover, Battell explained that Hecke sometimes gave him specific instructions, such as the vehicles needing to be able to pull trailers down to Mexico and the cartel's interest in only semi-automatic assault rifles, rifles, or handguns. Apparently pleased with Battell's work, Hecke texted Battell, "Appreciate all you do for me and the team." When asked about this text, Battell testified that Hecke was "giving praise for all the work I was doing for him. I was taking a lot off his plate so he could focus on other things."

On this record, the district court did not clearly err when finding that Hecke had "directed at least one other person" in the drug trafficking operation. *Beechler*, 68 F.4th at 369.

2

Section 3C1.1 requires a two-level enhancement if the district court finds that the defendant "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice." U.S.S.G. § 3C1.1. Obstruction under § 3C1.1 includes "threatening, intimidating, or otherwise unlawfully influencing a ... witness ... directly or

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Hecke told the CI that Battell was his "right hand man." We agree with Hecke that, in the recorded conversation, it is unclear whether he is talking about Battell's assistance with Hecke's illicit drug activities or his home improvement projects. But since the district court did not rely solely on this recording, Hecke's argument on this score "do[es] not overcome the bulk of the evidence showing he exercised some significant control and was responsible for some significant organization of [another]." *Garcia*, 948 F.3d at 807.

indirectly, or attempting to do so." *Id.* cmt. n.4(A). As we have repeatedly recognized, a mere "attempt to influence a witness is enough, regardless of whether it succeeds." *United States v. Barber*, 937 F.3d 965, 972 (7th Cir. 2019) (citing *United States v. Wright*, 37 F.3d 358, 362 (7th Cir. 1994)).

In applying this enhancement, the district court relied on two messages Hecke sent to the CI from jail. The first message, dated April 27, 2020, read: "Hello ci 753. Whats up." The second, sent about an hour later, stated:

> My mandatory minimum is so high that [I] have to go to trial. That means you will have to testify RAT. Everyone one [sic] will see your face. You are a liar and a fuckin coward. I know you were looking at 15 to 20 year minimum. Guess what? You will have to do sometime [sic]. The feds let no one go. I hope to see you in prison. I want to personally thank you.

Citing these messages, the district court found that Hecke "had the specific intent to obstruct justice by influencing [the CI's] participation as a witness at trial."

Hecke's objection to the enhancement on appeal is predicated on the theory that the government had failed to prove that he was, in fact, the sender of the messages. But Hecke never questioned their provenance below. Instead, Hecke relied on them to argue that the "communications from Hecke to [the CI] in April 2020" were not "designed with a specific intent to influence testimony." This is

waiver. *See United States v. Aslan*, 644 F.3d 526, 552 (7th Cir. 2011) (holding that defendant "waived any objections to the reliability of the [evidence]" because he "affirmatively rel[ied] on [the evidence] himself" to present alternative arguments).[7]

3

Turning to the final issue, Section 2D1.1 imposes a two-level enhancement "[i]f the defendant used violence, made a credible threat to use violence, or directed the use of violence." U.S.S.G. § 2D1.1(b)(2). When applying this enhancement, the district court pointed to various text messages Hecke sent to third parties seemingly threatening that he would call in armed reinforcements from the Sinaloa cartel. For example, in one series of texts, Hecke said: "Please a [sic] beg you not to play with me .... If any problems come to my mothers [sic] house I will blame you." A few hours later, Hecke texted the same person: "I just heard you threatened my peeps[.] I may not be able to control them now[.] You have no idea what you got yourself into .... Calling south in two hours to get them prepared if necessary .... I am will [sic] to

7. Even if we were to treat Hecke's argument as forfeited and review for plain error, our conclusion would be the same. The text messages indicate that they are "From: Hecke, Steven," and the first message correctly identified the CI by his number, 753. Moreover, Hecke did face a high mandatory minimum sentence, and the CI did testify at trial. The "provision of facts and details" and the "corroboration by or consistency with other evidence" here are sufficient to support the text messages' reliability for sentencing purposes. *United States v. Barker*, 80 F.4th 827, 834 (7th Cir. 2023).

die for my respect are you? They have all addresses .... I hope you have some big guns[.] They are vested up[.] And strapped up too."

The court also heard from a DEA agent, who explained that, based on his experience, the statements were threats (or could be perceived as such) and that the "south" may well be referring to the cartel. The agent further described the fear that the cartel instills in people, even in Fort Wayne, Indiana, due to "the long reach that [the people] believe cartels have."

Based on this evidence, the district court had "little trouble concluding" that Hecke credibly threatened violence in order "to invoke fear in the recipients and ensure their compliance." We find no error in this assessment.[8]

III

For the reasons above, we AFFIRM the judgment of the district court in all respects.

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8. Hecke's sole argument on appeal—that any threats to be discerned from these text messages amount to nothing more than a domestic dispute—is unsupported by the record.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION, FILED APRIL 25, 2022

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

Cause No. 1:20-CR-7-HAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN J. HECKE,

Defendant.

Filed April 25, 2022

OPINION AND ORDER

If this case were a criminal justice course, it would be called "Anatomy of a Criminal Investigation." Twice now, Defendant, Steven J. Hecke, has asked this Court to dissect the investigation leading to his arrest on gun and drug charges. (ECF No. 26). Before the Court is Hecke's Second Motion to Suppress Evidence and his Second Motion for *Franks*[1] Hearing (ECF Nos. 109, 114). As

1. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

part of those motions, Hecke renews his prior motions to suppress and request for *Franks* hearing. (ECF Nos. 66, 68 and 71). The motions are fully briefed (ECF Nos. 113, 115, 126, 132)[2], making the matters ripe for review. Having reviewed the parties' filings, the Court determines that no *Franks* hearing is warranted on any of the warrants and the Motions to Suppress will be DENIED because the respective judges had probable cause to issue them.

DISCUSSION

I. Introduction

The investigation into Hecke's activities began in November 2019 and continued through Hecke's arrest on January 15, 2020. During this two-month span, law enforcement officers obtained three pairs of state search warrants to track Hecke's truck and cell phone. *See* ECF No. 128, Exs. 2–7. These warrants were based on affidavits from Detective Darren Compton (Detective Compton) of the Allen County Police Department (ACPD) and summarized information obtained, in part, from a confidential informant (CI). After obtaining the initial tracking information, twice renewing the state tracking warrants, and conducting substantial physical surveillance and controlled buys, the Government sought federal warrants for: Hecke's residence on Spring Street in Fort Wayne, Indiana; two storage units; a separate house allegedly used as a stash house on Andrews Street

2. Additionally, the parties rely upon briefs they filed as part of the first motions to suppress.

in Fort Wayne, Indiana; Hecke's truck; and his cellular telephone. *See* 1:20-MJ-3 through and including 1:20-MJ-8. Upon execution of the federal search warrants at the various locations, agents found large quantities of drugs, drug trafficking paraphernalia, and guns.

