SUPREME COURT OF THE UNITED STATES

No. _____

WILLIE DAVID LARK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

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QUESTIONS PRESENTED

I. Whether, under 18 U.S.C. § 3161(h)(7)(A), a court of appeals may uphold a district court's wait for future appellate guidance as an ends-of-justice continuance when the district court never found that the ends of justice served by the delay outweighed the public's and the defendant's interests in a speedy trial.

II. Whether, at the preliminary stage under *Franks v. Delaware*, 438 U.S. 154 (1978), a court may deny a hearing by reconciling materially different sworn accounts of the same event given by the same affiant to different issuing magistrates.

LIST OF PARTIES AND PROCEEDINGS

Petitioner/Defendant-Appellant: Willie David Lark

Respondent/Plaintiff-Appellee: United States of America

Proceedings: *United States v. Lark*, No. 1:22-cr-140 (W.D. Mich. Apr. 4, 2025); *United States v. Lark*, No. 25-1337 (6th Cir. July 8, 2026).

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OPINIONS BELOW

The court of appeals affirmed petitioner's conviction and sentence on July 8, 2026, in an unpublished opinion. *United States v. Lark*, No. 25-1337 (6th Cir. July 8, 2026). The opinion is reproduced at Appendix A. The district court orders most directly relevant to the questions presented are the April 22, 2024, order denying petitioner's Speedy Trial Act motion (Appendix B), the June 16, 2023, order taking the suppression motion under advisement and adjourning trial (Appendix C), and the March 25, 2024, order denying the requested *Franks* hearing and the tracking-warrant challenge (Appendix D). The district court's judgment is reproduced at Appendix E.

JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231. Final judgment was entered on April 4, 2025, and petitioner timely appealed. The court of appeals entered judgment on July 8, 2026. This petition is filed within ninety days of that judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 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."

2. 18 U.S.C. § 3161(c)(1) generally requires trial to begin within seventy days after the triggering event specified by the statute.

3. Section 3161(h)(1)(D) excludes "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion."

Section 3161(h)(1)(H) excludes "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court."

Section 3161(h)(7)(A) excludes delay resulting from a continuance only "if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial," and further provides that no such period is excludable unless the court sets forth its reasons on the record, orally or in writing.

STATEMENT OF THE CASE

Petitioner Willie Lark seeks review of two questions concerning procedures approved below under the Speedy Trial Act and *Franks v. Delaware*, 438 U.S. 154 (1978). The first is whether a court of appeals may uphold a district court's wait for future appellate guidance as an ends-of-justice continuance when the district court never found that the ends of justice served by the delay outweighed the public's and the defendant's interests in a speedy trial. The second is whether, at the *Franks* threshold inquiry, a court may deny a hearing by reconciling materially different sworn accounts of the same event given by the same affiant to different issuing magistrates.

Petitioner was indicted on October 4, 2022, for federal controlled-substance offenses. A superseding indictment followed on November 17, 2022. After extensive pretrial litigation, petitioner proceeded to jury trial and was convicted. Judgment was entered on April 4, 2025. Between indictment and judgment, 913 days elapsed. Appendix E at 1.

A. The Franks Issue

On May 1, 2023, petitioner moved to suppress evidence obtained pursuant to several warrants and requested an evidentiary hearing under *Franks*. Motion to Suppress, R.E. 40. The investigation involved two GPS-tracking affidavits and two later residential-search affidavits signed by the same detective. The present dispute concerns the materially different sworn descriptions of the March

24, 2022, controlled purchase contained in those applications. For clarity, Appendices F and G reproduce the relevant March 24 paragraphs from one tracking affidavit and one residential affidavit. The corresponding applications repeated those descriptions.

The GPS-tracking affidavit described the March 24 transaction as follows:

> On March 24, 2022, Your Affiant met with the CI and the CI was searched for contraband and none was located. The CI was provided MSP prerecorded buy funds which the CI was to use to purchase crack cocaine from Willie Lark. The CI met Lark who arrived driving a red Chevrolet Colorado pickup truck.... The CI met with Lark and was then surveilled by Your Affiant to a pre-determined location where the CI provided Your Affiant with approximately 1.46 grams of field test positive crack cocaine. The CI was again searched for contraband, and none was located.
>
> *Appendix F at 2 (R.E. 40-2, PageID.133, ¶ G).*

Several months later, the same detective submitted residential-search affidavits describing the same March 24 transaction differently:

> On March 24, 2022, Your Affiant met with CI-1 and CI-1 was searched for contraband and none was located.... Your Affiant drove CI-1 to XXX S. Fair Avenue Benton Harbor Michigan where CI-1 was to meet with Lark.... CI-1 told Your Affiant that Lark was out of drugs and needed to go and get more drugs to sell to CI-1. MSP SWET was unable to conduct full surveillance on Lark's vehicle at this time.... Lark said he had given the drugs to sell to CI-1 to another person and that person would be arriving soon to the meet spot. CI-1 then was contacted by an unknown male in a black sedan. CI-1 exchanged pre-recorded MSP buy money to this subject in exchange for a quantity of field test positive crack cocaine.
>
> *Appendix G at 3 (R.E. 40-1, PageID.105, ¶ J).*

The later sworn account disclosed facts absent from the tracking affidavits: Lark said he was out of drugs; officers lost full surveillance of the red truck; an intervening telephone call occurred; and an unidentified male arriving in a black sedan physically completed the exchange. Petitioner argued that those materially different sworn accounts supplied the substantial preliminary showing required for a *Franks* hearing.

The district court held a non-evidentiary hearing on June 15, 2023. At its conclusion, the court stated: "I am taking under advisement the suppression motion, part of which is a *Franks* hearing." Appendix H at 1 (Suppression Hr'g Tr., PageID.253). It further stated that, after

supplemental briefing, it would take the *Franks* issue under advisement. Appendix H at 2 (Suppression Hr'g Tr., PageID.254).

Following supplemental briefing, the district court denied the *Franks* request. The court acknowledged that the tracking and residential affidavits described the March 24 transaction differently, but concluded that they were "reconcilable into a single coherent narrative." Appendix D at 9. It then created a color-coded overlay of the separate affidavits and relied on its reconciliation to conclude that petitioner had not made the preliminary showing required by *Franks*. Id. at 9–11. The separate affidavits had been presented to different issuing magistrates and no issuing magistrate ever reviewed the district court's reconstructed narrative.

B. The Speedy Trial Issue

At the conclusion of the June 15 hearing, the district court ordered supplemental briefing, stated that the suppression motion was under advisement, and continued the scheduled trial. Appendix H at 1–2. The written order entered the following day likewise stated that the motion was "taken under advisement," set deadlines for supplemental briefing, and adjourned the final pretrial conference and trial pending resolution of the motion. Appendix C at 1. Neither party requested that the case be held in abeyance while the Sixth Circuit considered *United States v. Sanders* en banc.

The government filed its supplemental memorandum on June 22, 2023. Petitioner filed a sur-reply on June 29 and a short supplement on July 3. Thereafter, the record remained silent for approximately 262 days. On March 20, 2024, petitioner moved to dismiss under the Speedy Trial Act. Five days later, the district court explained that it had been waiting for the anticipated en banc *Sanders* decision because that decision could affect petitioner's nexus challenge and because the court believed the parties were best served by waiting. Appendix D at 2–3.

On April 22, 2024, the district court denied the Speedy Trial Act motion. Although it had previously stated that the suppression motion was under advisement, it concluded that the anticipated *Sanders* decision constituted a "filing" or "material" needed for proper disposition of the motion under *Henderson v. United States*, 476 U.S. 321 (1986). Appendix B at 3. The district court also reasoned that petitioner's unresolved request for a *Franks* evidentiary hearing independently excluded time under § 3161(h)(1)(D). Id.

The court of appeals affirmed, but its Speedy Trial holding relied principally on § 3161(h)(7)(A). It reasoned that the context showed "from the get-go" that the district court believed the ends of justice were best served by awaiting *Sanders*, even though the order denying dismissal was not expressly couched in ends-of-justice terms. Appendix A at 13–15. In footnote 3, the panel also observed that the district court had relied on § 3161(h)(1)(D) for the time spent deciding whether a *Franks* evidentiary hearing was necessary. Id. at 13 n.3. The panel did not decide the merits of that alternative statutory interpretation.

REASONS FOR GRANTING THE PETITION

The decision below approves two procedures this Court has not recognized. On the Speedy Trial issue, the court of appeals inferred the statutory ends-of-justice balance from a record showing why the district judge preferred to await future precedent, but not that the judge weighed that preference against the public's and petitioner's speedy-trial interests. On the *Franks* issue, the lower courts resolved materially different sworn accounts at the preliminary stage through judicial reconciliation rather than testimony and cross-examination. Both questions concern who must perform the procedure prescribed by Congress or by the Fourth Amendment, and when.

I. The Speedy Trial Act Question Warrants Review

A. Section 3161(h)(7)(A) Requires the District Court To Perform the Statutory Balancing

18 U.S.C. § 3161(h)(7)(A) makes the district court's balancing of interests a condition of exclusion from the seventy-day trial requirement. Delay is excludable only if the judge grants the continuance "on the basis of" a finding that the ends of justice outweigh the public's and the defendant's interests in a speedy trial. A court of appeals may review that determination; it may not replace it with an inference drawn after the delay.

Zedner v. United States, 547 U.S. 489 (2006), permits later articulation of findings, but not later creation of them. The findings must exist, if only in the judge's mind, before the continuance is granted, and the reasons must appear on the record no later than the ruling on a motion to dismiss. Id. at 506–07. Without those findings, "there can be no exclusion." Id. at 507. Congress imposed that procedural strictness because the ends-of-justice exclusion is the Act's most open-ended source of delay. Id. at 508–09.

The record shows why the district court preferred delay: it believed *Sanders* might provide useful guidance. It does not show the balance the statute requires. The June 16th order took the suppression motion under advisement and adjourned trial pending a ruling. Appendix C at 1. Only after 262 days—and after petitioner moved to dismiss—did the court explain that *Sanders* could affect the nexus analysis and that the parties were "best served" by waiting. Appendix D at 2–3. Neither order found that this possible benefit outweighed the public's and petitioner's interests in a speedy trial. The court of appeals nevertheless inferred that the statutory determination existed "from the get-go." Appendix A at 13–15.

Other circuits reject that kind of reconstruction. The Fourth Circuit requires the record to show that the district court actually conducted the statutory balance when it granted the

continuance; in *United States v. Velasquez*, 52 F.4th 133, 138–43 (4th Cir. 2022), it refused the Government's invitation to infer a trial-preparation rationale from surrounding circumstances. *See also United States v. Henry*, 538 F.3d 300, 304–06 (4th Cir. 2008). The Tenth Circuit likewise requires the record to "clearly establish" that the district court considered the proper factors and holds that short, conclusory statements are insufficient. *See United States v. Toombs*, 574 F.3d 1262, 1269–74 (10th Cir. 2009). And the Eleventh Circuit has held that otherwise adequate reasons cannot save a continuance when the district court never made the required balance. *See United States v. Ammar*, 842 F.3d 1203, 1209–11 (11th Cir. 2016). The decision below permits what those cases forbid: inferring the statutory balance from a record showing only why the judge preferred delay.

B. *Henderson* Does Not Permit Open-Ended Motion-Related Delay

The district court relied on a different theory. Although it had previously taken the suppression motion under advisement, it later treated the anticipated en banc decision in *Sanders* as a "filing" or "material" needed to decide the motion. Appendix B at 3. *Henderson* held that, after a motion hearing, the automatic exclusion continues while the district court awaits "additional filings from the parties" needed for disposition. *Henderson v. United States*, 476 U.S. 321, 330-31 (1986). The Court described post-hearing briefs and factual materials supplied in the pending case, not future precedent from separate litigation.

The anticipated *Sanders* opinion was neither a party filing, evidence, a transcript, nor a document in petitioner's case. It was a judicial opinion that had not yet been written. By then, the district court had held oral argument, ordered the briefing it wanted, received the parties' final submissions, and expressly taken the motion under advisement. Appendices C and H. Petitioner has identified no published court-of-appeals decision treating future precedent as one of

Henderson's "papers." The Second Circuit's decision in *United States v. Bert* illustrates the ordinary rule: once a suppression motion was fully submitted and the thirty-day advisement period expired, eleven additional months were unexcluded. *See United States v. Bert*, 814 F.3d 70, 78–80 (2d Cir. 2016). Treating future law as motion-related material would turn § 3161(h)(1)(H)'s thirty-day limit into an open-ended wait.

