FILED

APR 16 2026

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. HENRY KONAH KOFFIE, AKA Narcoboss, AKA Dnmkingpin, Appellant.	No. 23-4199 D.C. No. 3:17-cr-00291-MO-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted April 13, 2026**
Portland, Oregon

Before: OWENS, VANDYKE, and SUNG, Circuit Judges.

Henry Konah Koffie appeals from his jury trial convictions on two counts of distributing a controlled substance resulting in death; one count of distribution of a controlled substance analogue resulting in serious bodily injury; and five counts of

---

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

distributing a controlled substance—violating 21 U.S.C. §§ 813, 841(a)(1), and (b)(1)(C). As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Under *Smith v. Arizona*, 602 U.S. 779, 792 (2024), it is unconstitutional for a testifying expert to base her conclusions solely on her review of another non-testifying analyst's report. As both parties agree, the district court erred when it permitted Simonique Washington to testify about the contents of the government's Pittsburgh controlled buy.

But the Confrontation Clause violation here was harmless. *See Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986) (explaining that Confrontation Clause errors are subject to harmless-error analysis). The government never charged Koffie with any violations arising from the Pittsburgh controlled buy, and to the extent evidence from that buy supported Koffie's conviction on other counts, overwhelming evidence made it clear that the jury would have nonetheless convicted Koffie. *See United States v. Johnson*, 875 F.3d 1265, 1279 (9th Cir. 2017) (finding harmlessness where "the government presented compelling additional evidence" to support its claim).

2. We need not determine whether the district court erred in denying Koffie's motion to suppress laboratory results from a package seized at the border for six months, as any such error was harmless. *See United States v. Job*, 871 F.3d

852, 865 (9th Cir. 2017) (noting that a district court's error in denying a motion to suppress evidence under the Fourth Amendment does not require reversal if it was harmless). The lab results that Koffie argues should have been suppressed were neither dispositive nor necessary for the government to prove beyond a reasonable doubt that Koffie was distributing fentanyl. And regardless of any improper seizure of the underlying parcel, the government presented the jury with other compelling evidence to support Koffie's distribution counts. We are "convinced that [any] improperly admitted evidence did not contribute to the verdict." *Id.* (citation omitted).

3. The district court did not err in denying Koffie's motion for a *Franks* hearing, as the search warrant did not contain any intentional or reckless misstatements or omissions of *material* facts. *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing that (1) "the affiant officer intentionally or recklessly made false or misleading statements or omissions"; and (2) "the false or misleading statement or omission was material, i.e., necessary to finding probable cause." *United States v. Norris*, 942 F.3d 902, 910 (9th Cir. 2019) (quoting *United States v. Perkins*, 850 F.3d 1109, 1116 (9th Cir. 2017)).

Even if there were any errors on prong one, none of these errors were material, as probable cause to search Koffie's home, his mother's home, and his

car existed based on the other evidence alone.

4. The district court did not abuse its discretion by denying Koffie's motion for attorney participation in voir dire without explanation. "It is wholly within the judge's discretion to reject supplemental questions proposed by counsel if the voir dire is otherwise reasonably sufficient to test the jury for bias or partiality." *United States v. Powell*, 932 F.2d 1337, 1340 (9th Cir. 1991).

Here, the judge's voir dire was reasonably sufficient to test the jury for bias or partiality, as the district court directly probed jurors about potential racial biases and about any potentially strong feelings about drugs and drug laws. And the district court did not abuse its discretion when it did not explain why it was denying the motion. *Powell*, 932 F.2d at 1340 (noting that the district court has considerable discretion in *how* to conduct voir dire).

AFFIRMED.[1]

[1] We grant Koffie's pending motion to file a pro se supplemental brief (Dkt. 21), which has already been submitted (Dkt. 35). We also conclude that the remaining issues raised in Koffie's pro se supplemental brief are unpersuasive.

FILED

JUL 13 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. HENRY KONAH KOFFIE, AKA Narcoboss, AKA Dnmkingpin, Defendant - Appellant.	No. 23-4199 D.C. No. 3:17-cr-00291-MO-1 District of Oregon, Portland ORDER

Before: OWENS, VANDYKE, and SUNG, Circuit Judges.