In his first set of motions, Hecke challenged only the issuance of the first two state search warrants that authorized law enforcement to place a GPS vehicle tracking device on a 2001 white Ford F150 registered to Hecke and to obtain cellular telephone records for telephone number 260-409-9567, believed to be used by Hecke in his drug trafficking activities. Hecke challenged the probable cause determination of the state Magistrate Judge as well as Detective Compton's statements in the search warrant affidavit. He argued that the search warrants would not have been issued if Detective Compton provided thorough and accurate information about the criminal history and reliability of the confidential informant working the case. He also argued that if those warrants were invalidated, the exclusionary rule applied to bar all tracking or surveillance data and any later obtained physical evidence that derived from the tracking and surveillance knowledge. *See Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). What Hecke did not do in his motions was challenge the factual basis for the federal warrants.

In response, the Government asserted that if Hecke was seeking to exclude the physical evidence against him, Hecke was attacking the wrong set of warrants and the true dispute revolved around the physical evidence obtained

from executing the federal warrants. It also asserted that Hecke had not made the substantial preliminary showing necessary to obtain a *Franks* hearing relating to the state warrants, that the Magistrate Judge's probable cause determination was sound, and, in any event, the Government did not intend to seek admission of the data obtained from the state search warrants in its case.

Given the Government's concession that it did not intend to use any of the tracking data it obtained against Hecke at trial, the Court determined that Hecke's motions attacking the state court warrants were moot. (Opinion and Order, ECF No. 96). The Court remarked that while it understood counsel's strategy of invalidating the warrants in piecemeal fashion, the matter was complicated by the later-acquired federal warrants that contained new information to support the probable cause determination. Thus, the Court found that even if Hecke were successful in challenging the initial state warrants, invalidating the later-acquired federal warrants might be an uphill struggle for Hecke.

Hecke welcomed this challenge. As explained above, he has renewed his challenge to the state warrants and, in addition, now adds the federal warrants to the mix. He has requested *Franks* hearings as to both and to suppress evidence obtained from both sets of warrants. The Court turns first to a discussion of the factual basis for the respective warrants, then to the Defendant's arguments that the agents intentionally misled the judicial officers involved in the issuance of the warrants, and finally to the probable cause determinations by the respective judicial officers.

II. The Warrants

a. State Search Warrant Affidavits

On November 12, 2019, Detective Compton submitted identical Search Warrant Affidavits (ECF Nos. 77-1 and 77-2) to the Allen County, Indiana, Superior Court seeking a search warrant to place a GPS tracking device on Hecke's vehicle and to obtain cell phone records for a cell phone allegedly used by Hecke as part of his drug trafficking activities. The facts underlying the request for the warrant began with an investigation by Detective Compton in November 2019. Detective Compton received information from an unidentified individual that Hecke was supplying large amounts of methamphetamine throughout Fort Wayne, Indiana. Detective Compton conducted a computer search of public and law enforcement data and determined that Hecke listed a residence of 810 Spring Street, Fort Wayne, Indiana (Spring Street residence). He also conducted a criminal history check which revealed Hecke's 2008 federal conviction for possession with intent to distribute cocaine and possession of a firearm during a drug trafficking offense.

In October 2019, before Detective Compton received this tip, an informant reported to Detective Compton that another individual, BSC,[3] advised the informant that he was being supplied drugs by an individual directly

3. Detective Compton included the full name of BSC in his affidavit. Even so, the Court refers to him by his initials as the parties have filed the affidavits under seal.

connected with Mexican cartels. No other information is provided about the identity of the supplier or the informant.

On November 6, 2019, the Allen County Drug Task Force and the DEA served a search warrant at BSC's Point West Drive apartment[4] where they located a ½ pound of methamphetamine, small amounts of other drugs, 3 firearms and narcotics distribution items.

Investigators interviewed BSC who advised them that his original drug supplier, Jason Wallen, was arrested in August 2019. After Wallen's arrest, BSC became acquainted with a new supplier who had supplied Wallen.[5] This individual was Hecke. BSC provided Hecke's cell phone number 260-409-9567 and told investigators that he used this number to facilitate narcotics deals. He also indicated that while texting Hecke, he used code words to

4. In Hecke's first set of motions, he stated that the affidavit did not say who lived at the Point West Apartment. He is correct that when the affidavit first mentions the search it did not identify BSC as the resident of the apartment. However, on page 5 of the affidavit, Detective Compton summarizes the investigation and references that the search warrant for the apartment was for BSC's apartment. The Government also clarifies in its brief that BSC was arrested after the raid on the Point West Apartment and that during his interview he made statements against his penal interest. The fact of the arrest is omitted from the affidavit.

5. A separate investigation by the DEA in November 2019 confirmed that Hecke supplied Wallen. This information is included later in the affidavit.

request narcotics.[6] BSC confirmed Hecke's residence and identified Hecke's Ford pickup truck with Indiana license plate TK550NLM. That license plate returned to Hecke at the Spring Street residence.

BSC represented that he started purchasing methamphetamine from Hecke – ¼ pounds for $1,700-$1,800 and ½ pounds for $2,800-$3,000. Eventually these amounts turned into one-pound quantities for $4000-$5,000 a pound, depending on the quality of the methamphetamine. BSC advised that Hecke would deliver the drugs using his Ford pickup truck. The drugs were vacuum sealed, wrapped in black tape, covered with a red grease, and wrapped in cellophane.

Hecke told BSC that he could get hundreds of pounds of methamphetamine and that he was supplied by the Mexican Cartel. Hecke told BSC that he would sell him 20 pounds of methamphetamine for $70,000 and kilograms of heroin for $35,000.

Text exchanges between BSC and 260-409-9567, the cell number BSC identified as Hecke's, from November 1 through November 3 were in the affidavit. Based on Detective Compton's training and experience he believed these text messages revealed several drug transactions including one for 2 pounds of methamphetamine for $4,000 between Hecke and BSC. Additionally, the cell phone analysis located 10 calls between BSC and Hecke's number between October 21 and November 3, 2019.

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6. The code word "headlights," for instance, means methamphetamine.

Appendix B

Apart from the information obtained from BSC, the affidavit contains information received from the ATF that Wallen owed Hecke a $50,000 drug debt for drugs fronted before Wallen's arrest. Wallen's girlfriend returned unsold drugs to Hecke and transferred Wallen's Dodge Challenger, motorcycle, and a camper to Hecke to pay off some of the debt. The provider of this information is not identified in the affidavit. But Agents confirmed that Wallen sold a Dodge Challenger to Hecke and the vehicle was registered to Hecke at the Spring Street residence which corroborated the information the ATF had received.

During physical surveillance on November 7 and November 8, 2019, Detective Compton identified Hecke driving the white Ford pickup truck with Indiana registration TK550NLM. More surveillance by the Allen County Drug Task Force observed Hecke purchase a medium size chest from Menards, and an XL black tote with a yellow lid from Home Depot. Agents observed Hecke meet with a teal Lexus at the Spring Street address. The driver carried a backpack into the residence. Hecke then exited the residence and loaded something from the trunk of the Lexus into the large black tote, carried the tote inside the residence and then returned the empty tote to the trunk of the Lexus. The driver of the Lexus then drove away. Detective Compton stated that from his training and experience it is common for large drug traffickers to use couriers to transport narcotics and money from their suppliers.