The panel also suggested in footnote 3 that petitioner's request for a *Franks* hearing might provide a separate basis for exclusion under § 3161(h)(1)(D). But the panel did not decide the district court's alternative theory; it resolved the appeal under the ends-of-justice provision. Appendix A at 13 & n.3. The alternative theory assumes that requesting a *Franks* evidentiary hearing automatically keeps the exclusion running until the district court eventually decides whether any such hearing will occur. *Henderson* does not support that assumption.

Henderson distinguishes motions that require hearings from motions that are fully submitted for decision. The Eleventh Circuit applied that distinction to a motion expressly requesting a hearing in *United States v. Jones*, 601 F.3d 1247, 1255–56 (11th Cir. 2010). Because the district court neither scheduled nor held the requested in camera hearing, the motion entered advisement when the government responded. Id. at 1256. The Fifth Circuit likewise held that an express request for a hearing did not produce an open-ended exclusion where no hearing occurred. Therefore, once the motion was under advisement, only thirty days remained excludable. *See United States v. Johnson*, 29 F.3d 940, 943–45 (5th Cir. 1994). The D.C. Circuit follows the same approach where the court neither holds a hearing nor indicates that one may be required. *See United States v. Bryant*, 523 F.3d 349, 359–60 (D.C. Cir. 2008).

The Ninth Circuit's reasoning in *United States v. Sutter* underscores the statutory purpose of the Speedy Trial Act. An indefinite continuance of a motion for which no hearing is scheduled is "tantamount to an indefinite advisement period" and conflicts with *Henderson*'s thirty-day limit.

United States v. Sutter, 340 F.3d 1022, 1031–33 (9th Cir. 2003). That limit prevents the automatic motion exclusion from swallowing the separate advisement provision. *See Henderson*, 476 U.S. at 329; *Jones*, 601 F.3d at 1255–56. A contrary rule would allow the thirty-day cap to be avoided whenever a litigant adds a request for an evidentiary hearing to a pretrial motion, whether or not the district court ever determines that the hearing is warranted.

Lark's record falls within *Henderson* under either characterization. The district court conducted an on-the-record proceeding at which it heard argument on the suppression motion and the threshold *Franks* request. Such an on-the-record colloquy qualifies as a "hearing" for Speedy Trial Act purposes. *See United States v. Staula*, 80 F.3d 596, 602 (1st Cir. 1996). The court then requested final briefs, expressly stated that the motion—including the *Franks* issue—would be under advisement, and received the last submission on July 3. Appendix H at 1–2. If June 15 was the statutory hearing "on" the motion requesting a *Franks* hearing, *Henderson* permitted time for the requested post-hearing briefing and then no more than thirty days of advisement. If the requested *Franks* evidentiary hearing is treated as a distinct future proceeding, the court never granted, scheduled, or identified that hearing as necessary and ultimately denied it. Under *Jones* and *Johnson*, the request alone did not suspend the clock indefinitely. The threshold question before the district court was whether Lark had made the showing required to obtain a *Franks* hearing in the first place.

Nor does *United States v. Campbell*, No. 23-3736, 2024 WL 4635829 (6th Cir. Oct. 31, 2024) (unpublished), resolve the issue. There, the district court granted and conducted the requested *Franks* hearing, bringing the delay within § 3161(h)(1)(D)'s express exclusion through "the conclusion of the hearing." In the case at bar, the court took the threshold entitlement question under advisement and denied a *Franks* hearing months later while the anticipated *Sanders* opinion remained unissued.

Treating either the anticipated *Sanders* opinion or the unresolved request for a *Franks* hearing as open-ended motion-related delay would thwart the structure *Henderson* enforced. The "prompt disposition" language and the thirty-day advisement limit provide an endpoint for motion-related delay and prevent an unresolved motion from becoming an unlimited tolling device. Here, the threshold *Franks* question was argued, fully submitted, expressly taken under advisement, and answered without any future evidentiary hearing. Allowing the ensuing delay to remain automatically excluded would conflict with both the text and purpose of the Speedy Trial Act.

C. *Bloate* Confirms the Act's Separate Treatment of Automatic and Discretionary Delay

Bloate v. United States, 559 U.S. 196 (2010), reinforces the statutory structure. The Court rejected an attempt to treat time for preparing pretrial motions as automatically excluded merely because that time was closely related to motion practice. Congress knew how to define automatic exclusions and instead placed that form of discretionary delay within the ends-of-justice mechanism. Id. at 205–10.

The same structural point applies here. Even if waiting for anticipated appellate guidance might sometimes be sensible, it is not an automatic motion exclusion. The statutory mechanism for discretionary delay is § 3161(h)(7)(A), with the balance and findings Congress required. If the decision below stands, a district court may postpone ruling while awaiting future law without making that balance, and a court of appeals may later infer it from a record showing only why the judge preferred to wait. Neither *Henderson*, *Bloate*, nor *Zedner* authorizes that result.

II. The Franks Question Warrants Review

A. The Fourth Amendment Focuses on What the Issuing Magistrate Saw

This Court has long emphasized that warrant review begins with the information actually presented to the issuing magistrate. *Aguilar v. Texas* stated that "in passing on the validity of a warrant, the reviewing court may consider only information brought to the magistrate's attention." 378 U.S. 108, 109 n.1 (1964). Although *Illinois v. Gates*, 462 U.S. 213 (1983), replaced *Aguilar*'s two-pronged informant test, it retained the issuing magistrate's independent constitutional role. And *Whiteley v. Warden*, 401 U.S. 560 (1971), confirms that information not presented to the issuing magistrate cannot later rehabilitate the probable-cause showing. That principle does not bar comparison of separate affidavits at the *Franks* threshold. It explains the proper use of the comparison: to identify evidence of possible falsity or material omission in the affidavit presented to the issuing magistrate, not to use the later affidavit to reconcile and cure the earlier account. Here, the district court used the later affidavit to reconcile the earlier account and thereby deny the threshold hearing; the court of appeals approved that methodology.

B. *Franks* Does Not Permit the Court to Resolve the Veracity Dispute at the Threshold

Franks v. Delaware, 438 U.S. 154 (1978), establishes a threshold procedure. A defendant who makes a substantial preliminary showing that a material statement was knowingly false or made with reckless disregard for the truth is entitled to an evidentiary hearing. Id. at 155–56, 171–72. The threshold is demanding, but it remains a threshold. At that stage, the court does not decide whether the defendant has proved intentional or reckless falsity by a preponderance; it decides whether the defendant has made the preliminary showing necessary for a hearing.

The documentary showing here came from the affiant himself. The tracking affidavits linked the CI's meeting with Lark and the red truck directly to the cocaine delivered to officers. The later

residential affidavit disclosed that Lark said he was out of drugs, officers lost full surveillance, an intervening call occurred, and an unidentified male in a black sedan physically completed the sale. The district court acknowledged that the accounts differed, supplied its own explanation for the different details, merged the accounts into a "single coherent narrative," and denied the requested *Franks* hearing. Appendix D at 9–11.

This methodology collapses *Franks*' two stages. The preliminary question was whether petitioner's sworn documentary showing supported a reasonable inference of deliberate or reckless falsity. The district court instead resolved the competing inferences in the affiant's favor before testimony or cross-examination. Petitioner does not ask this Court to hold that the affiant acted intentionally or recklessly; he asks for the hearing at which that question can be tested.

Nor does ordinary four-corners probable-cause review answer the *Franks* question. The rule that facial sufficiency is judged by what an affidavit contains concerns review of the warrant as submitted. *Franks* is the procedure for going behind the affidavit once the required preliminary showing is made. The Third Circuit recognizes that the required offer of proof may consist of sworn affidavits or other reliable witness statements. *United States v. Desu*, 23 F.4th 224, 234 (3d Cir. 2022) (quoting *United States v. Yusuf*, 461 F.3d 374, 383 n.8 (3d Cir. 2006)). Lark's offer was not speculation; it was the same affiant's later sworn account of the same event.

C. Other Circuits Treat Sworn Documentary Conflicts as Grounds for a Hearing

The Seventh Circuit's decision in *United States v. McMurtrey*, 704 F.3d 502 (7th Cir. 2013), presents the closest comparison. Two sworn police affidavits conflicted on critical facts. The court explained that the contradictions did not establish which affidavit was false, but "both could not be correct"; taken together, they made a sufficient preliminary showing. *See* Id. at 512. The government's proposed reconciliation could not defeat the hearing, and its explanations belonged

in the full evidentiary proceeding rather than serving as the reason to withhold one. *See* Id. at 510–13.

The Ninth Circuit likewise distinguished facial probable-cause review from a *Franks* veracity challenge in *United States v. Davis*, 663 F.2d 824 (9th Cir. 1981). Even though the issuing magistrate had seen both relevant affidavits on the same day, the court held that the differences were appropriate issues to develop at an evidentiary hearing. *See* Id. at 830–31. Lark presents the sharper question: the materially different accounts were presented to different issuing magistrates and were reconciled only later by the reviewing court. Those differences should have been tested at a hearing.

D. The Unresolved Material-Omission Question Further Supports Review

There is an additional reason this case provides a useful vehicle for clarification. *Franks* itself addressed affirmative false statements. This Court has never expressly decided whether the same hearing procedure extends to intentional or reckless material omissions. The courts of appeals have long recognized such claims. *See Stewart v. Donges*, 915 F.2d 572, 582–83 (10th Cir. 1990) (collecting decisions applying *Franks* to material omissions and adopting the same rule).

Petitioner's claim does not begin with an abstract omission allegation. The omitted facts were later supplied under oath by the same affiant in a separate warrant application: Lark said he was out of drugs; surveillance was lost; an intervening call occurred; and another individual in a different vehicle completed the exchange. Those facts were directly relevant to whether the red truck was being used to facilitate the controlled purchase. Whether the differences are characterized as contradictions, material omissions, or both, the preliminary-stage question is the same: may the court resolve them through its own reconciliation, or must it hold the evidentiary hearing when the sworn documentary record supplies the required preliminary showing?

CONCLUSION

This petition asks whether the statutory safeguards Congress prescribed for discretionary delay under the Speedy Trial Act and the evidentiary procedure prescribed by *Franks* may be displaced by the different procedures approved below. On the Speedy Trial issue, the court of appeals inferred the required statutory balance from a record showing why the district judge preferred to await future precedent. On the *Franks* issue, the lower courts resolved materially different sworn accounts at the preliminary stage through judicial reconciliation rather than testimony and cross-examination. Whether those procedures are consistent with the Speedy Trial Act, the Fourth Amendment, and this Court's precedents warrants review. The Petition for a Writ of Certiorari should therefore be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey C. Rager, attorney for the petitioner, Willie David Lark, hereby certify that the original and ten copies of this Motion for Leave and Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, One 1st Street NE Washington, DC 20543; and that a true copy of the foregoing Petition was served by mail with first-class postage prepaid, upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; J. Austin Hakes, United States Attorney's Office for the Western District of Michigan, 330 Ionia Avenue NW, Suite 501, Grand Rapids, MI 49503; Willie Lark , Inmate No. 25417-510, Manchester FCI, P.O. Box 4000, Manchester, KY 40962, by first class mail on this the. day of October 1, 2026.

Respectfully submitted,

s/ Jeffrey C. Rager
Jeffrey C. Rager
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APPENDIX INDEX

Appendix A (A-1–A-15): Opinion of the United States Court of Appeals for the Sixth Circuit, *United States v. Lark*, No. 25-1337 (July 8, 2026).

Appendix B (B-1–B-4): District Court Opinion and Order denying Motion to Dismiss under the Speedy Trial Act (Apr. 22, 2024).

Appendix C (C-1): District Court Order taking suppression motion under advisement and adjourning trial (June 16, 2023).

Appendix D (D-1–D-11): District Court Opinion and Order denying *Franks* hearing and tracking-warrant suppression challenge (Mar. 25, 2024).