The panel has voted to deny Appellant's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellant's petition for panel rehearing and petition for rehearing en banc are DENIED.

FILED

FEB 21 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY KONAH KOFFIE, AKA Narcoboss, AKA Dnmkingpin,

Defendant - Appellant.

No. 23-4199

D.C. No. 3:17-cr-00291-MO-1
District of Oregon, Portland

ORDER

Before: Lisa B. Fitzgerald, Appellate Commissioner.

The motion (Docket Entry No. 22) to file under seal and ex parte counsel's declaration in support of the motion for leave to file a pro se supplemental brief is granted. The clerk will file publicly the motion to seal (Docket Entry No. 22.1) and the motion for leave to file a pro se supplemental brief (Docket Entry No. 21.1). The clerk will maintain under seal and ex parte counsel's declaration in support of the motion for leave to file a pro se supplemental brief (Docket Entry Nos. 21.2 and 22.2).

The opening brief is due February 27, 2025. The answering brief is due March 31, 2025. The optional reply brief is due 21 days after the answering brief is served.

RECEIVED
OCT - 8 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

The motion (Docket Entry No. 21) for leave to file a pro se supplemental brief is referred to the panel assigned to hear the merits of this appeal. Appellant may file, by April 21, 2025, a single pro se supplemental brief, not to exceed 20 pages, raising in his own words any issues in his case. If filed, the pro se brief will be referred to the merits panel, along with the motion, and appellee will not be permitted to file a response unless directed to do so by the court.

Ernest Warren, Jr. OSB #891384
Warren & Sugarman
838 S.W. First Ave., Suite 500
Portland, OR 97204
Tel: (503) 228-6655
Fax: (503) 228-7019
E-mail: e.warren@warrenpdxlaw.com

Attorney for Henry Konah Koffie

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DISTRICT OF OREGON

UNITED STATES OF AMERICA,	**Case No. 3:17-cr-00291-JO**
Plaintiff,	**MOTION TO SUPPRESS CONTENTS OF TOSHIBA LAPTOP**
v.	
HENRY KONAH KOFFIE,	
Defendant.	

NOW COMES Henry Konah Koffie, through his attorney Ernest Warren, Jr. and moves to suppress the contents of a Toshiba laptop, seized by the government unlawfully.

Respectfully submitted this 20th day of April, 2021.

/s/ Ernest Warren, Jr.
Ernest Warren, Jr. OSB No. 891384
Attorney for Henry Konah Koffie

CERTIFICATE OF SERVICE

I hereby certify that I have served the **MOTION TO SUPPRESS, MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS** in the attached matter upon the parties listed below by notice of electronic filing using the CM/ECF System as follows:

Natalie Wight
U.S. Attorney's Office
District of Oregon
1000 S.W. Third Avenue
Suite 600
Portland, OR 97204
natalie.wight@usdoj.gov

William Narus
U.S. Attorney's Office
District of Oregon
1000 S.W. Third Avenue
Suite 600
Portland, OR 97204
william.narus@usdoj.gov

and filed the original with the Court on the date listed below.

DATED this 20th day April, 2021.

WARREN & SUGARMAN

/s/ Ernest Warren, Jr.

Ernest Warren, Jr. OSB No. 891384
Attorney for Henry Konah Koffie

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,	**Case No. 3:17-cr-00291-JO**
Plaintiff,	**MEMORANDA IN SUPPORT OF MOTION TO SUPPRESS CONTENTS OF TOSHIBA LAPTOP**
v.	
HENRY KONAH KOFFIE,	
Defendant.	

NOW COMES Henry Konah Koffie, through his attorney Ernest Warren, Jr. and moves to suppress the physical evidence, a Toshiba laptop, seized by the government unlawfully.

PROCEDURAL OVERVIEW

Mr. Koffie has been indicted for one count of Conspiracy to Import, Manufacture, Distribute, and Possess with Intent to Distribute a Controlled Substance in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 846, 952(a), and 963, and two counts of Distribution of a Controlled Substance Resulting in Death in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

Mr. Koffie was arrested on July 5, 2017, in Philadelphia, Pennsylvania. He made his initial appearance the following day and was detained. He was charged by way of criminal complaint. An indictment was returned in Oregon on August 2, 2017. He made his initial appearance in Oregon on August 8, 2017. He remains detained.