Based on this information, the reviewing state magistrate judge determined that probable cause

existed to monitor the location of Hecke's truck using a GPS tracking warrant to track where he "secures, buys, and/or stores narcotics in Indiana, or out of state." Additionally, the magistrate judge found probable cause to seize subscriber and communications information for the cell phone number 260-409-9567, as the phone was part of drug trafficking activities. These warrants were renewed on December 10, 2019, and January 7, 2020. The additional warrants built upon GPS and cell phone data obtained from the first set of warrants.

b. Federal Search Warrant Affidavits

On January 13, 2020, DEA Special Agent Michael Foldesi (SA Foldesi), a 28-year veteran agent with the DEA, applied for six federal search warrants seeking authority to search two residences, two storage units, Hecke's truck, and his cell phone. SA Foldesi's affidavit incorporated, in part, the information in the affidavits submitted by Detective Compton to obtain the state tracking warrants. But that was not the only source supporting the affidavit. SA Foldesi's affidavit supplemented the original state affidavits with new information, information received through two controlled buys by BSC, information from the state tracking and cell phone warrants, extensive physical surveillance, and information related to the Andrew Street address, later identified as Hecke's stash house.

1. Other Investigation Facts

SA Foldesi alleged that besides the information first received by Detective Compton that Hecke was trafficking

large amounts of methamphetamine in Fort Wayne, a law enforcement database disclosed that Hecke had "three inbound pedestrian border crossings in Nogales, Arizona on October 11, 2018; December 17, 2018; and May 7, 2019." SA Foldesi stated that Mexico is "a source location for drugs" and "these crossings are consistent with coordinating drug trafficking in the United States."[7] (Aff. at 3). SA Foldesi also notes later in the affidavit that historical location data obtained from Hecke's phone shows his phone was in Nogales, Arizona on May 6 and 7, 2019. (Aff. at 20). This information tracks the statements Detective Compton received from BSC that Mexican cartels supplied Hecke.

The Affidavit repeats and confirms the information received by SA Foldesi and Detective Compton from BSC[8] but adds more information about BSC. SA Foldesi writes that BSC was previously convicted of conspiracy to deal methamphetamine, theft, and forgery and the agents obtained his cooperation in exchange for the possibility of BSC earning sentencing consideration on his local narcotics charges (presumably arising from the raid of his apartment).

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7. SA Foldesi recounts other facts throughout the affidavit showing that Hecke told the CI in a recorded conversation during a controlled buy that he was supplying the Mexican cartel with rifles.

8. The Affidavit refers to a "CI." However, the CI and BSC are the same individuals. The Court uses the terms CI and BSC interchangeably in this Order.

2. Controlled Buys

Before turning to the specifics of each of the two controlled buys, it is a fair characterization to say that the Affidavit contains thorough accounts of each of the buys. The Court is summarizing those buys here.

i. November 13, 2019, Controlled Buy (Controlled Buy 1)

On November 13, 2019, SA Foldesi, Detective Compton, and DEA Task Force Officer Peter Bradley (TFO Bradley) met with BSC to conduct a controlled methamphetamine buy from Hecke. The typical pre-buy searches were conducted, the CI was outfitted with recording equipment, and he received $2,000 in pre-recorded currency. Detective Compton observed the screen of the CI's telephone show an incoming call from 260-409-9567. The CI confirmed that Hecke was the user of that telephone number. During the recorded call, Hecke coordinated a meeting with the CI to sell him a ½ pound of methamphetamine. Less than an hour later, Hecke was observed leaving his Spring Street residence, entering his white Ford pickup truck, and driving to the parking lot of BSC's apartment. Hecke was observed entering into the CI's apartment at 11:16 p.m. At 11:29 p.m., Detective Compton observed Hecke and BSC walking from the area of the back door of the apartment building into the parking lot. The CI left briefly in his own vehicle followed by officers. At 11:45 p.m. Hecke left the parking lot in his truck and returned to his Spring Street residence.

The CI returned to the apartment at the direction of officers. Detective Compton retrieved the electronic recording equipment from the CI and recovered a white plastic bag containing a freezer-size, zip-lock bag with a clear, glass-like substance inside. No more contraband was located during the post-buy searches. A field test returned positive for methamphetamine with a bag weight of 237 grams.

Detective Compton and SA Foldesi debriefed BSC. He told them: (1) Hecke entered the apartment and put the methamphetamine package on the coffee table; (2) the CI handed Hecke the $2,000 pre-recorded buy money; (3) Hecke did not count it in the CI's presence; (4) the CI went outside with Hecke to look at a car that was given to Hecke by a third-party as payment of a drug debt; and (5) Hecke did not want the third-party to know where he lived so he explained he had the car dropped off by the third-party at the CI's apartment. BSC identified Hecke from a photo array as the person who sold him the methamphetamine.

Detective Compton and SA Foldesi reviewed the audio and video recording and corroborated the details provided by the CI in the debriefing.

ii. December 5, 2019, Controlled Buy (Controlled Buy 2)

Controlled Buy 2 on December 5, 2019, looked much like the first buy. TFO Bradley and Detective Compton searched the CI's vehicle and person. The CI was outfitted with recording equipment and provided with

buy money. The CI received a call from Hecke's number and coordinated a ½ pound methamphetamine buy. Hecke met the CI at the Glenbrook Mall parking lot and the two drove separately to the Spring Street residence. Hecke and the CI entered the residence. Hecke was observed exiting the Spring Street residence and walking toward Andrew Street. A few minutes later Hecke returned to the Spring Street residence and shortly after, surveillance observed the CI leaving the residence.

Detective Compton recovered the recording equipment from the CI and the CI provided Detective Compton with a package wrapped in brown shipping tape, a plastic bag with a white powdery substance, and a plastic bag with a green leafy substance. Post-buy searches of the CI and his vehicle returned no other contraband. The substances were field tested and tested positive for methamphetamine (275 grams), cocaine (1 gram), and marijuana (2 grams).

Detective Compton debriefed the CI who recounted facts much like those observed by the surveilling agents during the buy. Along with those facts, the CI stated that Hecke told him to wait at the Spring Street residence because he had to go to his stash house up the street. While the CI waited in Hecke's bedroom, the CI observed about a half a kilogram of cocaine on a table, a box of marijuana, an UZI firearm with a 30-round magazine, and $8,000 to $10,000 cash on the bed. Hecke returned with the ½ pound of methamphetamine and told the CI it was a higher quality and cost $2,150. The CI further conveyed that Hecke provided a sample of the cocaine and marijuana.

The CI identified Hecke from a photo array. Detective Compton reviewed the audio and video recordings of the buy and corroborated the information obtained from the CI during his debriefing.

3. Information Obtained from the Earlier Issued State Warrants

Throughout the Affidavit SA Foldesi uses information obtained from the GPS tracking device on Hecke's truck and the location data from Hecke's phone to report his comings and goings. On November 20, 2019, that information revealed that Hecke's truck was at Public Storage.[9] Documents obtained from Public Storage through a subpoena confirmed that Hecke rented a storage unit and had paid the rent through April 30, 2020.