Appendix E (E-1–E-7): District Court Judgment (Apr. 4, 2025).

Appendix F (F-1–F-3): GPS-tracking affidavit, paragraph G.

Appendix G (G-1–G-4): Residential-search affidavit, paragraph J.

Appendix H (H-1–H-2): Selected pages from the June 15, 2023, suppression-hearing transcript.

NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0293n.06

Case No. 25-1337

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 08, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WILLIE DAVID LARK, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN O P I N I O N

Before: SUTTON, Chief Judge; McKEAGUE and BUSH, Circuit Judges.

McKEAGUE, Circuit Judge. Before taking his case to trial, Willie Lark moved to suppress evidence, asked for a *Franks* hearing, and sought dismissal of his indictment under the Speedy Trial Act. The district court denied all three requests, and a jury found Lark guilty of drug trafficking. Seeing no error in the district court's decisions, we **AFFIRM.**

I.

Willie Lark twice sold drugs to a confidential informant in Benton Harbor, Michigan. That prompted Detective Jeremiah Gauthier to seek a warrant to track the vehicle Lark drove to both transactions.

The supporting details were provided in an accompanying affidavit. Gauthier first articulated his own decade-long experience as a drug investigator. Then he explained that Informant 1 tipped off police that he or she could purchase cocaine from Lark. Gauthier described

Informant 1 as "credible and reliable" because Informant 1 had provided "verified" drug related tips to Gauthier and his colleagues for nearly a year and engaged in multiple controlled substance purchases during that time. R. 40-2, PageID 133, ¶¶ C, E. So, two controlled buys were arranged between Lark and the informant. Both proceeded in much the same way: Gauthier searched Informant 1 for contraband; Informant 1 met with Lark, purchased cocaine using recorded funds, and then was surveilled while returning to Gauthier. And there was another commonality too: Lark arrived to both transactions in the same red pickup truck. Presented with that information, a state court judge authorized police to place a tracking device on the red pickup truck for 45 days.

Several months later, Gauthier sought permission to track the red pickup truck again. This time, in the supporting affidavit, Gauthier relayed the same details about his experience and the initial controlled buys between Lark and Informant 1. But Gauthier also included new evidence. Among other things, he relied on another confidential informant—Informant 2—who had fed "verified or corroborated" drug information to Gauthier's colleagues for 10 months. *Id.*, PageID 140, ¶ M. Informant 2 claimed that Lark repeatedly delivered heroin to his or her home, each time using a red pickup truck. And, as it turned out, data from the initial tracking warrant showed that the red pickup truck had made numerous trips to the area near Informant 2's residence.

But there was more. Tracking data also showed that the red pickup made stops at several locations Gauthier "previously identified as being involved in drug trafficking." *Id.*, ¶ J. Indeed, on several occasions, Gauthier personally observed Lark—and the red pickup truck—at a residence on McAllister Avenue pegged by Informant 2 as a location from which Lark sold drugs. During that surveillance, Gauthier watched several individuals arrive at the property (some of whom interacted briefly with Lark) and then quickly depart. To Gauthier's eye, those short visits were consistent with drug activity. And he made similar observations at Lark's residence on South

Fair Avenue during a short period of surveillance. That made the red pickup truck's presence at both locations significant because, in Gauthier's experience, vehicles are often used to facilitate criminal activity. Based on those ties between the red pickup truck and drug sales, a state court judge authorized police to track the vehicle again.

As the investigation progressed, Gauthier sought a third warrant, this time to search Lark's South Fair Avenue residence. Once again, the accompanying affidavit detailed Gauthier's law enforcement experience and described the first controlled buy between Lark and Informant 1. And it rehashed Gauthier's surveillance efforts and the information gleaned from tracking the red pickup truck.

But it added detail on several fronts. One example: Gauthier now explained that he drove Informant 1 to the South Fair Avenue residence before the second controlled buy and claimed that the deal began in the driveway, where Lark arrived in his red pickup truck. But no drugs changed hands at that spot because Lark needed to refresh his supply. It was only a short time later, after Informant 1 called Lark, that an intermediary at a different location turned over cocaine. Another example: Gauthier provided more specifics about the drug deliveries to Informant 2,[1] explaining that tracking data showed the red pickup truck's stops at Informant 2's residence were "typically shorter stays ranging from two minutes to ten minutes" and frequently began and ended from South Fair Avenue, often with no detours. R. 40-1, PageID 107, ¶¶ R-S.

[1] This informant goes by different names, called "CI-2" in the second vehicle affidavit but relabeled "CI-3" in the residence affidavit. That's because the residence affidavit includes information from an additional, chronologically intervening informant. To the extent Lark takes issue with that relabeling, he offers no evidence to suggest the confidential informant called "CI-2" in the second vehicle affidavit is different than "CI-3" in the residence affidavit. To be as clear as possible, we simply refer to this individual as Informant 2 throughout. And we use the moniker Informant 3 for the other, intervening informant.

And the affidavit offered new details too. To start, it described Lark's past run in with the law, a charge of felony delivery of a controlled substance. And it included information from fresh confidential informants. One, who we will call Informant 3, had been working with Gauthier and his team for about half a year, providing reliable drug tips. Like the others, Informant 3 explained that Lark was a Benton Harbor-based drug dealer. Another—Informant 4—had a multi-year track record of providing reliable drug tips. Informant 4 personally observed methamphetamine, heroin, fentanyl, and cocaine at the South Fair Avenue residence, and told police that Lark sold drugs out of that location. And Informant 4 backed that tip up by purchasing heroin from Lark at the South Fair Avenue residence just days before Gauthier sought the warrant.

Presented with all that information, a state court judge authorized a search of the South Fair Avenue property. And that search turned up methamphetamine, fentanyl, and cocaine, along with Lark's parole paperwork, his social security card, and birth certificate. So a grand jury indicted Lark with two counts of possessing with intent to distribute controlled substances.

Before trial, Lark filed various motions. He moved to suppress any evidence obtained by tracking his vehicle or through the search of his residence. He also sought a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), pointing to alleged inconsistencies in the warrant affidavits. And finally, he moved to dismiss the indictment on Speedy Trial Act grounds. The district court denied each motion. So, Lark took the case to trial and was convicted. After being sentenced to 360 months' imprisonment, Lark appealed.

II.

Lark challenges his convictions on three fronts. Each comes up short.

A.

First, Lark argues that none of the warrants were supported by probable cause. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. And when officers secure a warrant to conduct a search, it must be backed by probable cause. *See id.* Whether probable cause exists is a "practical, common-sense" question: "given all the circumstances set forth in the affidavit" is there "a fair probability that contraband or evidence of a crime will be found in a particular place[?]" *United States v. White*, 990 F.3d 488, 490 (6th Cir. 2021) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). "With great deference toward the issuing judge's determination, federal courts examine the affidavit's four corners to determine whether, under the totality of the circumstances, the low bar of probable cause has been overcome." *United States v. Moore*, 999 F.3d 993, 996 (6th Cir. 2021). Here, both the vehicle tracking warrants and the residence search warrant clear that minimal hurdle.

1.

Up first are the vehicle tracking warrants. Probable cause to place a tracking device on a vehicle exists "if a supporting affidavit establishes probable cause to believe that the device will uncover evidence, fruits, or instrumentalities of a crime." *United States v. Coleman*, 923 F.3d 450, 454 (6th Cir. 2019). The affidavits here do just that.

Start with the first tracking affidavit. It focused on Informant 1, who participated in two controlled buys with Lark. And Lark arrived to both those transactions in the same red pickup truck. From that information alone, it would have been easy for the state court judge to conclude that tracking the red pickup truck "could uncover further evidence of wrongdoing." *Id.*; *United States v. Easter*, No. 25-1248, 2026 WL 18812, at *2 (6th Cir. Jan. 2, 2026). Indeed, "[c]ourts

have upheld vehicle-tracking warrants based on much weaker factual allegations than these." *See Coleman*, 923 F.3d at 454.

The second tracking affidavit included all that information and more. It relayed the tip provided by Informant 2, who claimed Lark repeatedly delivered drugs to his or her residence—each time driving a red pickup truck. And tracking data gleaned from the first tracking warrant showed the red pickup truck had in fact made numerous trips to the area near where Informant 2 lived. Adding to that, Gauthier witnessed the target vehicle parked at locations where Gauthier observed behavior he associated with drug activity. Paired with that information, the presence of the red pickup truck was noteworthy because, by Gauthier's estimation, it was likely being used to help facilitate drug offenses. Piling that information on, the second tracking affidavit clears the probable cause hurdle as well.

2.

The same is true of the warrant to search the South Fair Avenue residence. On this score, the focus is "whether officers provided direct or circumstantial support to create more than mere suspicion that contraband will be found at the location in question." *United States v. Sanders*, 106 F.4th 455, 462 (6th Cir. 2024) (en banc) (citation modified). Said differently, the affidavit must demonstrate "a nexus between the place to be searched and the evidence sought." *United States v. Crawford*, 943 F.3d 297, 308 (6th Cir. 2019) (citation modified).

Begin with Informant 4, a credible informant who told officers that he had seen "quantities of crystal methamphetamine, cocaine, and heroin/fentanyl" at the South Fair Avenue residence "currently and in the past." R. 40-1, PageID 107, ¶ T. With that tip, the affidavit "identifie[d] a reliable informant and establishe[d] that informant's basis for knowledge that drugs . . . [would] be found at the residence in question." *Untied States v. Moore*, 661 F.3d 309, 312 (6th Cir. 2011).

But it didn't stop there. Informant 4 purchased heroin from Lark at the South Fair Avenue property just three days before Gauthier sought a warrant. That transaction directly linked the South Fair Avenue residence to illicit drug sales. *See, e.g.*, *United States v. Archibald*, 685 F.3d 553, 558 (6th Cir. 2012). And there is more still. The second controlled buy between Lark and Informant 1 began in the driveway on South Fair Avenue. Recall too that Lark was accused of delivering drugs to Informant 2's home, and tracking data showed that most of those deliveries started or ended at the South Fair Avenue address. Beyond that, Gauthier observed activity at the residence that, based on his experience, was indicative of drug sales. And on top of all that, even if insufficient standing alone, the affidavit explained that Lark lived at the South Fair Avenue residence and had a past conviction for felony-controlled substance delivery. *See United Staes v. Dyer*, 580 F.3d 386, 392 (6th Cir. 2009) ("Although a defendant's criminal history is not dispositive, it is relevant to the probable cause inquiry." (citation modified)). Putting all those facts together, the state court judge very reasonably found a fair probability of criminal activity at the South Fair Avenue residence.[2]

3.

Lark's counterarguments don't change things. To start, he thinks the information in the residence search warrant was stale. But even if some of the information was dated, Informant 4 purchased drugs from Lark at the South Fair Avenue residence just 72 hours before Gauthier sought the warrant. And it "is reasonable that three days after [a] drug purchase[,] police would find narcotics . . . in the residence." *United States v. Pinson*, 321 F.3d 558, 565 (6th Cir. 2003). Lark also points out that Informant 4 does not say where on the property the drugs changed hands.

[2] Lark cites *United States v. Westley*, No. 22-3356, 2023 WL 5377894 (6th Cir. 2023) in his reply brief, claiming that the majority in that case "found that it could not connect the dots in the affidavit to find a substantial nexus" on similar facts. Appellant's Reply Br. at 14. But the panel in that case was fractured, and on the probable cause issue the majority concluded the affidavit *was* sufficient. *Westley*, 2023 WL 5377894, at *11-12.

Yet that detail does not alter the probable cause calculus because "direct evidence, such as a credible informant's tip of criminal activity occurring in or directly outside of the location of the search" can demonstrate "a fair probability that contraband will be found at the place to be searched." *Sanders*, 106 F.4th at 462. So, neither of Lark's specific doubts about the residence affidavit move the probable-cause needle.

Nor do Lark's more general attacks. To start, Lark accuses the district court of improperly cross-referencing the affidavits. Yet there is no indication it did so in assessing probable cause. As we explain below, it only compared the affidavits in assessing Lark's *Franks* argument.

