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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Gary S. Colldock,
13 Defendant.
14

No. CR-16-1254-JAS (LCK)

**REPORT AND
RECOMMENDATION**

15 Pending before the Court is Defendant Gary Colldock's Motion to Suppress. (Doc.
16 70.) Defendant argues that all evidence obtained from the tracker placed on his vehicle
17 should be suppressed because the facts supporting the search warrant lacked probable
18 cause and were stale. The government responded in opposition. (Doc. 74). This matter
19 came before the Court for oral argument and a report and recommendation as a result of a
20 referral, pursuant to LRCrim 57.6. Argument was heard on September 5, 2017. (Doc. 75.)
21 Having now considered the matter, the Magistrate Judge recommends that the District
22 Court, after its independent review, deny Defendant's motion to suppress.
23

I. FACTUAL BACKGROUND

24 On September 1, 2015, Magistrate Judge Bruce Macdonald found probable cause
25 for agents to install a tracking device on a 2000 Ford Taurus (Target Vehicle), registered
26 to Defendant Gary Colldock, 15525 N. Lago Del Oro Parkway, Tucson, Arizona 85739,
27 based on probable cause that it would lead to evidence of violations of 21 U.S.C. § 841.
28 All information necessary to show probable cause for the issuance of a search warrant

1 must be contained within “the four corners” of the written affidavit. *United States v.*
 2 *Gourde*, 440 F.3d 1065, 1067 (9th Cir. 2006) (en banc) (citing *United States v. Anderson*,
 3 453 F.2d 174, 175 (9th Cir. 1971)).

4 In the instant case, the affidavit in support of the tracking warrant provided
 5 information that Drug Enforcement Administration (DEA) Special Agent Tanya Solana
 6 knew, based on her training and experience, that drug traffickers routinely utilize vehicles
 7 for a variety of reasons directly related to their smuggling operation; that it is common
 8 for traffickers to drive these vehicles using counter-surveillance techniques; and, that
 9 individuals on probation and participating in narcotics trafficking usually store narcotics
 10 in a place other than their residence because their residences are subject to probation
 11 searches. (Doc. 74-1 at 3 ¶ 5.)

12 The Miami DEA office conducted an undercover investigation involving a dark
 13 web marketplace known as Agora which is used to buy and sell, among other things,
 14 illegal drugs, precursor chemicals, and counterfeit merchandise, and provides the ability
 15 to launder money. (*Id.* at 4 ¶¶ 6-7.) In dark web marketplaces, bitcoin is the currency
 16 used to make purchases, and customers can purchase bitcoin by exchanging cash with
 17 dark web vendors. (*Id.* at 8 ¶ 18.) In the course of this investigation, agents located
 18 DrWhite¹ as an Agora vendor of methamphetamine, cocaine, and “Fast Cash In Mail For
 19 BTC Service.” (*Id.* at 5 ¶ 8.) In addition to selling drugs, SA Solana determined DrWhite
 20 was operating a “cash-in-mail” service for bitcoin. (*Id.* at 8 ¶ 18.) Between May 14, 2015
 21 and August 3, 2015, DEA agents placed a series of four orders with DrWhite on Agora
 22 for a total amount of 9.5 grams of methamphetamine. (*Id.* at 5 ¶ 10.) The four packages
 23 were shipped via U.S. mail with return addresses from fictitious companies in Tucson or
 24 Saddlebrook, which is approximately 27 miles northeast of Tucson. (*Id.* at 5-6 ¶ 10.)

25 On DrWhite’s profile page, Agora indicated it had verified that DrWhite was on
 26 another dark web marketplace known as Silk Road. (*Id.* at 6 ¶ 11.) This verification

28 ¹ All references to DrWhite in the affidavit contain no space between Dr and
 White and no period after Dr. (See Doc. 74-1 at 8-12.)