More GPS monitoring on December 4, 2019, placed Hecke's truck at Southwest Self Storage in Fort Wayne. On December 11, 2019, Officer Radecki interviewed an employee from Southwest Self-Storage, who provided documentation showing Hecke rented a storage unit there since May 8, 2019. After receiving permission from

9. The same day, surveillance on Hecke observed him parked in his truck in front of the Indiana Mexican Bakery with a Hispanic male. Hecke dropped the male off at Don Chava's Mexican Grill. The male exited the truck carrying a plastic grocery bag appearing to agents to be full. The Hispanic male entered into a blue Chevrolet Malibu with an Illinois license plate that returned to Lernardo Sain. Sain has a 2009 arrest for marijuana dealing. After contacting the Bureau of Prisons, Detective Compton learned that Sain and Hecke were incarcerated together in 2012.

management. Officer Radecki used his certified narcotic detection K-9 Brix to sniff the outer doors of multiple storage units. Brix alerted to presence of drug odor at the door of Hecke's unit. (Aff. at 19). Brix alerted a second time at Southwest Self-Storage on January 8, 2020. On the same January date, K-9 Brix alerted to the presence of narcotic odor outside Hecke's Public Storage unit, discussed above.

On December 3, 2019, SA Foldesi reported more surveillance with the help of the GPS tracking device. This time, Hecke traveled to Cube Smart Self Storage in Harvey, Illinois. DEA Agents in Chicago observed Hecke's truck drive into the storage units and staying for 4 minutes before exiting the lot. Hecke then drove directly back to Indiana. When Hecke returned to Indiana, agents observed him parking his pickup truck on Andrew Street north of Spring Street. Hecke removed a five-gallon bucket from his truck and carried it into his Spring Street residence. An individual identified as Steven Brinkman and another individual were observed arriving at the Spring Street residence and carried into the residence a "hockey-style bag" which was expanded and appeared full. Further surveillance over the next few hours revealed a high volume of traffic coming and going from Spring Street. Consistent with the GPS tracking information, location data from Hecke's cell phone also showed that his phone was in the area of the Cube Smart Self-Storage during the times identified by SA Foldesi in the affidavit.

Tracking data reveals that on December 8, December 17, 2019, and January 5, 2020, Hecke's truck made similar

trips to the Cube Smart Self-Storage in Harvey, Illinois and returned to Fort Wayne the same day. Although the affidavit provides scrupulous details of what Detective Compton observed after Hecke's truck arrived back at his residence each time, it suffices to say that activity similar to and consistent with the activity observed after the December 3, 2019, trip to the Illinois storage unit were presented in the affidavit. For instance, each time, Hecke was observed removing white five-gallon buckets from his truck and carrying them into his residence. Again, location data from Hecke's phone confirmed the GPS tracking information for his truck.

On December 23 and December 30, 2019, GPS tracking data on Hecke's truck showed other trips to Public Storage in Fort Wayne. After the December 23 storage unit visit, GPS data showed Hecke's truck visited several residences on that day. Surveillance after the December 30 visit showed Hecke arriving home to the Spring Street address. He carried a filled plastic bag and a backpack appearing to be heavy (based on how Hecke carried it), into the residence.

Based on his training and experience, SA Foldesi provided details connecting the use of the storage units, the trips to Illinois, and the comings and goings from the Spring Street residence to Hecke's drug trafficking activities. For example, SA Foldesi noted that in his experience some drug traffickers travel long distances to obtain drugs from their supplier and that, after receiving a large shipment of drugs, they distribute them quickly so as to not hold large quantities longer than necessary.

Additionally, SA Foldesi explained that drug traffickers use multiple storage and stash locations for drugs and drugs proceeds to minimize any loss if one location is compromised.

4. Andrew Street Residence

At pages 16 and 17 of the Affidavit, SA Foldesi details surveillance intending to show Hecke coming and going from a residence located at 1615 Andrew Street (Andrew Street residence) that SA Foldesi believed to be Hecke's stash house. Throughout November and December 2019, the surveillance details show that Hecke left his Spring Street residence, walked northbound down an alleyway toward the Andrew Street residence. Detective Compton observed Hecke entering once through the back gate of the Andrew Street residence and, on a different occasion, exiting through the back gate. (Aff. at 16). During Controlled Buy 2, Hecke was observed leaving the Spring Street residence, walking in the alley toward Andrew Street but could not be seen entering the residence. When Hecke returned from Andrew Street, he provided the drugs to the CI.

Upon returning from one of the Illinois trips, Detective Compton observed a white male identified as Kevin Harris (Harris), helping Hecke unload the five-gallon buckets from Hecke's truck. A computer search of public and law enforcement databases shows Harris had lived at 1615 ½ Andrew Street. SA Foldesi believed that Harris lived in the other apartment at the same residence as Hecke's stash house. Harris has a 1998 conviction for possession of a controlled substance.

On January 8, 2020, a truck registered to Harris arrived in the alley behind the Andrew Street residence. Harris entered the rear fence. About a minute later, Harris was observed leaving through the alley in his truck. Soon after, Hecke was observed walking from the Andrew Street residence to his Spring Street residence. Similar observations were made by officers the next day except this time both Harris and Hecke used keys to access the door and Hecke carried several bags into the Andrew Street residence. SA Foldesi explained that based on his experience, it is common for drug traffickers to use multiple residences, storage units, and the residences of others as stash or distribution locations.

Based on all of the above information, Magistrate Judge Susan Collins found probable cause that evidence of drug trafficking activities would be recovered in the locations sought. She approved issuance of warrants for the two residences, two storage units, Hecke's truck and his cell phone.

III. Standard of Review for *Frank's* Hearing

Search warrant affidavits are presumed to be valid. *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). Yet a search warrant is invalid if police officers obtain it by deliberately or recklessly providing the issuing court with false, material information. *United States v. McMurtrey*, 704 F.3d 502, 504 (7th Cir. 2013). In *Franks v. Delaware*, the Supreme Court defined the procedure, evidentiary burdens, and proper remedies associated with a defendant's attack on the truthfulness

of statements made in an affidavit supporting the issuance of a search warrant. When challenging the affidavit's integrity, the defendant must make a dual "substantial preliminary showing" of (1) a material falsity that would alter the probable cause determination, and (2) a deliberate or reckless disregard for the truth. *McMurtrey*, 704 F.3d at 508. "These elements are hard to prove, and thus *Franks* hearings are "rarely held" because a defendant seeking a *Franks* hearing "bears a substantial burden to demonstrate probable falsity." *United States v. Maro*, 272 F.3d 817, 821 (7th Cir. 2001) (citations omitted). "Conclusory, self-serving statements are not enough to obtain a *Franks* hearing." *United States v. Johnson*, 580 F.3d 666, 671 (7th Cir. 2009) (citing *Franks*, 438 U.S. at 171). Allegations of falsehood or reckless disregard for the truth must be "accompanied by an offer of proof" such as affidavits or sworn statements. *Franks*, 438 U.S. at 171.