The Indictment alleges that the defendant was posing as an individual known as "DNMKingpin" and "Narcoboss" and distributing furanyl fentanyl through the dark web, purportedly causing the deaths of two individuals in Oregon. The individuals are referred to by their initials (C.W. (date of death May 6, 2017); and A.M. (date of death May 29, 2017)).

At the time of Mr. Koffie's arrest, search warrants were executed for two premises: 216 Walnut Street 2nd Floor, Darby, Pennsylvania, 19023; 300 Berbro Street, Darby, Pennsylvania, 19023; and a 2016 Chevy Tahoe, and evidence seized.

BACKGROUND

On July 5, 2017, authorities executed the search warrant and arrested Mr. Koffie at his residence in Darby, Pennsylvania. Mr. Koffie was transported to an office in Philadelphia, Pennsylvania.

I. Mr. Koffie's Toshiba Laptop should be suppressed since it was not in the Search Warrant.

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..." U.S. Const. Amend. IV.

The default Fourth Amendment position is that no search or seizure should occur until a warrant has been issue based on probable cause. *Illinois v. Gates,* 462 U.S. 213, 238 (1983). The Fourth Amendment to the Constitution requires that all warrants must "particularly describ[e] . . . the persons or things to be seized." "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another." *Marron v. United States*, 275 U.S. 192, 196 (1927). "Here, the specific evil is the 'general warrant' abhorred by the colonists, and the problem is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire,* 403 U.S. 443, 467 (1971). The Fourth Amendment limits searches, and thus avoids the exploratory rummaging "by requiring a 'particular description' of the things to be seized." Id. "[A] search conducted pursuant to a warrant that fails to conform to the particularity

requirement of the Fourth Amendment is unconstitutional." *Massachusetts v. Sheppard*, 468 U.S. 981, 988 n.5 (1984).

The Ninth Circuit says one has a legitimate right to privacy in their computer. *United States v. Comprehensive Drug Testing, Inc.* 513 F.3d 1085, 1136 (9th Cir. 2008). Computers hold vast amounts of data and information. In *United States v. Payton,* 573 F.3d 859 (9thCir. 2009), the computer was not mentioned in the search warrant. The court notes, "the warrant did not explicitly authorize the search of Payton's computer, and it incorporated Officer Horn's affidavit only to support probable cause, not to describe the objects to be searched or searched for. The after-the-fact testimony of the issuing judge that he intended expressly to authorize the search of computers could not cure the failure of the warrant to authorize the search of computers, because one purpose of a warrant is to inform the person subject to the search just what may be searched. *United States v. Hayes,* 794 F.2d 1348, 1355 (9th Cir.1986)." *Id.* That computer did not meet the reasonableness element required by the Fourth Amendment.

That court held that computer data is given a legitimate expectation of privacy and must be cited to in the search warrant in order to be valid. Other courts also recognize the right to privacy while using a computer. *United States v. Morgan,* 435 F.3d 660, 663 (6thCir. 2006) (holding that an individual has a right to privacy while using his computer); *United States v. Johnson*, 495 F.3d 536, 539 (7th Cir. 2007)(holding that individuals have a legitimate expectation of privacy in their personal computers); *United States v. Grant,* 490 F.3d 627, 631 (8th Cir. 2007)(holding that computer data is given a legitimate expectation of privacy).

Mr. Koffie did not agree to have his Toshiba laptop searched. Additionally, this laptop was also not named in any search warrants for this case. This violates Mr. Koffie's Fourth Amendment right to privacy and his right against unlawful search and seizures under *Illinois v. Gates.* Under

Comprehensive Drug Testing, Inc. Mr. Koffie has a legitimate privacy right in his personal computer. Mr. Koffie's laptop should thus be suppressed as it was illegally obtained as the search warrant lacked the level of particularity necessary for the Toshiba laptop.