1 feature provides credibility to a vendor; therefore, most vendors do not change their
 2 vendor name from one dark web marketplace to another. (*Id.*) Instead, by using a
 3 consistent name, vendors build their “brand name” with customers. (*Id.*)

4 In 2013, the FBI arrested the person it believed to be the owner of Silk Road. (*Id.*
 5 ¶ 12.) During their investigation, forensic analysis of computer servers recovered
 6 transaction histories and private message communications associated with Silk Road
 7 users. (*Id.*) In trying to identify Agora vendor DrWhite, SA Solana reviewed private
 8 message communications which were identified for Silk Road vendor DrWhite. (*Id.*
 9 ¶ 13.) May and June 2013 communications revealed that Silk Road DrWhite was
 10 involved in receiving cash for bitcoins and possibly other illegal activity via the dark web
 11 and requested funds be sent to “Gary C.” at an Oracle Road address in Tucson. (*Id.* at 6-7
 12 ¶¶ 13-15.) The physical address in these communications was confirmed as Defendant
 13 Gary Colldock’s then-current address when he was arrested by Tucson Police on an
 14 unrelated matter in June 2013. (*Id.* at 8 ¶ 16.) The messages sent to Silk Road DrWhite
 15 contained MoneyPak numbers that are used to convert cash into funds to be used online.
 16 (*Id.* ¶ 19.) Although MoneyPak is no longer available, it is part of the Green Dot
 17 Corporation and DEA agents provided Green Dot with a MoneyPak number sent to
 18 DrWhite on Silk Road. (*Id.* at 8-9 ¶ 19.) That MoneyPak number came back to Gary
 19 Colldock, which included Defendant’s date of birth and his current (2015) listed Tucson
 20 address where the Target Vehicle was registered and observed by agents. (*Id.* at 9 ¶¶ 19-
 21 20.) Defendant’s current (2015) Pima County Probation Officer is aware of Defendant
 22 driving only one car, the Target Vehicle, and it is the sole vehicle law enforcement has
 23 observed him operating. (*Id.* ¶ 23.) Surveillance of Defendant driving the Target Vehicle
 24 resulted in agents observing him use counter-surveillance techniques. (*Id.* ¶ 21.)

25 Defendant Colldock was indicted on June 22, 2016, and charged with six counts of
 26 violating 21 U.S.C. § 841, for possessing with intent to distribute a controlled substance,
 27 and one count of violating 18 U.S.C. § 924(c)(1)(A), for carrying a firearm during a drug
 28 trafficking crime. (Doc. 1.) Trial is currently scheduled for October 18, 2017. (Doc. 63.)

II. DISCUSSION

A. Probable Cause Determination

The standards for determining probable cause for a search are set forth in *Illinois v. Gates*, 462 U.S. 213 (1983). Probable cause has been defined as a “fair probability” that contraband or evidence is located in a particular place. *Id.* at 238. A fair probability is dependent on the “totality of the circumstances” and can include reasonable inferences, as well as a “common sense practical” approach. *United States v. Kelley*, 482 F.3d 1047, 1050 (9th Cir. 2007). A fair probability is not a certainty or even a preponderance of the evidence. *United States v. Krupa*, 658 F.3d 1174, 1177 (9th Cir. 2011) (citing *United States v. Gourde*, 440 F.3d 1065, 1069-71 (9th Cir. 2006) (en banc)). Further, “great deference” should be given to a magistrate judge’s determination. *Gates*, 462 U.S. at 236 (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)). Moreover, “resolution of doubtful or marginal cases in this area should largely be determined by the preference to be accorded to warrants.” *Kelley*, 482 F.3d at 1051 (citing *Gates*, 462 U.S. at 237 n.10) (other citations omitted).

The affidavit in this case provided evidence that DEA agents purchased methamphetamine from DrWhite on the Agora dark web marketplace. The packages containing the methamphetamine were sent through the U.S. mail and had return addresses from Tucson and Saddlebrook (27 miles from Tucson). DrWhite on Agora sold narcotics and operated a cash-in-mail service for bitcoin. Agora verified that DrWhite was a previous vendor from the dark web marketplace Silk Road. Agents also knew that dark web vendors keep their brand names from site to site so that customers know what to expect in future transactions. In trying to determine the identity of Agora DrWhite, DEA agents obtained, from the FBI, transaction histories and private message communications associated with Silk Road users.

The Silk Road communications showed that DrWhite requested bitcoin purchasers to send funds to “Gary C” at an address on Oracle Road in Tucson used by Defendant Colldock in 2013. Agents also learned that Silk Road DrWhite used MoneyPak numbers

1 and that a MoneyPak number corresponded to Defendant's name, date of birth, and 2015
2 resident address. This information provided probable cause to believe Silk Road DrWhite
3 is Defendant Gary Colldock. In turn, because DrWhite from Agora was verified to be a
4 Silk Road vendor, and DrWhite on Agora and Silk Road used identical names, sold
5 bitcoin, and used addresses in the Tucson area, there is probable cause to believe they
6 were the same person.