Lark also repeatedly questions the reliability of the confidential informants. He thinks the affidavits' attempts to vouch for their veracity were "too general" and lacked "specifics." Appellant's Br. at 21. For one, that overlooks the cumulative impact of not one, not two, not three, but four informants providing consistent information. *See Crawford*, 943 F.3d at 307. For another, where an officer has worked with a confidential informant, or another officer vouches for an informant's credibility, that is generally sufficient to demonstrate reliability. *See id.* at 306. Indeed, an "affiant need only specify that the confidential informant has given accurate information in the past to qualify as reliable." *United States v. Greene*, 250 F.3d 471, 480 (6th Cir. 2001).

The affidavits here did just that. They established that Gauthier, or one of his drug taskforce colleagues, worked with the informants for an extended period of time, and that each had previously provided reliable tips (and only reliable tips) to drug investigators. *See, e.g.*, *United States v. Allen*, 211 F.3d 970, 971, 975 (6th Cir. 2000) (en banc) (finding sufficient a statement that informant was "a responsible and credible citizen because, [the affiant had] known said informant for 5 years and said informant [had] given [the affiant] information about individuals involved in criminal activity in the past that [had] proven to be reliable" (citation modified)). It is

true, of course, that the informants remained unnamed in the affidavits, but that is not fatal to a credibility finding. *See United States v. Jackson*, 470 F.3d 299, 308 (6th Cir. 2006). Based on their track records, there was little reason to doubt the reliability of the informants' tips that Lark was dealing drugs and using his red pickup truck and South Fair Avenue residence to do so.

But even if there were reasons to doubt their reliability, independent information augmented the informants' credibility. *See Dyer*, 580 F.3d at 392. Tracking data drawn from the first warrant, for example, confirmed that Lark's red pickup truck had driven to the area near where Informant 2 claimed Lark delivered drugs. And both Informant 1 and Informant 4 engaged in controlled buys with Lark. Piecing that all together, to our eye, the informants appear "quite credible" because they were both "known to the officers" and their tips were "proven right." *Sanders*, 106 F.4th at 464.

Lark also takes issue with the way the controlled buys were conducted, pointing out that the affidavits do not say whether each buy was fully surveilled or if officers saw drugs change hands between Lark and the informants. Those are fair critiques, but on these facts, they don't change the result. To start, a holistic reading of the affidavits suggests that each transaction was surveilled to some degree, even if that detail is not explicitly mentioned each time a buy is described. And, even if that were not the case, Gauthier vouched for the prior credibility of the informants participating in the buys and the affidavits show that officers took some steps to oversee each transaction. *See, e.g.*, *Crawford*, 943 F.3d at 303 (relying on controlled buy in a probable cause assessment even though officers could not "monitor [the informant's] interaction with [the defendant]" because the reliable informant was able to "fill[] in the gaps"); *see also United States v. Mitchell*, No. 21-5571, 2021 WL 5772534, at *4–5 (6th Cir. Dec. 6, 2021) (similar). Even if the affidavits could have been more detailed on this front, assessing the controlled buys along with all

the other facts offered by Gauthier, there was a fair probability Lark's pickup truck and residence were connected to drug activity.

Beyond that, Lark's arguments pick the affidavits apart with "line-by-line scrutiny"—an "improper" "divide-and-conquer approach." *United States v. Christian*, 925 F.3d 305, 311 (6th Cir. 2019) (en banc) (citation modified). Again and again, he highlights apparent weakness in the information Gauthier provided, focusing on what more the affidavits could have included. But a warrant affidavit is assessed based on "what it does contain, not on what it lacks, or on what a critic might say should have been added." *Allen*, 211 F.3d at 975. And, as we've already described, Gauthier offered plenty. Viewed through the proper deferential lens, there was enough evidence to find probable cause to support each warrant. So, the district court correctly denied Lark's suppression motion.

B.

Next, Lark argues that the district court should have held a *Franks* hearing so that he could question Gauthier about alleged misleading statements or omissions in the warrant affidavits. *Franks v. Delaware*, 438 U.S. 154 (1978). But to be entitled to a *Franks* hearing, a defendant "must make a substantial preliminary showing that the affidavit includes a knowing, intentional, or reckless falsehood" and that "the affidavit couldn't have established probable cause without such falsehoods." *United States v. Richards*, 164 F.4th 508, 519 (6th Cir. 2026) (citation modified). That presents a heavy burden because we presume warrant affidavits are valid. *Id*. And the decision "to hold an evidentiary hearing based upon a challenge to the validity of a search warrant's affidavit, given alleged misstatements and omissions, is committed to the sound discretion of the district court." *United States v. Young*, 847 F.3d 328, 348 (6th Cir. 2017).

Measured by those standards, the district court properly refused Lark a *Franks* hearing. Start with Lark's assertion that Gauthier's statements must be false because the description of the second controlled buy between Informant 1 and Lark differs from affidavit to affidavit. No doubt, the affidavits explain in varying degrees of detail how the buy between Informant 1 and Lark took place. Even so, while the affidavits "contain *different* details, they are not *contradictory* details." R. 64, PageID 302 (emphasis in original).

A look at the affidavits confirms as much. Gauthier explained in the vehicle affidavits that Informant 1 purchased cocaine from Lark during the second controlled buy, and that Lark drove the red pickup truck to the transaction. The subsequent residence affidavit does not walk that assertion back—it simply explains how the drugs were delivered through an intermediary after Informant 1 initiated the deal with Lark in the driveway of the South Fair Avenue residence. That difference in detail makes sense, given the focus of each warrant. And it makes this case different from a case like *United States v. Hammond*, 351 F.3d 765 (6th Cir. 2003), where "remarkable inaccuracies" tainted the affidavit. *Id.* at 774. In the end, Lark offers no evidence to show that the second controlled buy did not unfold as Gauthier consistently described—albeit in varying levels of detail—and so he falls short of identifying false statements necessary to trigger a *Franks* hearing. *See Franks*, 438 U.S. at 155–56.

Perhaps recognizing that shortcoming, Lark shifts gears and claims that, at the very least, Gauthier omitted details from the vehicle tracking affidavits. But, on that score, he faces a steep climb because "a defendant . . . trying to show an omission . . . must meet an even higher standard: that the officer omitted the information with an intention to mislead and that the omission was critical to the finding of probable cause." *United States v. Higgins*, 141 F.4th 811, 817 (6th Cir. 2025) (citation modified), *cert. denied*, 223 L. Ed. 2d 540 (2026). Lark musters hardly more than

a conclusory assertion that Gauthier intended to mislead the state court judge by offering a shorter description of the controlled buy in the vehicle affidavits. Because Lark "can't show that [Gauthier] was lying by not including [more] information," his argument comes up short. *Richards*, 164 F.4th at 519 (citation modified).

Lark also focuses on Gauthier's statements about when the second tracking device was placed. In doing, he points to data from the tracker showing that it was active the day before Gauthier claimed it was affixed to the red pickup truck. From that, Lark infers that Gauthier's statement about when the tracker was placed must be false. But Lark has not explained why Gauthier's statement was untrue. Indeed, as the government persuasively explains, the tracker likely logged activity before being positioned because it was being charged, not because it was already logging the movements of the truck. Lark does little to refute that plausible explanation, certainly less than the required "substantial" showing. *Franks*, 438 U.S. at 155. More important, though, even if Gauthier misspoke about the date the tracker was placed, Lark offers no evidence that he did so recklessly or intentionally, nor does he explain how excising that data would materially affect the probable cause calculus. *Id*. at 155–56.

Finally, Lark protests that the district court improperly cross-referenced the vehicle affidavits with the residence affidavit. But it did so only to determine if the documents included contradictory information, which might have allowed Lark to shoulder his initial *Franks* burden. Indeed, in moving for a *Franks* hearing, Lark offered up that exact type of analysis. And he does not hesitate to rely on cases employing a similar framework. *See United States v. McMurtrey*, 704 F.3d 502, 512 (7th Cir. 2013) (concluding that *Franks* hearing was necessary when a "side-by-side" comparison of affidavits revealed "contradictions"). All told, the district court properly declined to hold a *Franks* hearing.

C.

Finally, Lark argues that he was not brought to trial fast enough. The Speedy Trial Act requires trials to begin no later than 70 days after the defendant's indictment or initial appearance in court. 18 U.S.C. § 3161(c)(1). But the Act includes various exclusions, so not all days are included in that count. *See id.* § 3161(h)(1)-(8). For today's purposes, it suffices to address just one.[3]

18 U.S.C § 3161(h)(7)(A) affords district courts discretion to delay a trial and omit time from the speedy trial calculation when "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." *See Zedner v. United States*, 547 U.S. 489, 498 (2006). As the parties see it, the district court exercised that ends-of-justice authority in awaiting our en banc decision in *United States v. Sanders* before ruling on Lark's motion to suppress. And, as we understand his brief, Lark doesn't suggest that a specific, forthcoming decision likely to provide guidance about a central issue is an improper reason to delay a defendant's trial. At the very least, he cites no authority for that proposition, so we need not dwell on that point.

Instead, Lark says, the district court's explanation came too late. To his mind, the district court's reliance on *Sanders* was simply an "after-the-fact" excuse to grant a continuance and its

[3] Lark, though, faces other problems. 18 U.S.C. § 3161(h)(1)(D), for example, excludes the time between the filing of a motion and a hearing on that motion from the speedy trial clock. *See United States v. Mentz*, 840 F.2d 315, 326 (6th Cir. 1988). As the district court saw it, that meant the time it needed to decide whether a hearing on Lark's *Franks* motion was necessary was excluded. Yet, in Lark's opening brief, beyond a few passing references, he develops little argument challenging that conclusion. By simply "mention[ing]" that argument "in a skeletal way" and "leaving the court to put flesh on its bones," Lark arguably waived the issue. *United States v. Fowler*, 819 F.3d 298, 309 (6th Cir. 2016) (citation modified). And that's a problem because we have "repeatedly held that a litigant's failure to address every independent ground on which the district court rests its decision renders the judgment unreviewable." *United States v. Perry*, No. 22-2031, 2024 WL 692890, at *8 (6th Cir. Feb. 20, 2024).

"retrospective explanation" failed to "meet the Speedy Trial Act's requirements." Appellant's Br. at 50-53. So, according to Lark, far more than 70 days ticked off the clock.

No doubt, the Act requires a district court to "set[] forth, in the record of the case, either orally or in writing, its reasons" for granting a continuance. 18 U.S.C. § 3161(h)(7)(A). But "the court does not have to give its reasons contemporaneously with the grant of the continuance; it need only give the reasons no later than the ruling on the defendant's motion to dismiss on Speedy Trial Act grounds." *United States v. Richardson*, 681 F.3d 736, 739 (6th Cir. 2012) (citation modified); *Zedner*, 547 U.S. at 507. And we do not require a district court to use "magic words" in intoning an ends-of-justice finding. *United States v. White*, 920 F.3d 1109, 1117 (6th Cir. 2019) (citation modified). Accordingly, an ends-of-justice continuance is appropriate where "the reasons for it are clear from the context or record." *Id.*

Here, the context makes clear that from the get-go the district court thought the ends of justice were best served by awaiting our decision in *Sanders*. Start with the initial hearing on Lark's suppression motion, where *Sanders* was the first agenda item the district court addressed. During the hearing, the district court explained that the *Sanders* en banc argument had been scheduled for later that year, for what that was "worth," R. 57, PageID 247-48, and it later continued Lark's trial "pending resolution of [his] motion to suppress." R. 55, PageID 206. Consistent with its initial focus, the district court later explained that *Sanders* was worth a fair bit. To its mind, the parties were best served by awaiting en banc guidance because "the original panel decision in *Sanders* is probably one of the strongest Lark [could] cite for his position." R. 64, PageID 295 n.1; R. 67, PageID 307-08. And it stayed steady in denying Lark's motion to dismiss on speedy trial grounds, explaining that the *Sanders* en banc "decision [had] the potential to reshape the proper analysis of Lark's nexus challenge." R. 70, PageID 328-29.