CONCLUSION

Mr. Koffie's laptop was not included in the search warrant and was thus not a reasonable search. For the aforementioned reasons the Toshiba laptop should be excluded.

Respectfully submitted this 20th day of April, 2021.

/s/ Ernest Warren, Jr.
Ernest Warren, Jr. OSB No. 891384
Attorney for Henry Konah Koffie

CERTIFICATE OF SERVICE

I hereby certify that I have served the **MOTION TO SUPPRESS, MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS** in the attached matter upon the parties listed below by notice of electronic filing using the CM/ECF System as follows:

Natalie Wight
U.S. Attorney's Office
District of Oregon
1000 S.W. Third Avenue
Suite 600
Portland, OR 97204
natalie.wight@usdoj.gov

William Narus
U.S. Attorney's Office
District of Oregon
1000 S.W. Third Avenue
Suite 600
Portland, OR 97204
william.narus@usdoj.gov

and filed the original with the Court on the date listed below.

DATED this 20th day April, 2021.

WARREN & SUGARMAN

/s/ Ernest Warren, Jr.

Ernest Warren, Jr. OSB No. 891384
Attorney for Henry Konah Koffie

SCOTT ERIK ASPHAUG, OSB #833674
Acting United States Attorney
District of Oregon
WILLIAM M. NARUS, CAB #243633
William.Narus@usdoj.gov
NATALIE K. WIGHT, OSB #035576
Natalie.Wight@usdoj.gov
ANDREW T. HO, OSB #185047
Andrew.Ho@usdoj.gov
Assistant United States Attorneys
1000 SW Third Avenue, Suite 600
Portland, Oregon 97204-2902
Telephone: (503) 727-1000
Attorneys for United States of America

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA	**3:17-cr-00291-MO**
v.	**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS CONTENTS OF TOSHIBA LAPTOP**
HENRY KONAH KOFFIE,	
Defendant.	

This Court has already denied defendant's motion, and renewed motion, to suppress the search warrant executed at his residence in Darby, Pennsylvania (Orders at ECF Nos. 78 and 128.) The affidavit supporting the search warrant explained how defendant used the darkweb to sell fentanyl and the search warrant specifically authorized the seizure of evidence related to, and the instrumentalities of, defendant's distribution of controlled substances, including computers located at defendant's residence. Defendant now seeks to suppress the contents of a Toshiba laptop seized from his residence because the search warrant did not list that particular laptop. Defendant's motion is without merit. The search warrant need not specify a specific computer to

seize, only the types of evidence that can be seized. Defendant's motion must be denied because the search warrant was sufficiently precise to authorize the seizure of the Toshiba laptop and a search of its contents.

PROCEDURAL BACKGROUND

In July 2017, defendant was charged by criminal complaint and a search warrant was executed at his residence on Walnut Street in Pennsylvania. (ECF No. 8.) He was then indicted in the District of Oregon for conspiracy to distribute controlled substances and distribution of controlled substances resulting in death. (ECF Nos. 11 and 142.) On April 21, 2021, the Grand Jury for the District of Oregon issued a superseding indictment to include five substantive counts of furanyl fentanyl distribution, and one count of distribution of controlled substances resulting in serious bodily injury.[1] This Court denied defendant's earlier motions to controvert and suppress the search warrant of his residence on November 14, 2019 (ECF No. 78) and again on March 8, 2021 (ECF No. 128). Pending before the Court is defendant's motion to specifically suppress the contents of a Toshiba laptop seized from his residence. (ECF No. 138.)

RELEVANT FACTUAL BACKGROUND

Defendant, using the monikers "DNMKINGPIN" and "NARCOBOSS," sold thousands of doses of the deadly drug furanyl fentanyl throughout the United States through a darknet or darkweb marketplace known as Alphabay. After an extensive investigation that included online controlled buys from defendant through Alphabay using cryptocurrency, law enforcement

[1] The new substantive counts in the superseding indictment reflect the five undercover furanyl fentanyl purchases made by law enforcement during the conspiracy identified in the original indictment. The new substantive counts, and the new distribution resulting in serious bodily injury count, are all based on discovery previously provided to defendant at the beginning of the case in 2017.

determined defendant's true identity and obtained a search warrant for evidence and instrumentalities of drug distribution at defendant's residence.