7 The Target Vehicle was registered to Defendant's 2015 address (used for
8 MoneyPak transactions) and was observed at that residence by law enforcement. Agents
9 also observed Defendant use counter-surveillance techniques when driving the vehicle.
10 There was a fair probability that the Target Vehicle was being used in furtherance of drug
11 trafficking and that use of the tracking device would lead to evidence, fruits, or
12 instrumentalities of the drug trafficking and the identification of involved individuals.
13 Under a totality of the circumstances, the issuing magistrate judge did not err in making a
14 practical, common-sense decision finding probable cause.

15 B. Staleness

16 Defendant argues the information in the search warrant was stale because the Silk
17 Road information about DrWhite was from 2013. Therefore, he argues there is no reason
18 to believe that DrWhite would be carrying drugs in 2015. As explained above, the
19 tracking warrant was based on drug purchases made from DrWhite on Agora in 2015.
20 The 2013 Silk Road information was used for purposes of identifying DrWhite.

21 A review of the applicable case law provides that information offered in support of
22 the application for a search warrant is not stale if "there is sufficient basis to believe,
23 based on a continuing pattern *or other good reasons*, that the items to be seized are still
24 on the premises." *United States v. Gann*, 732 F.2d 714, 722 (9th Cir. 1984). There was no
25 significant delay in this case. As set forth in the affidavit, DEA agent placed four orders
26 for methamphetamine with DrWhite through Agora, between May 2015 and August 3,
27 2015. (Doc. 74-1 at 8 ¶ 10.) During that same time period, agents researched the 2013
28 transactional histories and communications for Silk Road DrWhite and conducted

1 surveillance on Defendant's vehicle. The warrant was requested and signed on September
 2 1, 2015. (Doc. 74-1 at 18-21.) The Court finds there is a sufficient basis to believe that
 3 drug trafficking, which was known to have taken place over the course of three months in
 4 2015, was ongoing less than a month later.

5 **C. Good Faith.**

6 As stated above, the Court finds there was sufficient probable cause to support the
 7 issuance of the search warrant. However, even if the warrant was deemed not sufficient,
 8 the Court finds the "good faith" exception applies because the agents' reliance on the
 9 warrant was objectively reasonable, and the affidavit contained sufficient evidence to
 10 justify the agents' reliance on the warrant. *See United States v. Leon*, 468 U.S. 897, 922-
 11 23 (1984).

12 **D. *Franks* Hearing**

13 In his motion, Defendant cited *Franks v. Delaware* in arguing that the government
 14 failed to sufficiently link Agora DrWhite in 2015 to Silk Road DrWhite in 2013. (Doc. 70
 15 at 14.) The Court must conduct a *Franks* hearing if a defendant makes "a substantial
 16 preliminary showing that '(1) the affidavit contains intentionally or recklessly false
 17 statements, and (2) the affidavit purged of its falsities would not be sufficient to support a
 18 finding of probable cause.'" *United States v. Stanert*, 762 F.2d 775, 780 (9th Cir. 1985)
 19 (quoting *United States v. Lefkowitz*, 618 F.2d 1313, 1317 (9th Cir. 1980)). The Court
 20 finds that Defendant made no showing that the affidavit contained intentionally or
 21 recklessly false statements. As indicated above, the agent and affidavit clearly showed a
 22 sufficient link between Silk Road DrWhite and Agora DrWhite and to Defendant and the
 23 Target Vehicle.

24 **III. RECOMMENDATION**

25 It is recommended that, after its independent review of the record, the District
 26 Court deny Defendant's Motion to Suppress (Doc. 70). Any party may serve and file
 27 written objections on or before September 25, 2017. A party may respond to the other
 28 party's objections on or before October 9, 2017. No reply brief shall be filed on

1 objections unless leave is granted by the District Court. If objections are not timely filed,
2 they may be deemed waived.

3 Dated this 11th day of September, 2017.

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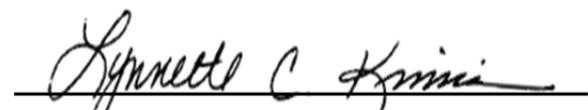
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Honorable Lynette C. Kimmens

United States Magistrate Judge