With all that, the district court put its finding on the record, and it did so "by the time [it] rule[d] on [the] defendant's motion to dismiss." *Zedner*, 547 U.S. at 507. The district court's order denying Lark's motion to dismiss, true enough, is not couched explicitly in ends-of-justice terms. But it cited its § 3161(h)(7)(A) authority. And an "ends-of-justice continuance can be found even when a delay is not designated as such by the court." *White*, 920 F.3d at 1117 (citation modified). Nor is there any indication that the district court conjured up *Sanders* as an after-the-fact reason to sidestep the Speedy Trial Act's dictates. *Cf., e.g.*, *United States v. Brown*, 100 F.4th 703, 713 (6th Cir. 2024) ("[T]the district court's retrospective explanation for its ends-of-justice continuance did not meet the Speedy Trial Act's requirement that it explain, on the record, why the ends of justice served by the continuance outweigh the public's and defendant's interests in a speedy trial."). On this record—where the importance of *Sanders* was evident from the start—we are convinced that "[p]hony, post-hoc justifications played no role." *United States v. Patton*, 651 F. App'x 423, 426 (6th Cir. 2016). And with that waiting period excluded, Lark's prosecution fell within the required Speedy Trial Act window.

III.

For those reasons, we **AFFIRM** the district court's judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE DAVID LARK,

Defendant.

_____/

Case No. 1:22-cr-140

Hon. Robert J. Jonker

ORDER

A Superseding Indictment charges Defendant Willie David Lark with possession with intent to distribute methamphetamine, fentanyl, cocaine, and cocaine base on August 30, 2022 (Count 1) and possession with intent to distribute fentanyl, cocaine, and cocaine base on September 15, 2022 (Count 2). (ECF No. 20). Lark moves to dismiss the Superseding Indictment on the grounds that his rights under the Speedy Trial Act, 18 U.S.C. § 3161, have been violated. (ECF No. 63). For the following reasons, the Court **DENIES** Lark's Motion.

I. LEGAL STANDARDS

In any case where a defendant pleads not guilty, the Speedy Trial Act mandates that trial must commence within 70 days of the filing date of the indictment or from the defendant's first appearance—whichever occurs latest. 18 U.S.C. § 3161(c)(1). Certain periods of delay, however, are excluded from the 70-day clock. § 3161(h); *see also United States v. Richardson*, 681 F.3d 736, 738 (6th Cir. 2012) ("[B]ecause criminal cases vary widely, and there are valid reasons for delay in some cases, the Act excludes delays due to certain, enumerated events from the seventy-day period."); *Zedner v. United States*. 547 U.S. 489 (2006).

Relevant to this case, the Speedy Trial Act excludes delays from a pretrial motion—measured from "the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion"—plus an additional 30 days after the motion has been taken under advisement. §§ 3161(h)(1)(D), (H). The Act also excludes delays resulting from continuances granted "by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government"—so long as the judge articulates why "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A).

In this case, the parties agree that half of the 70-day clock expired before the Court's June 15, 2023, hearing on Lark's Motion to Suppress Evidence. (*See* ECF Nos. 6, 28, 32, 39–40). The parties sharply disagree, however, on what amount of time—if any—should be counted toward the Speedy Trial clock between June 15 and the Court's April 10, 2024 Order denying Lark's motion to suppress. (*See* ECF Nos. 63, 69). While the government contends that no time has elapsed, (ECF No. 69 at PageID.323), Lark argues that 249 countable days have passed, (ECF No. 63 at PageID.289). Accordingly, Lark contends that the Court should dismiss the Superseding Indictment with prejudice for a Speedy Trial Act violation,

II. ANALYSIS

As the Court has discussed at length in its previous Orders, it was waiting to decide Lark's suppression motion until the *en banc* Sixth Circuit issued its ruling in *United States v. Sanders*. *See* 68 F.4th 1030 (6th Cir. 2023) (granting rehearing *en banc*). In the original *Sanders* decision, a divided panel granted the defendant's motion to suppress after concluding that the search warrant affidavit did not establish a sufficient nexus between defendant's home and his suspected drug activity and that the good-faith exception articulated in *United States v. Leon*, 468 U.S. 897 (1984), did not save the warrant. 59 F.4th 232, 237–47 (6th Cir. 2023) (procedural history omitted). In the Court's view, the original *Sanders* decision was (and still is) the strongest case Lark could cite for his arguments that the South Fair Avenue residence search warrant lacked a sufficient nexus and is so bare-boned that it does not

qualify for the *Leon* good-faith exception to the exclusionary rule. The *en banc* rehearing in *Sanders* occurred in October 2023, but the full Court has not yet issued its ruling—hence the Speedy Trial Act dispute.

As evidenced by the parties' and the Court's repeated references to the original panel decision at the June 15 hearing, however, this unanticipated wait for the *en banc Sanders* decision does not alter the fact that the full Court's decision has the potential to reshape the proper analysis of Lark's nexus challenge. The Court thus viewed the *en banc* decision in *Sanders* as a "filing" or "material[]" it "needed for proper disposition of the motion," so the delay caused by that wait is excluded from the 70-day clock under § 3161(h)(1)(D). *See Henderson v. United States*, 476 U.S. 321, 331 (1986). It was not until the parties asked the Court on April 1, 2024, to proceed on the suppression motion that the matter was "actually under advisement by the court." § 3161(h)(1)(H). This, in turn, gave the Court 30 additional excludable days to decide Lark's motion—a deadline that the Court's April 10 Order easily satisfied. (ECF No. 67).

Lark's own motion practice in this case opened the door to another independent basis for tolling the Speedy Trial Act clock. Lark's motion to suppress did not simply make a "four corners" challenge to the search warrant affidavits. He also moved for a *Franks* hearing. (ECF No. 40). Lark's request necessarily invited the Court to conduct an additional evidentiary hearing. The Court ultimately concluded that Lark failed to make the requisite showing for a *Franks* hearing, (ECF No. 64), but the premise of Lark's position remains that such a hearing is necessary. Consequently, Lark's motion stopped the clock under § 3161(h)(1)(D), at least until the Court concluded the hearing was not necessary. *See Henderson*, 476 U.S. at 330–31. The Court made it clear that the original hearing on the motion was non-evidentiary. ECF No. 51. This meant a further evidentiary would still have to be held if the Court agreed with Lark on the *Franks* issue.

Finally, even if the Court believed a Speedy Trial Act violation occurred, dismissal *without* prejudice is the only appropriate sanction. "The Speedy Trial Act enumerates three factors that trial

courts must consider when deciding whether to dismiss an action with or without prejudice: 1) the seriousness of the offense; 2) the facts and circumstances that led to the dismissal; and 3) the impact of reprosecution on the administration of the Speedy Trial Act and on the administration of justice." *United States v. Moss*, 217 F.3d 426, 430 (6th Cir. 2000) (citing 18 U.S.C. § 3162(a)).

Here, Lark correctly concedes that the Sixth Circuit has deemed drug offenses like those alleged here to be "categorically" serious. *Moss*, 217 F.3d at 431. The remaining two factors also support dismissal without prejudice. While Lark is undoubtedly frustrated by the delay and is in no way responsible for it, the Court maintains that its decision to wait for the *en banc* Court's potentially case-altering decision in *Sanders* was appropriate—particularly because Lark's best case on the merits was the original *Sanders* panel decision and because Lark's motion invited a further evidentiary *Franks* hearing, anyway. For similar reasons, reprosecution would not have an adverse impact on the administration of justice. Just like Lark is not responsible for the delay, neither is the government. *See United States v. Howard,* 218 F.3d 556, 562 (6th Cir. 2000) (dismissal with prejudice may be necessary to deter prosecutorial misconduct). Moreover, Lark offers no evidence that he suffered any actual prejudice because of the delay, and the Court can find none.

IT IS THEREFORE ORDERED that Lark's Motion to Dismiss Indictment for a Speedy Trial Act Violation, (ECF No. 63), is **DENIED**.

Dated: April 22, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE DAVID LARK,

Defendant.
_____/

CASE NO. 1:22-cr-140

HON. ROBERT J. JONKER

ORDER

The matter came up for a hearing on Defendant's pending motions on June 15, 2023. Based on all matters of record, and for the reasons the Court stated in detail from the bench, **IT IS ORDERED:**

1. Defendant's motion for disclosure of confidential informants and related reports (ECF No. 41) is **DENIED**.
2. Defendant's motion to suppress evidence (ECF No. 40) is taken under advisement. The government shall have until **June 22, 2023**, to file a supplemental brief. Defendant shall have **seven (7) days** to respond.
3. The final pretrial and trial dates are adjourned pending resolution of Defendant's motion to suppress.

IT IS SO ORDERED.

Dated: June 16, 2023

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE DAVID LARK,

Defendant.

_____/

Case No. 1:22-cr-140

Hon. Robert J. Jonker

OPINION AND ORDER

A Superseding Indictment charges Defendant Willie David Lark with possession with intent to distribute methamphetamine, fentanyl, cocaine, and cocaine base on August 30, 2022 (Count 1) and possession with intent to distribute fentanyl, cocaine, and cocaine base on September 15, 2022 (Count 2). (ECF No. 20). The charges stem from evidence found during a residential search and a subsequent search of Lark's person. The residential search on August 30, 2022, uncovered significant quantities of fentanyl, cocaine, and cocaine base, as well as a bevy of documentation linking Lark to the residence. On September 15, 2022, police arrested Lark on a warrant and found distribution quantities of fentanyl, cocaine, and cocaine base on his person in pre-packaged plastic bags.

Lark moves to suppress this evidence, claiming that the search warrant affidavit for the residence did not justify the residential search and that the later search of his person was fruit of the poisonous tree. (ECF No. 40, PageID.81). Part of Lark's challenge to the residential search warrant affidavit is that it contains information from earlier tracking warrants that were themselves

improper because they lacked affidavits supporting probable cause for a tracking device. Another part of his challenge is that the residential search warrant included a material misstatement that warrants a *Franks* hearing. *See generally Franks v. Delaware*, 438 U.S. 154 (1978). Finally, Lark contends that the residential search warrant lacked sufficient information creating a nexus between him, his suspected drug dealing, and the search location. The government argues that both the tracking warrants and the residential warrant were amply supported by probable cause; that there was no material misstatement in the residential warrant affidavit; and regardless, that *Leon* good faith would apply, *see generally United States v. Leon*, 468 US. 897 (1984). (ECF No. 50, PageID.172).

The matter came before the Court for oral argument on June 15, 2023, at which time the Court took the matter under advisement. (ECF No. 54). Following oral argument, both parties filed additional briefing. (ECF Nos. 58, 62). The Court and the parties also identified a Sixth Circuit case of potential significance on the nexus issue. In particular, a divided panel of the Circuit had granted a motion to suppress in *United States v. Sanders* on February 6, 2023. 59 F.4th 232, 235 (6th Cir. 2023). The Circuit as a whole vacated that panel decision on May 24, 2023, and granted *en banc* rehearing just two weeks before the hearing in this case. 68 F.4th 1030 (6th Cir. 2023). The *en banc* rehearing occurred in October 2023, but the full Court has not yet issued its ruling. Because the decision has the potential to affect the proper analysis of Lark's nexus challenge, the Court has been waiting for the *en banc* decision before issuing its opinion in this case.

On March 20, 2024, Lark filed a Motion to Dismiss under the Speedy Trial Act. (ECF No. 63). The Court has not made a final decision on the Speedy Trial Act motion and will deal with it separately after the government responds. On initial review, the Court is skeptical of Lark's

Speedy Trial position, particularly in light of earlier EOJ consents in the case, the pendency of the Circuit's *en banc* decision on the nexus issue, and Lark's open request for a *Franks* hearing. *Cf. Henderson v. United States*, 476 U.S. 321, 329–30 (1986) (declining to read a "reasonably necessary" limitation into the Speedy Trial Act's exclusion for disposition of pretrial motions). However, the Court can understand Lark's frustration on the extended wait. Moreover, the Court can certainly make several decisions on the suppression motion without final word from the *en banc* Court on nexus. And the Court will do so in this Opinion. The Court is still inclined to believe that all parties are best served by waiting for the *en banc* decision in *Sanders* to resolve the nexus challenge.[1] However, if the parties believe the Court should decide the nexus issue without waiting for the full Court's decision in *Sanders*, the Court will consider it. The parties should advise the Court of their positions no later than **April 1, 2024,** on whether the Court should wait for *Sanders* before making a final decision on nexus.