Franks also applies to omissions. *United States v. Williams*, 737 F.2d 594, 604 (7th Cir. 1984) (internal citations omitted). The defendant therefore is not limited to challenging affirmative statements appearing in the warrant affidavit; omissions from the affidavit may also be challenged. *Id.*; *United States v. McNeese*, 901 F.2d 585, 594 (7th Cir. 1990). The defendant bears a substantial burden as to such omissions. He "must offer direct evidence of the affiant's state of mind or inferential evidence that the affiant had obvious reasons for omitting facts in order to prove deliberate falsehood or reckless disregard." *United States v. Souffront*, 338 F.3d 809, 822 (7th Cir. 2003) (quoting *McNeese*, 901 F.2d at 594).

Appendix B

a. Application of *Franks* to State Search Warrants

Hecke challenges the state warrants contending that Detective Compton omitted critical information in his affidavit relating to the reliability and credibility of BSC that render the probable cause determination invalid. Hecke, for instance, notes that the state warrant affidavit contains no criminal history information for BSC, no information on BSC's recent arrest, and no information about any benefit BSC might receive by cooperating with the Government. He also critiques the affidavit more generally, calling it confusing. In turn, the Government argues that none of these criticisms have merit and there is no evidence that Detective Compton intentionally omitted information to mislead the magistrate judge.

It is generally well-understood that warrant affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation." *United States v. Ventresca*, 380 U.S. 102, 108, 85 S. Ct. 741, 13 L. Ed. 2d 684 (1965). For this reason, "[a]n affiant cannot be expected to include in an affidavit every piece of information gathered in the course of an investigation." *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990). *Franks* does not protect against *all* omissions in the affidavit; it protects only against material omissions, meaning omissions designed to mislead, or that are made in reckless disregard of whether they would mislead, a judicial officer's probable cause determination. *See United States v. Clark*, 935 F.3d 558, 563 (7th Cir. 2019) ("Our cases do not hold that a *Franks* hearing is required every time some substantial adverse information about an informant's credibility is

omitted from a probable cause affidavit."). The Court finds no such omissions occurred here.

Hecke is correct that Detective Compton did not provide details of BSC's criminal history or a description of the new charges he faced in the affidavit. Hecke contends that had the magistrate known this information, it could have affected the magistrate's assessment of BSC's credibility and, in turn, the probable cause determination. Yet the mere fact that the affidavit omitted information about the informant's criminal background or a motive to provide information against the defendant will not destroy the probable cause determination where the rest of the affidavit establishes reliability. *United States v. Taylor*, 471 F.3d 832, 840 (7th Cir. 2006); see also *Clark*, 935 F.3d at 565 ("Our *Franks* hearing cases show that when police have sufficiently corroborated an informant's tip, the omission of facts pertaining to the informant's credibility may not be material."). Here, as the Government points out, the totality of the circumstances set out in the affidavit supplies the necessary reliability and corroboration of BSC's information.

As for Hecke's assertion that the affidavit is confusing, this is a non-starter. A confusing or sloppy affidavit does not necessitate a *Frank's* hearing. *United States v. Briggs*, 2021 U.S. Dist. LEXIS 44653, 2021 WL 915940, at *20 (E.D. Pa. Mar. 10, 2021) ("But shoddy and sloppy is not [a] threshold requirement necessary to trigger a *Franks* hearing."). The Government acknowledges that Detective Compton's affidavit "could have been more clear" on certain information. (ECF No. 75 at 16). But even so, the affidavit

is not robbed of its probative effect just because the court could conceive of better ways to write it. What matters here is that BSC provided fresh and specific details of his interactions with Hecke to Detective Compton. He provided a cell number and address for Hecke, text messages between himself and Hecke in which the code words he described to Detective Compton were used, and he provided information about the delivery vehicle Hecke used when providing him methamphetamine. And then there is the precise pricing information based on quality of the product that BSC provided as well as the statements against BSC's own interest that he made when he discussed methamphetamine quantities he bought from Hecke. These facts blunt Hecke's challenge to the reliability of BSC. The information provided by BSC was corroborated by the investigation making the attack upon BSC's credibility and reliability unfounded.

It is also difficult to fathom how any of the information Hecke points to was crucial to the magistrate's probable cause determination. "[M]agistrate judges . . . often know, even without an explicit discussion of criminal history, that many confidential informants 'suffer from generally unsavory character' and may only be assisting police to avoid prosecution for their own crimes." *United States v. Veloz*, 948 F.3d 418, 428 (1st Cir. 2020) (quoting *United States v. Avery*, 295 F.3d 1158, 1168 (10th Cir. 2002). And when it comes to BSC, Detective Compton not only named BSC fully in the affidavit but provided information of BSC's own drug activities that did not place BSC in the best light. BSC's apartment had been raided yielding drugs and guns and BSC admitted to several

months of personal drug acquisitions. *See United States v. Harris*, 403 U.S. 573, 583-84, 91 S. Ct. 2075, 29 L. Ed. 2d 723 (1971) ("Admissions of a crime . . . carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search."). Considering all the other information presented to the magistrate, including the ATF information related to Wallen's transfer of his Challenger to Hecke and the independent surveillance conducted, the Court cannot conclude that the information allegedly omitted would have been material to the probable cause determination. *United States v. DeLong*, 2022 U.S. Dist. LEXIS 48429, 2022 WL 823881, at *7 (N.D. Ill. Mar. 18, 2022) (denying *Franks* hearing where "[a] detailed description of Goodwin's prior narcotics trafficking, prison sentence, witnessing another crime involving a death, prior cooperation with law enforcement, or any similar information was not necessary or critical to a judge's probable cause determination.").

The high standard necessary under *Franks* to warrant a hearing has simply not been met here. Not only are the alleged omissions immaterial to the probable cause finding, but Hecke has not shown that they were intentional or reckless. *United States v. Larry*, 2021 U.S. Dist. LEXIS 1042, 2021 WL 38006, at *3 (N.D. Ind. Jan. 5, 2021) ("An omission without a corresponding assertion of intentionality, recklessness, or a demonstration of materiality does not create a basis for a Franks hearing."). Hecke has not offered direct or circumstantial evidence of Detective Compton's intent. Without it, the Court cannot authorize a *Franks* hearing. Hecke's request for a *Franks* hearing related to the state warrants is DENIED.

b. Application of *Franks* to Federal Warrants

The outcome is the same for Hecke's challenge to the federal warrants. Hecke challenges only the facts in the affidavit related to the two controlled buys. He ignores the bulk of the information in the affidavit, focusing instead on the video and audio evidence of the controlled buys which he argues do not support the events set out by SA Foldesi in the affidavit. To this end, he contends that there are both omissions from the affidavit and affirmative misstatements in it.

For its part, the Government argues that SA Foldesi's statements were not false or inaccurate, that he did not knowingly or recklessly mislead the judge, and that any omissions from the affidavit were not material. The Government also contends that Hecke reads information into SA Foldesi's statements in the affidavit and, at times, construes his words in an overly technical manner rather than using common-sense.