As detailed in the affidavit, the Portland Police Bureau responded to two overdose deaths in May 2017. *See* Government Exhibit 1, Search Warrant Application, Affidavit of Special Agent Bryan G. Ressler at ¶¶ 7, 16. Adult Victim 1 ordered fentanyl over the darknet site AlphaBay from NARCOBOSS; and law enforcement found information in Adult Victim 2's room related to AlphaBay and a bitcoin wallet. *Id.* at ¶ 19. In the weeks after the deaths, investigators analyzed AV2's laptop and found an encryption key associated with NARCOBOSS. *Id.* at ¶ 22. Investigators also described a non-fatal fentanyl overdose of a Portland State University student from May 2016, where they determined the source of the fentanyl was the AlphaBay vendor DNMKINGPIN. *Id.* at ¶ 42. Investigators identified many similarities between the AlphaBay vendors DNMKINGPIN and NARCOBOSS and submitted that both vendors were operated by defendant.

The affidavit described the darknet as "an overlay network that can only be accessed via particular software, configurations, or authorizations, often using non-standard communication protocols and ports." *Id.* at ¶ 7, n.1. One such darknet is the Tor network. *Id.* The Tor network is also referred to as "onionland," because its domain suffix is ".onion" and communication over the network occurs over computer networks anonymously through multiple layers of encrypting, like the layers of an onion. *Id.*

AlphaBay is described as a darknet site that operates like an escrow service between buyers and vendors. *Id.* at ¶ 12. AlphaBay holds onto the appropriate amount of bitcoin from the buyer's account until the order is finalized. *Id.* Bitcoin is a cryptocurrency, *i.e.*, a digital asset or Internet currency that uses cryptography to secure transactions. *Id.* at ¶ 12, n.4.

Investigators logged onto AlphaBay using AV1's credentials and saw that there was an order for "1 Gram China White Synthetic Heroin Fentanyl Mix $40 per gram" that had been purchased from NARCOBOSS. *Id.* at ¶¶ 11, 13. In May 2017, investigators made multiple undercover purchases of fentanyl from NARCOBOSS on AlphaBay. *Id.* at ¶¶ 24, 27.

Additionally, investigators found that defendant had a Twitter social media account and posted a photo of two laptop computers. The caption stated, "No clubbing for me tonight. Work, work, work, work, work, work...." One of the screens of the computer showed the icon for the Tor browser, necessary to access AlphaBay. *Id.* at ¶ 67.

In June 2017, investigators determined that the postage for the undercover fentanyl purchases, and the postage for the parcels that delivered the fatal fentanyl doses to AV1 and AV2, were purchased from an online postage company using Bitcoin. *Id.* at ¶¶ 91-97.

Based on the investigation, it was clear that computers were a key component of the criminal activity. Based on his training and experience, Agent Ressler stated that individuals ordering illicit narcotics, including defendant, likely ordered them over the internet and transactions involving illicit narcotics used bitcoin. *Id.* at ¶ 114-116. Because the undercover purchases of fentanyl conducted by law enforcement were conducted through the internet, Agent Ressler had reason to believe that there would be computers or other digital devices at defendant's residence containing evidence of criminal activity. *Id.* at ¶ 115-16, 120. The warrant would authorize law enforcement to seek records that would likely be found stored on computers at defendant's residence. *Id.* at ¶¶ 115-116. The search warrant authorized law enforcement to "locate not only computer files that might serve as direct evidence of the crimes described on the warrant but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when." *Id.* at ¶ 121. An individual's

computer generally serves not only as a storage medium of evidence of narcotics-related crime, but also as an instrumentality for committing the crime. *Id.* at ¶ 127. The warrant specifically authorized the seizure of computers for off-site review. *Id.* at ¶¶ 130-131.