BACKGROUND

On August 30, 2022, law enforcement executed a state search warrant at a house on South Fair Avenue in Benton Harbor, Michigan. Inside, investigators found a safe containing significant amounts of fentanyl and cocaine, as well as personally identifying documents belonging to Lark. (ECF No. 50, PageID.172–74). Investigators also found additional paperwork in the house with Lark's name on it and verified that Lark had listed the South Fair Avenue address as his residence with MDOC prior to his discharge from parole in May 2022. (*Id.*). Officers obtained a state arrest

[1] In particular, the original panel decision in *Sanders* is probably one of the strongest Lark can cite for his position because it found a lack of probable cause on nexus and also rejected the government's *Leon* good faith argument, even though there was an affidavit describing two controlled purchases linked to the residence. That panel decision has been vacated with the rehearing *en banc*, but the full Court itself has yet to provide its decision and guidance on the proper nexus analysis.

warrant for Lark and arrested him on September 15, 2022. (*Id.* at PageID.172). During the arrest, Lark informed the officers that he had drugs on his person. (*Id.*). During a search incident to arrest, officers recovered approximately 13 grams each of fentanyl and powder cocaine, as well as an additional 5 grams of cocaine base, from Lark's person. (*Id.*). Officers also found a key, and a subsequent warrant confirmed that the key fit the safe where the drugs were stored at the Fair Avenue residence. (*Id.*). At issue in this case are the warrant affidavits supporting the search of the South Fair residence and those supporting two GPS vehicle tracking warrants during the months-long investigation that culminated in Lark's arrest.

A. The Tracking Warrants.

The first GPS tracking warrant was sought and obtained by Detective Jeremiah Gauthier in March 2022 to place a tracking device on a red Chevrolet Colorado pickup truck. (ECF No. 40-2, PageID.133). In the accompanying affidavit, Gauthier described controlled purchases by confidential informants ("CIs"): one occurring on February 24, 2022, and one on March 24, 2022. (*Id.*). Gauthier explained that for both transactions, a CI met Lark, "who arrived driving a red Chevrolet Colorado pickup truck." (*Id.*). After the meeting, the CI left the location and provided Gauthier with crack cocaine. (*Id.*). The warrant issued on March 29, 2022, and lasted for 45 days. (*Id.*, PageID.130).

Detective Gauthier also sought and obtained the second GPS tracking warrant, which issued on August 1, 2022, and lasted for 45 days. (ECF No. 40-2, PageID.136). The affidavit accompanying this warrant application repeated the same information from the original GPS warrant request. (*Id.*, PageID.139–40). It also included additional observations from the months following the original tracking warrant. (*Id.*). In particular, the affidavit stated that investigators had observed short-stay visits by at least two individuals at the South Fair Avenue address when

Lark's red Chevrolet Colorado pickup truck was parked there. (*Id.*). These individuals came and left separately after staying only a short time. (*Id.*). The affidavit also recited that an additional confidential informant provided new information that Lark had made multiple deliveries of heroin to that individual using his red pickup truck. (*Id.*).

B. The Residential Search Warrants.

On August 30, 2022, Detective Gauthier swore out two additional affidavits seeking a search warrant for the South Fair Avenue residence address and a suspected stash house on McAlister Avenue. (ECF No. 40-1, PageID.103–12, 115–24). The affidavits are similar and cover much of the same ground. They repeat the basic information included in the earlier tracking warrant affidavits, including the extensive experience Gauthier has in drug trafficking investigations. (*See, e.g.*, *id.*, PageID.104–05). They also contain new information acquired during the ongoing investigation. Specifically, the affidavits detail information from a total of four confidential informants who provided specific information identifying Lark as a drug dealer and linking him to the South Fair Avenue residence. (*See, e.g.*, *id.*, PageID.105–07). Three of the CIs personally participated in controlled purchases of drugs from Lark. (*Id.*).

Gauthier's affidavits also state that Lark's criminal history includes a felony drug distribution conviction from 2020. (ECF No. 40-1, PageID.104). Further, Gauthier describes the results of the tracking warrants tying Lark's red pick up to both the South Fair Avenue residential address and the suspected stash house on McAlister Avenue. (*See, e.g.*, *id.*, PageID.105–08). Finally, Gauthier describes a controlled buy of heroin from Lark to a CI at the South Fair Avenue address within 48 to 72 hours of the warrant affidavit. (*Id.*, PageID.109).

Detective Gauthier description of the March 24, 2022 controlled buy in the residential search warrant affidavits is different from the description in the earlier tracking warrant affidavits. In the tracking warrants, this is how the affidavit describes the buy:

> On March 24, 2022, Your Affiant met with the Cl and the Cl was searched for contraband and none was located. The Cl was provided MSP prerecorded buy funds which the Cl was to use to purchase crack cocaine from Willie Lark. The CI met Lark who arrived driving a red Chevrolet Colorado pickup truck which Det. Ashley later obtained the Michigan license plate from which was identified as ENW6255. The Cl met with Lark and was then surveilled by Your Affiant to a pre-determined location where the Cl provided Your Affiant with approximately 1.46 grams of field test positive crack cocaine. The Cl was again searched for contraband, and none was located. The VIN# listed through the Law Enforcement Information Network (LEIN) as it relates to Michigan license plate ENW6255 is #1GCDT136168119359. Per LEIN information, Michigan license plateENW6255 title issue date on the 2006 Chevrolet Colorado occurred on March 10, 2022.

(ECF No. 40-2, PageID.133). In the residential search warrant affidavits, Gauthier describes March 24 controlled buy as follows:

> On March 24, 2022, Your Affiant met with the Cl and the Cl was searched for contraband and none was located. The Cl was provided MSP prerecorded buy funds which the Cl was to use to purchase crack cocaine from Willie Lark. Your Affiant drove Cl-1 to XXX S. Fair Avenue Benton Harbor Michigan where Cl-1 was to meet with Lark. Lark was observed arriving at XXX S. Fair Avenue and Cl-1 contacted Lark in the driveway of this residence. A short time later Cl-1 returned to Your Affiant and told Your Affiant that Lark was with Charles Hill in the same vehicle. Cl-1 told Your Affiant that Lark was out of drugs and needed to go and get more drugs to sell to Cl-1. MSP SWET was unable to conduct full surveillance on Lark's vehicle at this time. A short time later Cl-1 called Lark's phone number, XXX-XXX-XXXX (which is the same number Cl-1 used to set up this drug deal) to ask Lark where he was at. Lark said he had given the drugs to sell to Cl-1 to another person and that person would be arriving soon to the meet spot. Cl-1 then was contacted by an unknown male in a black sedan. Cl-1 exchanged pre-recorded MSP buy money to this subject in exchange for a quantity of field test positive crack cocaine. During this drug deal Lark was driving a 2006 red Chevrolet Colorado with Michigan license plate ENW6255.

(ECF No. 40-1, PageID.105). Lark maintains that the two accounts cannot be squared and that a *Franks* hearing is necessary. He emphasizes that the tracking warrant affidavits contain no mention of South Fair Avenue or any other specific location, and that they also do not mention

any interruptions or intermediaries involved in the transaction. Indeed, the description of the March 24 controlled buy in the tracking warrants potentially makes it seem like Gauthier witnessed a simple and direct controlled buy from Lark in the red pickup truck and that the CI rendezvoused with law enforcement immediately afterwards—though it does not say that explicitly. But in the residence warrant affidavits, Gauthier makes clear that the actual delivery of drugs was not from Lark, but instead from some unidentified person who Gauthier links to Lark via a previously undisclosed phone call. The residence warrant affidavits also identify the South Fair Avenue address as the place where the CI and Lark originally met.

ANALYSIS

A. Legal Standards.

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by oath or affirmation." U.S. Const. amend. IV. To meet the probable cause standard, a supporting affidavit "need not establish beyond a reasonable doubt that incriminating evidence will be found on the premises to be searched." *United States v. Blakeney*, 942 F.2d 1001, 1025 (6th Cir. 1991). Similarly, "affidavits do not have to be perfect, nor do they have to provide every specific piece of information to be upheld." *Hale v. Kart*, 396 F.3d 721, 725 (6th Cir. 2005). That said, the affidavit still must demonstrate "a nexus between the place to be searched and the evidence sought." *United States v. Coleman*, 923 F.3d 450, 457 (6th Cir. 2019) (quotation omitted). More specifically, the affidavit must provide enough facts to establish "a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (en banc) (quoting *Illinois v. Gates*, 46 U.S. 213, 238–39 (1983)). In evaluating the strength of the affidavit and the magistrate's probable-cause

determination, the Court must employ a "commonsense" totality-of-the-circumstances approach. *United States v. Brown*, 732 F.3d 569, 573 (6th Cir. 2013).

B. Probable Cause for Tracking Warrants.

The Court first rejects Lark's argument to the extent he contends that the tracking warrants for his red Chevrolet pickup truck were not supported by probable cause. In the affidavit for the first GPS tracking warrant in March 2022, Detective Gauthier detailed two controlled buys of crack cocaine where CIs met Lark in his pickup truck and then immediately turned the drugs over to Gauthier. And Gauthier's affidavit for the second tracking warrant for Lark's pickup truck in early August 2022 contained all of this information plus new information gained from the first tracking warrant—including Gauthier's surveillance of several individuals visiting Lark's residence for suspiciously short and staggered periods of time. These particularized allegations grounded in Gauthier's own observations are more than sufficient to establish probable cause that Lark was engaging in drug dealing activities and using his pickup truck to do so.

Even if probable cause is lacking, the good-faith exception to the exclusionary rule articulated in *United States v. Leon* protects the tracking warrants. 468 U.S. at 905. At bottom, the tracking affidavits were not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.* at 923. To the contrary—and for the very same reasons the Court finds that the tracking warrants were supported by probable cause—"it is abundantly clear that the officers who executed the search warrant were entitled to reasonably and in good faith rely on it." *United States v. Williams*, 544 F.3d 683, 688 n.1 (6th Cir. 2008).

C. *Franks* Hearing.

Lark also contends that he is entitled to a *Franks* hearing on the residential search warrants because Gauthier's affidavits for those warrant applications contained materially false and

deliberately misleading statements. Search warrant affidavits are presumptively valid. *United States v. Rodriguez-Suazo*, 346 F.3d 637, 648 (6th Cir. 2003). Under *Franks*, however, a reviewing court will go behind the face of a search warrant if the defendant overcomes this presumption by demonstrating that specified portions of the affidavit were deliberately or recklessly false and that the challenged statements were necessary to the issuing magistrate's finding of probable cause. 438 U.S. at 171–72.

To obtain a *Franks* hearing, "the defendant must make a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit." *United States v. Stuart*, 507 F.3d 391, 396 (6th Cir. 2007) (quotation omitted). An officer's statement in an affidavit is "deliberately false" when the officer makes the statement knowing that it is untrue. *See, e.g.*, *United States v. Whitley*, 249 F.3d 614, 620–21 (7th Cir. 2001). By contrast, an officer displays reckless disregard for the truth when he "entertains serious doubts as to the truth of his allegations" in an affidavit. *Id.*

Here, Lark argues that Gauthier knowingly or recklessly included false or misleading information in the residential search warrant affidavits because his description of the March 24, 2022 controlled buy materially differs from his description of the same controlled buy in his affidavits for the tracking warrants. But these differences do not meet the high bar necessary for a *Franks* hearing. To the contrary, the tracking and residential search warrants efforts are reconcilable into a single coherent narrative. This is apparent by the following overlay of the two affidavits. The purple text is common to both affidavits; the blue text is only in the tracking warrant affidavits; and the red text is only in the residential search warrant affidavits:

> On March 24, 2022, Your Affiant met with the CI and the CI was searched for contraband and none was located. The CI was provided MSP prerecorded buy funds which the CI was to use to purchase crack cocaine from Willie Lark. Your

> Affiant drove Cl-1 to XXX S. Fair Avenue Benton Harbor Michigan where Cl-1 was to meet with Lark. Lark was observed arriving at XXX S. Fair Avenue and Cl-1 contacted Lark in the driveway of this residence. The CI met Lark who arrived driving a red Chevrolet Colorado pickup truck which Det. Ashley later obtained the Michigan license plate from which was identified as ENW6255. The Cl met with Lark and [a] short time later Cl-1 returned to Your Affiant and told Your Affiant that Lark was with Charles Hill in the same vehicle. Cl-1 told Your Affiant that Lark was out of drugs and needed to go and get more drugs to sell to Cl-1. MSP SWET was unable to conduct full surveillance on Lark's vehicle at this time. A short time later Cl-1 called Lark's phone number, XXX-XXX-XXXX (which is the same number Cl-1 used to set up this drug deal) to ask Lark where he was at. Lark said he had given the drugs to sell to Cl-1 to another person and that person would be arriving soon to the meet spot. Cl-1 then was contacted by an unknown male in a black sedan. Cl-1 exchanged pre-recorded MSP buy money to this subject in exchange for a quantity of field test positive crack cocaine. [C1] was then surveilled by Your Affiant to a pre-determined location where the Cl provided Your Affiant with approximately 1.46 grams of field test positive crack cocaine. The Cl was again searched for contraband, and none was located. During this drug deal Lark was driving a 2006 red Chevrolet Colorado with Michigan license plate ENW6255. The VIN# listed through the Law Enforcement Information Network (LEIN) as it relates to Michigan license plate ENW6255 is #1GCDT136168119359. Per LEIN information, Michigan license plate ENW6255 title issue date on the 2006 Chevrolet Colorado occurred on March 10, 2022.