Despite the Government's contention that Hecke engages in an overly technical reading of the affidavit, Hecke seemingly challenges the controlled buy procedures and believes information from Controlled Buys 1 and 2 is either omitted or misrepresented in the affidavit. He has submitted the video and audio recordings from the two buys to support his contentions. The Court has reviewed these recordings and, on the whole, they do not, as Hecke asks the Court to believe, detract from the statements in SA Foldesi's affidavit, rather they corroborate them on nearly every fact. Nonetheless, the Court looks at Hecke's specific contentions.

Appendix B

For Controlled Buy 1, Hecke claims that SA Foldesi erroneously stated that the pre-buy search of the CI and his apartment were recorded. This representation is befuddling to the Government since SA Foldesi wrote in the affidavit: "Detective Compton conducted a pre-buy search of the CI's Fort Wayne apartment and the CI's person, and no contraband was located." (Aff, at 5). The next sentence reads "CI was outfitted with an audio and video recorder and transmitter." (*Id.*). Nowhere does SA Foldesi suggest that the pre-buy search was recorded and a common-sense reading of his statements is that after the pre-buy search, the CI was outfitted with the recording equipment. But even if Hecke read these statements differently, he offers no proof that SA Foldesi lied about Detective Compton conducting a pre-buy search.

Next, Hecke points out that the CI is left unattended in his apartment and is off camera for a period. Other than to mention this fact, Hecke does not explain how this fact helps his cause or contradicts anything in the affidavit. Hecke also believes the video recording of Controlled Buy 1 contradicts what the CI told SA Foldesi and that SA Foldesi's statement that "[y]our affiant and Detective Compton observed Hecke placing a package on the table" is false. Hecke contends that the video does not show that he placed a package on the table.

Finally, Hecke objects to SA Foldesi's summary in the affidavit of the recorded call between the CI and himself. SA Foldesi wrote, "This phone call was recorded, and during the call, Hecke coordinated a meeting with CI in order to sell a half-pound of methamphetamine." Hecke

does not dispute the call occurred; rather, he disputes SA Foldesi's characterization of what transpired on the call.

For Controlled Buy 2, Hecke questions SA Foldesi's recitation of the events. At page 11, SA Foldesi discusses Detective Compton's debriefing of BSC after the buy. SA Foldesi writes that when Hecke and the CI arrive at Hecke's Spring Street residence "Hecke told CI to wait there at his residence because he had to go to his stash house up the street." Hecke asserts that this is erroneous information intended to mislead the magistrate. Instead, he points out that in the video you can hear him say, "I got to run up the block real quick." There is no mention of a stash house.

The Government responds to these contentions with two, well-taken, arguments. First, the Government emphasizes that the fact that a controlled buy could have been conducted to "provide an even higher level of confidence does not imply that probable cause is missing." *United States v. Glenn*, 966 F.3d 659, 661 (7th Cir. 2020). Hecke's observations that BSC was left unattended or that the agents should have recorded the pre- and post-buy searches attack the controlled buy process itself, not what information from that process wound up in the affidavit. If Hecke is challenging how the controlled buys occurred, this is not a *Franks* issue. What matters for *Franks* is whether Hecke has shown that based on the process used the affiant intentionally mislead the judicial officer about what occurred. No such proof has been offered.

The Government also relies on the considerable leeway the courts give to officers to interpret and evaluate events

unfolding before them. *See generally Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014) (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 185, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990) ("[W]hat is generally demanded of the many *factual determination* that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable."). "A statement in a warrant affidavit is not false merely because it summarizes or characterizes the facts in a particular way." *United States v. Hare*, 772 F.2d 139, 141 (5th Cir. 1985).

The Government asserts that it was reasonable for SA Foldesi to believe, given the circumstances of Controlled Buy 2 that when Hecke stated he had "to run up the block real quick," once he and BSC got to Hecke's Spring Street residence that he was going to his stash house to retrieve the drugs he was about to sell. Given SA Foldesi's expertise in investigating drug offenses and his knowledge of the present drug investigation, the Government contends that it was certainly a logical and permissible conclusion by SA Foldesi that Hecke used a stash house. Likewise, when SA Foldesi summarized what occurred during the recorded call, the Government believes this was a reasonable interpretation of the conversation's content and not a misrepresentation.

The Court agrees with the Government. Some representations in the affidavit were based on inferences drawn from SA Foldesi's training and experience, as well as his knowledge of the facts of the case. Hecke has offered no proof that there was any intent to mislead the

magistrate or that any of the inferences drawn would have changed the probable cause determinations for any of the federal warrants. Thus, the Court perceives no basis for concluding that these statements were knowing or reckless misrepresentations or omissions of material fact.

In short, the alleged omissions, or erroneous statements from the controlled buys fall far short of the heavy burden that a defendant must satisfy to obtain a *Franks* hearing. Defendant's motion fails.

IV. Probable Cause

Having found no omissions or material misrepresentations in either the state or the federal warrants, this Court defers to the warrant-issuing judge's determination of probable cause if there is substantial evidence in the record to support the decision. *United States v. Koerth*, 312 F.3d 862, 865 (7th Cir. 2002). When an affidavit is the only evidence presented to a judge to support a search warrant, as it is here, the validity of the warrant hinges on the strength of the affidavit. *United States v. Orozco*, 576 F.3d 745, 748 (7th Cir. 2009). A search warrant affidavit establishes probable cause when, based on the totality of circumstances, it "sets forth sufficient evidence to induce a reasonably prudent person to believe that a search will uncover evidence of a crime." *United States v. Mykytiuk*, 402 F.3d 773, 776 (7th Cir. 2005) (citing *United States v. Peck*, 317 F.3d 754, 755–56 (7th Cir. 2003). "The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him,

there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Sims*, 551 F.3d 640, 644 (7th Cir. 2008) (ellipsis and brackets omitted).

For the state warrants, the facts set out in the affidavit were more than enough to justify the belief by a prudent person that evidence of drug trafficking activities would be found through use of a GPS tracking device and data from the cell phone. The information provided to Detective Compton came from a CI who provided confirmed and reliable information. This was evident from the facts in the affidavit itself; it was unnecessary for Detective Compton to state his opinion of the CI's reliability when the information the CI provided was confirmed time after time. The affidavit also provided independent investigative facts and surveillance which only strengthened the probable cause analysis. The probable cause finding of the state magistrate was a sound one.

So, too, the information in the affidavit for the federal warrants leaves no doubt that the Magistrate Judge properly determined probable cause. She had before her a 26-page affidavit that detailed with specificity the times and dates of interactions between the CI and Hecke – including two controlled buys; Hecke's comings and goings from the Spring Street and Andrew Street residences; his multiple trips to storage units; his prior criminal history and his association with other drug felons; and his repeated trips to a storage unit in Illinois. Together with this information, she had before her the representations of a 28-year DEA veteran connecting

the detailed information with the drug trafficking trade. Based on all this, the Court has little trouble concluding that the totality of the circumstances supported the magistrate judge's probable cause.