Accordingly, Attachment B to the search warrant authorized the seizure of items, including any "computer, electronic storage medium (such as flash memory or other media that can store data), or digital devices," that contained evidence of violations of 21 U.S.C. § 841(a)(1) or that were used as instrumentalities for violations of 21 U.S.C. § 841(a)(1). Gov. Ex. 1, Att. B at 3. Based on the probable cause established by Agent Ressler's affidavit, a magistrate judge in the Eastern District of Pennsylvania authorized the search warrant.

ARGUMENT

The warrant clearly authorized the search and seizure of computers and the Toshiba laptop is a computer. Defendant cannot point to any legal authority that requires law enforcement to know the make and model of a computer prior to execution of a warrant. What is required is probable cause that a type of item—a computer, drugs, receipts—will be found at the location. This warrant did just that and the seizure of the laptop was done in good faith.

I. The Search Warrant Was Sufficiently Precise to Seize the Toshiba Laptop.

The Ninth Circuit looks at three factors to determine whether a warrant is sufficiently precise:

> (1) whether probable cause exists to seize all items of a particular type described in the warrant, (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not, and (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued.

United States v. Vasquez, 654 F.3d 880, 884 (9th Cir. 2011) (quoting *United States v. Stubbs*, 873 F.2d 210, 211 (9th Cir.1989)). The specificity required depends on what is reasonable given

the circumstances of the case and the type of items involved. *United States v. Storm*, No. 3:11-CR-00373-SI, 2012 WL 3643845, at *9 (D. Or. Aug. 23, 2012) (citing *United States v. Hill*, 459 F.3d 966, 973 (9th Cir. 2006)). "Where digital evidence is concerned, the Ninth Circuit has often upheld broad warrants to seize all storage media for later examination." *Id.* Based on the circumstances of the case and the type of items involved, the search warrant lawfully supported the search and seizure of the Toshiba laptop from defendant's residence.

The search and seizure of the Toshiba laptop meets each of the Ninth Circuit's factors. First, the affidavit demonstrated that probable cause existed to seize the computers at defendant's residence. Second, the warrant set out an objective standard for seizing computers because seizure was limited to computers at defendant's residence on Walnut Street in Pennsylvania. Third, the government described the items to be seized with particularity that was reasonable based on the circumstances of the case at the time and the type of items involved.

Agent Ressler thoroughly explained how the use of computers and other electronic devices capable of accessing the internet has been central to the investigation. He informed the magistrate judge that he had probable cause to believe that computers or other electronic devices would be located at defendant's residence due to the nature of defendant's offense.

While defendant is correct that the Fourth Amendment protects an individual's privacy interest, that "interest must give way to the magistrate's official determination of probable cause." *United States v. Ross*, 456 U.S. 798, 823 (1982). Here, a magistrate judge determined that there was probable cause to seize "[a]ny computer, electronic storage medium (such as flash memory or other media that can store data), or digital devices that contains or in which is stored records, digital currencies or information" that was located at defendant's residence at 216

Walnut Street, 2nd Floor, Darby, Pennsylvania, that contained evidence or were instrumentalities of violations of 21 U.S.C. § 841(a)(1). Gov. Ex. 1, Att. B at 1, 3.

There was good reason to authorize the search and seizure of computers at the residence. The warrant clearly detailed defendant's prolific use of computers to commit his crimes. And many of his crimes were committed over the darkweb in an effort to conceal his identity and the very device or devices he used. Requiring more specificity—like the make and model or number of computers—would have been practically impossible.

Defendant seizes on *United States v. Payton*, 573 F.3d 859 (9th Cir. 2009), to support his argument that the warrant was required to list a specific computer. His argument is misplaced. In *Payton,* the warrant was devoid of *any* authorization to search computers. *Payton*, 573 F.3d at 860 ("The warrant did not explicitly authorize the search of computers"). Here, Attachment B to the search warrant explicitly authorized the search and seizure of any computer used as an instrumentality of a 28 U.S.C. § 841(a)(1) violation or containing evidence of such a violation. While computers hold vast amounts of data and information, the Fourth Amendment does not provide special categorical protection to computers. *Payton*, 573 F.3d at 864. All *Payton* tells us is that computers must be generally listed in the warrant—it certainly does not require that a specific make and model be listed.