Viewing the affidavits together shows that while they contain *different* details, they are not *contradictory* details. An examination of the purpose of each of the affidavits reveals why Gauthier included different details in the affidavits. To obtain a tracking warrant, Gauthier's affidavit only had to establish a nexus between the CI who executed the March 24 controlled buy and Lark's red pickup truck. To obtain the residential search warrant, however, Gauthier needed to show more than just a link between the CI and the red pickup truck—he needed to link the CI to *both* Lark's red pickup truck *and* the South Fair Avenue address. And once he did that, Gauthier needed to explain how the actual exchange of money for drugs happened somewhere else (anything less would have been misleading) and why he still believed Lark was the ultimate source of the drugs. The two descriptions of the March 24, 2022 controlled buy are still reconcilable into a single consistent narrative—the description in the search warrant affidavits simply contains more

details than the tracking warrant affidavits because the search warrant affidavits had to establish a link between the CI and the South Fair Avenue address. Accordingly, Lark has failed to make the required strong preliminary showing that Gauthier knowingly or recklessly included false information in the residential search warrant affidavits, so he is not entitled to a *Franks* hearing.

IT IS THEREFORE ORDERED that:

1. Lark's Motion for a *Franks* hearing is **DENIED**.
2. Lark's Motion to Suppress is **DENIED** to the extent that it is based on a challenge to the tracking warrants.
3. The only remaining suppression issue is whether there is probable cause to support the residential search warrants—and more specifically, if there is a sufficient nexus between drug trafficking, and the South Fair Avenue residence. The parties shall notify the Court in writing by **April 1, 2024,** whether they want the Court to rule on this issue before the Sixth Circuit decides *Sanders*.

IT IS SO ORDERED.

Dated: March 25, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Western District of Michigan

UNITED STATES OF AMERICA

-vs-

WILLIE DAVID LARK

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:22-cr-140

USM Number: 25147-510

Geoffrey Upshaw
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to Count(s) _____.

☐ pleaded nolo contendere to Count(s) _____ , which was accepted by the court.

☒ was found guilty on Counts 1 and 2 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Offense Ended	Count
21 U.S.C. § 841(a)(1), (b)(1)(A)(viii), (b)(1)(B)(vi), (b)(1)(C), 851, 802(57), 802(58) Possession with Intent to Distribute Controlled Substances	September 15, 2022	1
21 U.S.C. § 841(a)(1), (b)(1)(C), 851, and 802(44) Possession with Intent to Distribute Controlled Substances	September 15, 2022	2

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

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

Date of Imposition of Sentence: April 4, 2025

Dated: April 4, 2025

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **360 months, concurrent on both counts of conviction.**

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

That the defendant receive a substance abuse evaluation and given the opportunity to participate in substance abuse programming.

That the defendant receive a mental health evaluation and given the opportunity to participate in mental health programs as needed.

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

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

- ☐ at _____ on _____
- ☐ as notified by the United States Marshal.

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

- ☐ before 2:00 P.M. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By:_____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **10 years, concurrent on both counts of conviction.**

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.

2. You must not unlawfully possess a controlled substance.

3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☒ You must cooperate in the collection of DNA as directed by the probation officer.

5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

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

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and treatment of substance abuse, as directed by the probation officer, and follow the rules and regulations of that program until such time as you are released from the program by the probation officer and must pay at least a portion of the cost according to your ability, as determined by the probation officer.
2. You must participate in a program of mental health treatment, as directed by the probation officer, and follow the rules and regulations of that program, until such time as you are released from the program by the probation officer and must pay at least a portion of the cost according to your ability, as determined by the probation officer.
3. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
4. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

   The probation officer may conduct a search under this condition only when a reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

Assessment	Fine	Restitution	AVAA Assessment*	JVTA Assessment**
$200.00	**$2,000.00 ($1,000.00 as to each of Counts 1 and 2)**	**-0-**	**-0-**	**-0-**

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

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

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

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement.

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

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

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

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

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of **$200.00** due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

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

C ☐ Payment in equal _____ installments of $_____ over a period of _____, to commence _____ after the date of this judgment; or

D ☐ Payment in equal _____ installments of $_____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or

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

F ☒ Special instructions regarding the payment of criminal monetary penalties:
The restitution and/or fine is to be paid in minimum quarterly installments of $25.00 based on IFRP participation, or minimum monthly installments of $20.00 based on UNICOR earnings, during the period of incarceration, to commence 60 days after the date of this judgment. Any balance due upon commencement of supervision shall be paid, during the term of supervision, in minimum monthly installments of **$50.00** to commence 60 days after release from imprisonment. The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

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

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

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

Make a total of 4 copies:
Original – Leave With Court
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Page 1 of 3

1 Copy To Prosecutor
1 Copy To Leave At Residence or with Person
1- Copy for your records

STATE OF MICHIGAN 5th District Court	AFFIDAVIT FOR SEARCH WARRANT	CASE NO.

POLICE AGENCY: **Berrien County Sheriff**

Det. Jeremiah Gauthier, Affiant(s), state(s) that:

1. **The person, place or thing to be searched is described as and is located at:**

   A 2006 Chevrolet Colorado pickup truck, red in color with Michigan license plate ENW6255 and VIN # 1GCDT136168119359. Per a check through the Michigan Secretary of State this vehicle is registered to Earl Raheem Taylor at [redacted] Lansing Michigan 48906. This vehicle is currently being used primarily by Willie Lark who resides at [redacted] S. Fair Ave. Benton Harbor Michigan 49022.

2. **The PROPERTY to be searched for and seized, if found, is specifically described as:**

   All tracking information obtained from the tracking device that will be covertly placed on the above-described vehicle which will enable the police to electronically monitor its travels and whereabouts. This information will be collected for a period of forty-five (45) days after the placement of the G.P.S tracking device on the vehicle within a reasonable time not to exceed seven (7) after the issuance of this court order.

3. **The FACTS establishing probable cause or the grounds for search are:**

   A) Your Affiant has been a certified police officer since 2006.Your Affiant is a Detective with the Berrien County Sheriff Department and has been employed by the Berrien County Sheriff Department since 2010. Your Affiant is currently assigned to the Southwest Enforcement Team (SWET) which is a multi-jurisdictional narcotics enforcement team. Your Affiant has been working with this narcotics unit since 2014. Your Affiant has been assigned to the Drug Enforcement Administration (DEA) as a Task Force Officer (TFO) since 2017.

   B) Your Affiant has made hundreds of controlled substances arrests while working as a uniformed police officer. Your Affiant has assisted in running controlled purchases of narcotics and has conducted multiple narcotics related investigations. Your Affiant has worked as an undercover officer and has participated in the execution of numerous narcotics related search warrants. Your Affiant has received specialized training in narcotic enforcement investigations.

Det.
Affiant

Reviewed on
3-28-22
Date

APA Byrd
Prosecuting Official

Subscribed and sworn to before me on
3-29-22 2:22 PM
Date Time

Judge/~~Magistrate~~

AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

C) On February 24, 2022, Your Affiant spoke with a credible and reliable confidential informant of the Michigan State Police Southwest enforcement Team. (Hereinafter CI) The CI told Your Affiant the CI could purchase crack cocaine from Willie Lark who resides at [redacted] S. Fair Ave. Benton Harbor Michigan. Your Affiant is familiar with Willie Lark through prior law enforcement experience.

D) Your Affiant provided a Michigan Secretary of State photograph of Willie David Lark, black male, date-of-birth [redacted] The CI confirmed Willie Lark was the suspect the CI could purchase crack cocaine from.

E) The CI being utilized in this drug investigation has been a CI with the MSP SWET team for approximately the last 8-12 months and has conducted multiple controlled substance purchases while working with MSP SWET. The CI has provided drug and gun related information to Your Affiant and other members of MSP SWET which Your Affiant and other members of MSP SWET have verified or corroborated. The CI has not provided information to Your Affiant or other members of MSP SWET that were false or misleading.

F) On February 24, 2022, Your Affiant met with the CI and the CI was searched for contraband and none was located. The CI was provided MSP pre-recorded buy funds which the CI was to use to purchase crack cocaine from Willie Lark. The CI met Lark who arrived driving a red Chevrolet Colorado pickup truck which Your Affiant later obtained the Michigan license plate from which was identified as EFW0322. The CI met with Lark and was then surveilled by Your Affiant to a pre-determined location where the CI provided Your Affiant with approximately 0.69 grams of field test positive crack cocaine. The CI was again searched for contraband, and none was located. The VIN # listed through the Law Enforcement Information Network (LEIN) as it relates to Michigan license plate EFW0322 is: # 1GCDT136168119359.

G) On March 24, 2022, Your Affiant met with the CI and the CI was searched for contraband and none was located. The CI was provided MSP pre-recorded buy funds which the CI was to use to purchase crack cocaine from Willie Lark. The CI met Lark who arrived driving a red Chevrolet Colorado pickup truck which Det. Ashley later obtained the Michigan license plate from which was identified as ENW6255. The CI met with Lark and was then surveilled by Your Affiant to a pre-determined location where the CI provided Your Affiant with approximately 1.46 grams of field test positive crack cocaine. The CI was again searched for contraband, and none was located. The VIN # listed through the Law Enforcement Information Network (LEIN) as it relates to Michigan license plate ENW6255 is: # 1GCDT136168119359. Per LEIN information, Michigan license plate ENW6255 title issue date on the 2006 Chevrolet Colorado occurred on March 10, 2022.

Det.
Affiant

Reviewed on
3-28-22
Date

APA Byrd
Prosecuting Official

Subscribed and sworn to before me on
3-29-22 Date
1:22 PM Time

Judge/Magistrate

AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

H) Based on Your Affiants training and experience, it is known that vehicles are often used to transport, commit, and conceal criminal activity and evidence. Therefore, all data obtained from this tracking device will assist law enforcement in establishing probable cause on a location of not only where Lark may be keeping narcotics and / or US currency that stem from illegal narcotics sales but also the possible location or identification of any other co-conspirators involved in distributing crack cocaine with Lark.

This Affidavit consists of three (3) pages.

Det.
Affiant

Reviewed on
3-28-22
Date

APA Byrd
Prosecuting Official

Subscribed and sworn to before me on
3-29-22 1:22 PM
Date Time

Judge/Magistrate

AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

Make a total of 4 copies: Original - Leave With Court 1 - Copy for Return to Court	Page 1 of 10	1 Copy To Prosecutor 1 Copy To Leave At Residence or with Person 1- Copy for your records

STATE OF MICHIGAN 5th District Court	AFFIDAVIT FOR SEARCH WARRANT	CASE NO. SWE-198-22

POLICE AGENCY: **Berrien County Sheriff**

Det. Jeremiah Gauthier, Affiant(s), state(s) that:

1. **The person, place or thing to be searched is described as and is located at:**

[redacted] South Fair Avenue, Township of Benton, County of Berrien, State of Michigan. This residence sits on the East side of South Fair Avenue and is South of Wabash Avenue and North of E. Britain Avenue. This residence is blue in color with white window trim. The numbers '[redacted] are affixed to the West side of the residence near a window to the left of an entry door.