CONCLUSION

For the reasons above, the Defendant's Motion to Suppress and Request for *Frank's* Hearing (ECF No.'s 109, 114) are DENIED. The Court also DENIES the Defendant's renewed arguments relating to ECF No's. 66, 68 and 71. The Court shall set this matter for trial by separate minute entry.

SO ORDERED on April 25, 2022.

/s/ Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES
DISTRICT COURT

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION, FILED AUGUST 9, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

Cause No. 1:20-CR-7-HAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN J. HECKE,

Defendant.

Filed August 9, 2021

OPINION AND ORDER

Defendant Steven J. Hecke (Hecke) and his co-defendant are facing gun and drug charges as set forth in a nine-count Indictment. (ECF No. 26). This matter comes before the Court on Hecke's Motions to Suppress Evidence (ECF Nos. 66, 68), filed on April 20, 2021, and May 7, 2021, and the later request for a hearing under *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) (ECF No. 71), filed on May 11, 2021. The parties have submitted extensive briefing (ECF Nos. 75, 84, 91,

92), making the matter ripe for review. Having reviewed the parties' filings, the Court determines that no *Franks* hearing is warranted and the Motions to Suppress based on the lack of probable cause supporting the state search warrant affidavits will be DENIED as MOOT.

DISCUSSION

Search warrant affidavits are presumed to be valid. *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). However, a search warrant is invalid if police officers obtain it by deliberately or recklessly providing the issuing court with false, material information. *United States v. McMurtrey*, 704 F.3d 502, 504 (7th Cir. 2013). In *Franks*, the Supreme Court defined the procedure, evidentiary burdens, and proper remedies associated with a defendant's attack on the truthfulness of statements made in an affidavit supporting the issuance of a search warrant. To obtain a *Franks* hearing, the defendant must make a "substantial preliminary showing" of (1) a material falsity or omission that would alter the probable cause determination, and (2) a deliberate or reckless disregard for the truth. *McMurtrey*, 704 F.3d at 508. "These elements are hard to prove, and thus *Franks* hearings are rarely held" because a defendant seeking a *Franks* hearing "bears a substantial burden to demonstrate probable falsity." *United States v. Maro*, 272 F.3d 817, 821 (7th Cir. 2001) (citations omitted).

Although the issues presented to the Court are framed in the context of *Franks*, it is necessary to further refine the parties' dispute. This case involves multiple state and

federal warrants, only two of which are challenged by the present set of motions. The initial state warrants, seeking to place a GPS device on a Ford F150 truck registered to Hecke and the other requesting cell phone records for the telephone number 260-409-9567, were issued on November 12, 2019. These warrants, according to Hecke, violated the Fourth Amendment because Detective Compton, the affiant, omitted material information about a confidential informant's criminal history, his current legal troubles, and his reliability. Hecke catalogues in detail much of what the affidavits omit and argues that under Seventh Circuit precedent "credibility omissions themselves, even in the absence of more direct evidence of the officer's state of mind, provide sufficient circumstantial evidence to support a reasonable and thus permissible inference of reckless disregard for the truth." *United States v. Glover*, 755 F.3d 811 (7th Cir. 2014); *United States v. Clark*, 935 F.3d 558 (7th Cir. 2019) (inference that the omissions were deliberate or reckless permissible where affiant omitted all adverse information he had about the credibility of the informant).

After obtaining the state warrants, the Government sought federal warrants for: Hecke's residence on Spring Street in Fort Wayne, Indiana; two storage units; a separate house allegedly used as a stash house on Andrews Street in Fort Wayne, Indiana; Hecke's truck; and his cellular telephone. *See* 1:20-MJ-3 through and including 1:20-MJ-8. These warrants, all issued on January 13, 2020, authorized officers to search and locate evidence of drug trafficking. The affidavits used to obtain each of these warrants rely, in significant part, on the GPS

tracking information and cell phone records obtained through the state warrants. (ECF No. 94, Ex. H). The affidavits also rely on information obtained from the same confidential informant catalogued in the affidavits for the state warrants and, in addition, they detail controlled buys by the confidential informant from the Defendant on November 13, 2019, and December 5, 2019. Upon execution of the federal search warrants at the various locations, agents found large quantities of drugs, drug trafficking paraphernalia, and guns.

As noted above, Hecke has challenged only the issuance of the original state warrants and argues that if those warrants are invalidated, the exclusionary rule applies to bar all tracking or surveillance evidence as well as all evidence later obtained using the tracking and surveillance knowledge. *See Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). As the Defendant's argument goes, without details obtained from the state search warrants, probable cause did not exist to obtain the federal search warrants—warrants that yielded the mother-load of evidence against him. Thus, Hecke focuses first on the state search warrants and seeks a *Franks* hearing to attack the affidavits that yielded these initial probable cause findings by the state court Magistrate. The Defendant has yet to move to suppress or challenge the basis for the federal warrants.

For this reason, the Government asserts that Hecke is attacking the wrong set of warrants and the true dispute revolves around the evidence obtained from the federal warrants. In addressing the *Franks* motion, the

Government acknowledges that Detective Compton's affidavit "could have been more clear" (ECF No. 75 at 16), but asserts that despite the lack of clarity Hecke fails to make the requisite showing of *mens rea* to warrant a *Franks* hearing. Further, even if Hecke made the required showing, the Government represents it does not intend to use at trial any of the evidence obtained from the state warrants, thereby mooting any challenge to that evidence. Finally, the Government argues that the later-acquired federal warrants contain a separate probable cause determination independent of any illegally obtained evidence from the state warrants. Thus, in the Government's view, the alleged omissions by Detective Compton regarding the confidential informant in the state affidavits are not material—not to the issuance of either the state or federal warrants.

The Court agrees with the Government's analysis in part. Given the Government's agreement to not use the evidence at trial, there is no practical difference between denying Defendant's motions as moot or granting both motions to suppress. *See United States v. Quintana*, No. 15 CR 552-1, 2016 U.S. Dist. LEXIS 148603, 2016 WL 6277435, at *1 (N.D. Ill. Oct. 27, 2016) (denying as moot defendant's motion to suppress with respect to the search of his residence, given the government's representation that it does not intend to introduce any evidence from the search); *United States v. Armstead*, No. CR11-0143, 2011 U.S. Dist. LEXIS 143200, 2011 WL 6204598, at *2 (N.D. Iowa Dec. 13, 2011) ("As a practical matter, it is unclear whether there is a significant difference between granting the motion to suppress or denying the motion

as moot (based on the Government's promise not to offer the evidence during its case in chief)."); *United States v. Shaky*, No. 09-299, 2010 U.S. Dist. LEXIS 117567, 2010 WL 4625511, at *1 n.1 (W.D. Pa. Nov. 4, 2010) (denying motion as moot as allegedly suppressible statements would not be used at trial); *United States v. Tomkins*, No. 07 CR 227, 2009 U.S. Dist. LEXIS 51059, 2009 WL 590237, at *4 (N.D. Ill. Mar. 6, 2009) (government's representation that it does not intend to rely on any cameras, photo memory sticks, or packets of photographs seized at defendant's house, or to introduce any evidence seized from defendant's tool chests moots the motion to suppress evidence). Indeed, under either alternative, the Government, given its concession, will not be offering evidence obtained from the cell phone records or the GPS tracking device into evidence at trial. Thus, there is little value to be derived from, or need for, a judicial finding on the matter. *See United States v. Aleman*, 548 F.3d 1158, 1167 (8th Cir. 2008) (declining to review denial of motion to suppress defendant's statements, explaining that the "challenge is moot because the government did not use any part of his statement at the trial."). Accordingly, the Motions to Suppress the state warrants and the request for a *Franks* hearing are DENIED as MOOT.