Of course, to list computers, there must be probable cause to believe that that evidence sought by the search warrant would be found in the defendant's computers. *Payton*, 573 F.3d at 863 (search of defendant's residence for evidence of drug sales did not suggest evidence would be found on the computers). Here, the very nature of defendant's criminal activity and the evidence obtained during the course of the investigation, including defendant's sale of controlled substances on the darkweb and his Twitter post associating his "work" with computers, pointed

to computers at defendant's residence as both an instrumentality of and direct evidence of defendant's crimes.

II. Absent Sufficient Particularity, the Good Faith Exception Applies.

Even if the Court finds that the search warrant was insufficiently particular to seize the Toshiba laptop, the good faith exception applies. The "Supreme Court [has] set out an exception to the exclusionary rule for a search conducted in good faith reliance upon an objectively reasonable search warrant." *United States v. Crews*, 502 F.3d 1130, 1135-36 (9th Cir. 2007) (citing *United States v. Leon*, 468 U.S. 897, 925 (1984)). "Working from the premise that the exclusionary rule is a judicially created, as opposed to constitutionally required, remedy for Fourth Amendment violations, the Court reasoned that where police conduct is pursued in complete good faith, the rule's deterrent function loses much of its force." *United States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006) (internal quotation marks omitted).

The Government bears the burden of proving that officers relied on the search warrant "in an objectively reasonable manner." *Crews*, 502 F.3d at 1136. In four circumstances, the good faith exception will not apply because reliance is per se unreasonable: (i) where the affidavit is false or recklessly disregards the truth; (ii) the magistrate wholly abandons his or her judicial role; (iii) the warrant is facially deficient; or (iv) the affidavit is so lacking in probable cause that no reasonable officer could rely upon it in good faith. *Leon*, 468 U.S. at 923-26.

Here, the deterrent value of suppression is nil. Agent Ressler wrote a thorough and accurate affidavit that clearly sets forth probable cause and explains why evidence of defendant's criminal offenses is likely to be found on computers at his residence at Walnut Street in Pennsylvania. The United States Attorney's Office in Philadelphia approved the warrant prior to it being signed by the magistrate judge. Transcript of Suppression Hearing at 94-95 (ECF No.

81). The Ninth Circuit has consistently held that law enforcement's reliance on counsel is "critical" to a good faith finding. *United States v. Winsor*, 549 F. App'x. 630, 632 (9th Cir. 2013) (citation omitted).

Agent Ressler acted in good faith in drafting, submitting, and executing the search warrant and affidavit. Law enforcement acted in good faith in relying upon the warrant issued by the magistrate judge in Philadelphia when it seized the Toshiba laptop from the defendant's residence. There is no police misconduct to deter here. The societal costs of suppression, on the other hand, are substantial. Accordingly, even if there were a Fourth Amendment violation, which there was not, suppression would not be warranted.

CONCLUSION

The government respectfully requests that the Court deny the motion to suppress the contents of the Toshiba laptop (ECF No. 138).

Dated: May 4, 2021

Respectfully submitted,

SCOTT ERIK ASPHAUG
Acting United States Attorney

/s William M. Narus
WILLIAM M. NARUS
Assistant United States Attorney

/s Natalie K. Wight
NATALIE K. WIGHT
Assistant United States Attorney

/s Andrew T. Ho
ANDREW T. HO
Assistant United States Attorney

AO 106 (Rev. 04/10) Application for a Search Warrant GOVT

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)
The premises and vehicle as described in Attachment A.

Case No. 17-911-M-1 ~3

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

The premises and vehicle as described in Attachment A.

located in the Eastern District of Pennsylvania, there is now concealed *(identify the person or describe the property to be seized)*:

The information and items set forth in Attachment B hereto.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
21 U.S.C. § 841 (a)(1)	Distribution/Possession with Intent to Distribute Fentanyl

The application is based on these facts:
See affidavit which is attached hereto and incorporated herein by this reference.

- ☑ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Bryan G. Ressler, Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: July 5, 2017

Judge's signature

City and state: Philadelphia, Pennsylvania

Hon. ELIZABETH T. HEY, United States Magistrate Judge
Printed name and title

Additional material from this filing is available in the Clerk's Office.