2. **The PROPERTY to be searched for and seized, if found, is specifically described as:**

* All controlled substance, including but not limited to cocaine / fentanyl.
*All vehicles, persons, and outbuildings associated with [redacted] S. Fair Avenue at the time the search warrant is executed.
* Any and all firearms, firearm accessories, ammunition and / or US currency located at the above-described location.

See "Attachment #1 of the Search Warrant"

3. **The FACTS establishing probable cause or the grounds for search are:**

A) Your Affiant has been a certified police officer since 2006.Your Affiant is a Detective with the Berrien County Sheriff Department and has been employed by the Berrien County Sheriff Department since 2010. Your Affiant is currently assigned to the Southwest Enforcement Team (SWET) which is a multi-jurisdictional narcotics enforcement team. Your Affiant has been working with this narcotics unit since 2014. Your Affiant has been assigned to the Drug Enforcement Administration (DEA) as a Task Force Officer (TFO) since 2017.

Det.
Affiant

Reviewed on
8-26-22
Date

APA Byrd
Prosecuting Official

Subscribed and sworn to before me on
8/30/22
Date

2:30 pm
Time

Judge/Magistrate

AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

B) Your Affiant has made hundreds of controlled substances arrests while working as a uniformed police officer. Your Affiant has assisted in running controlled purchases of narcotics and has conducted multiple narcotics related investigations. Your Affiant has worked as an undercover officer and has participated in the execution of numerous narcotics related search warrants. Your Affiant has received specialized training in narcotic enforcement investigations.

C) On February 24, 2022, Your Affiant spoke with a credible and reliable confidential informant of the Michigan State Police Southwest Enforcement Team. (Hereinafter CI-1) CI-1 told Your Affiant CI-1 could purchase crack cocaine from Willie Lark who resides at [redacted] S. Fair Ave. Benton Harbor Michigan. Your Affiant is familiar with Willie Lark through prior law enforcement experience.

D) CI-1 has been a CI with the MSP SWET team for approximately the last 8-12 months and has conducted multiple controlled substance purchases while working with MSP SWET. CI-1 has provided drug and gun related information to Your Affiant and other members of MSP SWET which Your Affiant and other members of MSP SWET have verified or corroborated. CI-1 has not provided information to Your Affiant or other members of MSP SWET that were false or misleading.

E) Your Affiant provided CI-1 with a Michigan Secretary of State photograph of Willie David Lark, black male, date-of-birth [redacted] CI-1 confirmed Willie Lark was the suspect CI-1 could purchase crack cocaine from.

F) Your Affiant checked Willie Lark's prior criminal history as it pertains to drugs and drug distribution convictions. Your Affiant learned Lark was convicted of felony-controlled substance / delivery on April 20, 2020, through the 2nd Circuit Court. Lark was sentenced to a minimum of 13 months in prison at which time Lark was paroled from the Michigan Department of Corrections in May 2021. Lark was on parole in the Berrien County area and was paroled to the address of [redacted] S. Fair Avenue, Benton Harbor Michigan 49022. Your Affiant searched the Berrien County Criminal Justice System and located Willie David Lark, black make, date-of-birth [redacted]

G) On February 24, 2022, Your Affiant met with CI-1 and CI-1 was searched for contraband and none was located. CI-1 was provided with Michigan State Police pre-recorded buy funds which CI-1 was to use to purchase crack cocaine from Willie Lark. CI-1 met with Lark who arrived driving a red 2006 Chevrolet Colorado pickup truck which Your Affiant later obtained the Michigan license plate from which was identified as EFW0322. CI-1 met with Lark for the drug deal and following the drug deal CI-1 was surveilled by Your Affiant to a pre-determined location where CI-1 provided Your Affiant with a quantity of field test positive crack cocaine CI-1 advised he/she had just purchased from Willie Lark. CI-1 was again searched for contraband, and none was located. CI-1 advised he/she had contacted Willie Lark's phone number [redacted] to set up the drug purchase.

Det.
Affiant

Reviewed on 8/26/22
Date

Prosecuting Official

Subscribed and sworn to before me on 8/30/22 2:30 pm
Date Time

Judge/Magistrate

AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

H) On March 22, 2022, Your Affiant spoke with a confidential informant of the Michigan State Police Southwest Enforcement Team. (Hereinafter CI-2) CI-2 provided the following drug related information as it pertains to Willie David Lark:

a) Lark is a Benton Harbor Michigan based drug dealer of cocaine, crack cocaine, and heroin.
b) Lark obtains a large portion of his drugs from a Benton Harbor based source of supply of drugs identified only as Charles Hill. Your Affiant is familiar with Charles Edward Hill, male, date-of-birth [redacted]
c) Lark has recently begun to obtain upwards of 40-50 grams of heroin to sell from Charles Hill, along with a large amount of cocaine and crack cocaine.

I) CI-2 has been a CI with the MSP SWET team for approximately the last 4-6 months and has provided multiple drug and gun related information to Your Affiant and other members of MSP SWET which Your Affiant and other members of MSP SWET have verified or corroborated. CI-2 has not provided information to Your Affiant or other members of MSP SWET that were false or misleading.

J) On March 24, 2022, Your Affiant met with CI-1 and CI-1 was searched for contraband and none was located. CI-1 was provided with Michigan State Police pre-recorded buy funds which CI-1 was to use to purchase crack cocaine from Willie Lark. Your Affiant drove CI-1 to [redacted] S. Fair Avenue Benton Harbor Michigan where CI-1 was to meet with Lark. Lark was observed arriving at [redacted] S. Fair Avenue and CI-1 contacted Lark in the driveway of this residence. A short time later CI-1 returned to Your Affiant and told Your Affiant that Lark was with Charles Hill in the same vehicle. CI-1 told Your Affiant that Lark was out of drugs and needed to go and get more drugs to sell to CI-1. MSP SWET was unable to conduct full surveillance on Lark's vehicle at this time. A short time later CI-1 called Lark's phone number, [redacted] (which is the same number CI-1 used to set up this drug deal) to ask Lark where he was at. Lark said he had given the drugs to sell to CI-1 to another person and that person would be arriving soon to the meet spot. CI-1 then was contacted by an unknown male in a black sedan. CI-1 exchanged pre-recorded MSP buy money to this subject in exchange for a quantity of field test positive crack cocaine. During this drug deal Lark was driving a 2006 red Chevrolet Colorado with Michigan license plate ENW6255.

K) Your Affiant confirmed through the Law Enforcement Information Network (LEIN) that both Michigan license plates observed on Lark's 2006 Chevrolet Colorado on February 24, 2022, and March 24, 2022, were on a 2006 Chevrolet Colorado with an assigned VIN # 1GCDT136168119359. Both license plates were registered to Earl Raheem Taylor with an address of [redacted] Vermont Avenue Lansing Michigan 48906.

L) On March 29, 2022, Your Affiant obtained a State of Michigan court order through the 5th District Courts to electronically track Willie Lark and his 2006 Chevrolet Colorado. Your Affiant obtained a court order through the 5th District Court by the Honorable Judge Pasula for placement of an electronic tracking device for Willie Lark's identified 2006 red Chevrolet Colorado. On March 31, 2022, Your Affiant installed an electronic tracking device on Willie Lark's 2006 red Chevrolet Colorado at [redacted] S. Fair Avenue Benton Harbor Michigan 49022.

Det.
Affiant

Reviewed on 8/26/22
Date

Prosecuting Official

Subscribed and sworn to before me on 8/30/22 2:30 pm
Date Time

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AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

M) Your Affiant monitored the tracking data from Willie Lark's vehicle since the installment of the tracking device. Your Affiant noted that Willie Lark's vehicle made multiple frequent stops at several residential locations in and around the immediate Benton Harbor Michigan area that Your Affiant has previously identified as residential houses involved in drug trafficking.

N) Your Affiant further identified several residential locations outside of the Benton Harbor Michigan area that Lark traveled to on numerous occasions. Your Affiant noted that when Lark traveled to these residential locations, Lark would make a short stay visit (a few minutes or less) before returning to the Benton Harbor Michigan area.

O) On July 19, 2022, Your Affiant, and other members of the MSP SWET team, conducted surveillance on Willie Lark's identified residence of [redacted] S. Fair Ave. Benton Harbor Michigan 49022. During this time Lark's red 2006 Chevrolet Colorado was parked in the driveway. Your Affiant and other members of MSP SWET conducted surveillance for approximately 30-45 minutes at this location. During this time frame Your Affiant and other members of MSP SWET observed at least two vehicles arrive at [redacted] S. Fair Avenue and contact an unknown person at this residence. Within a few minutes of these two vehicles arriving, both vehicles departed [redacted] S. Fair Avenue. These two vehicles did not arrive at the same time; however, their pattern of behavior was the same. These two vehicles arrived approximately 10-15 minutes apart.

P) On July 19, 2022, D/Lt. Shawn Yech spoke with a Michigan State Police Southwest Enforcement (MSP SWET) confidential informant. (Hereinafter CI-3) CI-3 provided the following drug related information as it pertains to Willie David Lark:

a) Willie Lark is a crack cocaine and heroin dealer that lives at [redacted] S. Fair Avenue Benton Harbor MI.
b) Willie Lark also has a house located on McAlister Avenue within the City of Benton Harbor MI. which Lark sells crack cocaine and heroin from.
c) Willie Lark drives a red Chevrolet Colorado to transport and deliver drugs in.
d) Willie Lark has delivered a quantity of heroin at one time on several different occasions to CI-3 in the past at or near CI-3's residence. On every trip Lark has delivered heroin to CI-3, Lark has driven his red 2006 Chevrolet Colorado.

Q) CI-3 has been a CI with the MSP SWET team for approximately the last 7-9 months and has provided multiple drug related information to members of MSP SWET which Your Affiant and other members of MSP SWET have verified or corroborated. CI-3 has not provided information to Your Affiant or other members of MSP SWET that were false or misleading.

Det.
Affiant

Reviewed on 8/26/22
Date

Prosecuting Official

Subscribed and sworn to before me on 8/30/22
Date

2:30 pm
Time

Judge/Magistrate

AFFIDAVIT AND SEARCH WARRANT
(sw.dot 7-95 by wat)

something helpful, which would include things that would largely disavow what they are reported to have said in the affidavits. That's, I think, all by itself not enough to require disclosure at this time.

The other thing they could do is if called by the Defense, as Ms. Tosic said, hostile, they might establish that they think the Defendant is a drug dealer. That's what they told the agents in the affidavits, but you can't call somebody just to set up an impeachment. I think that's well established, and so if the only thing they are going to say affirmatively is detrimental and the real reason you want them is to show the jury that there is a lot of bad people out there that Mr. Lark is alleged to have dealt with, that's not a valid purpose or reason to call. So at least on this record I don't think there is anything that would warrant the disclosure of the identities.

I am taking under advisement the suppression motion, part of which is a Franks hearing. I haven't thought through how this would apply if a Franks hearing is in the Court's view needed, because potentially that would shift the balance in play, but I am not going to cross that bridge until I first determine whether suppression is warranted or a Franks hearing is necessary or both. On the present record I don't see a basis for the disclosure and I'll deny the Defense motion accordingly, and then we'll deal with the suppression issues,

including the Franks hearing, after the briefing is in and I'll take that under advisement.

The last thing. I don't know exactly how much time I'll need to resolve this, but I don't think that I am going to be ready and that the parties need to be ready for final pretrial and trial on the current schedule. I think I'll need at least time within that window between now and then, because trial is scheduled, I think, for July 18. So I am going to ask that Ms. Bourque reschedule the final pretrial and trial along with the decision I eventually make on the motion. Of course, if I grant the motion, I am not sure whether the government has other evidence that it believes it would be bringing forward in the case independently, and that may depend on what the Court's ruling is and the scope of it.

On the other hand, if I deny it, then presumably the government is ready to go with what it currently has, and then we were just pushing back the final pretrial and trial to a point when both sides have a chance to take into account the ruling of the court.

So are there other things that would be useful for the case today.

MR. HAKES: No, Your Honor. I was going to ask about trial dates but the Court has addressed that question.

THE COURT: All right. Ms. Tosic.

MS. TOSIC: No, Your Honor.