The absence of the GPS tracking evidence and the cell phone evidence at trial removes one layer of Hecke's argument. But this does not end the analysis. The exclusion of the GPS tracking and cell phone evidence by the Government's agreement accomplishes only one of Defendant's goals here. Indeed, Hecke acknowledges that his purpose in attacking the initial warrants is to use that

finding (assuming it was favorable to him) as a gateway to argue that, under the Fourth Amendment, derivative evidence (i.e., the evidence obtained through the federal warrants) must be suppressed as "fruit of the poisonous tree." *Wong Sun*, 371 U.S. at 488. (ECF No. 92 at 2). But the Defendant's argument is not a foregone conclusion. Under the "fruit of the poisonous tree" doctrine, not all evidence *needs* suppressed "simply because it would not have come to light but for the illegal actions of the police." *Wong Sun*, 371 U.S. at 488. The government may use evidence that it has obtained from a source independent of the primary illegality. *Id.* Thus, courts should ask if "intervening events or circumstances independent of the primary illegality may have so attenuated the causal connection as to dissipate the taint of the unlawful police action" *United States v. Timmann*, 741 F.3d 1170, 1182 (11th Cir. 2013); *Wong Sun*, 371 U.S. at 488.

Here, even if a "primary illegality" occurred with respect to the state court warrants, as Hecke asserts, the existence of subsequent federal warrants founded on other evidence of criminal conduct, such as evidence obtained from controlled buys, complicates matters.[1] The new warrants were supported by a separate and independent finding of probable cause by a neutral and detached federal magistrate judge, which has not been attacked

1. For present purposes, the Court accepts the Defendant's argument that the omissions in the affidavits for state search warrants regarding the confidential informant's criminal history, his recent arrest, and the minimal corroboration of the CI's veracity would meet the threshold for a *Franks* hearing and further warrant suppression.

by Hecke in any motion before the Court. The existence of the later-acquired warrants may be an intervening and independent event that could purge the taint of any prior unlawful conduct Hecke asserts regarding the state warrants. *See United States v. Bell*, 925 F.3d 362 (7th Cir. 2019) (assuming without deciding that a primary illegality occurred and applying the "independent source" doctrine to uphold a later-acquired warrant supported by evidence independent of the primary illegality alleged).[2]

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2. *Bell's* analysis may ultimately be instructive here. In that case, Bell was helping another individual, Turner, sell stolen firearms in exchange for a portion of the profit. Turner ran into his own legal troubles and cooperated with law enforcement against Bell by providing details of one of the sales and conducting several controlled transactions with Bell. Bell was eventually arrested and, at the time of his arrest, the arresting officer opened Bell's flip phone and viewed a photograph of a firearm on the home screen in what the Seventh Circuit found "was likely an unconstitutional search." 925 F.3d at 367. Approximately a week later, the agent sought a warrant for Bell's phone. The supporting affidavit recounted that Turner had shown the agent a photo of an AK-47 that Bell had sent him via text message. The affidavit also stated that an officer had seen a photo of an AK-47 on the home screen of Bell's cellphone subsequent to his arrest. A federal district judge granted the warrant. Later, the agent sought a second warrant to extract electronically stored data from Bell's cellphone. That search yielded data showing that the photo had been sent from Bell's cellphone and the date of that transmission.

Bell moved to suppress the evidence obtained from his cellphone. He argued that the arresting officer unconstitutionally searched his flip phone by opening it to view the home screen. Without the information from this search, Bell asserted, both warrants lacked probable cause. Further, Bell argued that the photo obtained pursuant to the first warrant was impermissibly used as support for the second.

But the Court has been presented with neither a motion to suppress the federal warrants nor briefing on the issues that would flow from such a motion and complete the adversarial process. Defendant has opted instead to make the arguments in piecemeal fashion which does not permit the Court, at present, to analyze the very argument the Court believes Hecke intends to make. At most, the Court has before it the Government's bare assertion that the affidavits for federal search warrant provide "ample evidence" for an independent finding of probable cause. (ECF No. 75 at 25: "Even ignoring the vehicle tracking from November through December 10 . . . other investigative measures furnished ample information for probable cause.") and the Defendant's assertions that it is premature to discuss

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In analyzing the issue, the Seventh Circuit assumed the existence of a primary illegality, i.e., that the search of the phone at the time of arrest was unconstitutional. It went on, however, to uphold the subsequent warrants in spite of the primary illegality and permit the photo evidence obtained from Bell's cell phone and the electronic evidence tied to it under the "independent source" doctrine:

> Although the first search warrant affidavit included the tainted information, under the independent source doctrine, when a search warrant is obtained, in part, with tainted information, we ask two questions. First, would the warrant have been issued even without considering the tainted information? And, second, was the officer's decision to seek the warrant prompted by the illegal search? *United States v. Etchin*, 614 F.3d 726, 737 (7th Cir. 2010); *see also United States v. Scott*, 731 F.3d 659, 664 (7th Cir. 2013)

Bell, 925 F.3d at 370.

the federal warrants without a ruling on the state search warrants. Add to this mix, the Government's concession to not use evidence obtained via the state warrants and the Court cannot further advance the Defendant's intended argument.

The Court is mindful of the Seventh Circuit's instruction that district judges should not venture into the role of advocate by conducting a party's research, crafting arguments on a party's behalf, or *sua sponte* deciding issues without the benefit of adversarial presentation. *Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011) ("Neither the district court nor this court are obliged to research and construct legal arguments for parties, especially when they are represented by counsel."); *Kay v. Board of Educ. of City of Chicago*, 547 F.3d 736, 738 (7th Cir. 2008) (when a "[district] judge [acts] *sua sponte*, the parties [are] unable to provide their views and supply legal authorities."). Here, because the Court has not been presented with a motion to suppress the federal warrants and the Government has agreed to forgo use of evidence obtained from the state warrants at trial, the most the Court can do is conclude that the Defendant's motions related to the state court warrants (ECF Nos. 66, 68, 71) are DENIED as MOOT. The Court acknowledges that this is not the most satisfying resolution; however, the manner in which this case has unfolded requires such a result presently.

Appendix C

CONCLUSION

Based on the above, the Defendant's Motions to Suppress (ECF Nos. 66, 68) and his Motion for a *Franks* Hearing (ECF No. 71) are DENIED as MOOT.

SO ORDERED on August 9, 2021.

/s/ Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES
DISTRICT COURT