

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA	::	
	::	CRIMINAL CASE NO.
v.	::	1:23-cr-00125-MHC-RGV-5
	::	
MARIO BERNARD PEEK,	::	
<i>also known as Mucho</i>	::	

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Defendant Mario Bernard Peek (“Peek”) is named along with eleven other co-defendants in a twenty-four-count superseding criminal indictment that charges Peek with conspiring to possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846, and with four counts of knowingly possessing with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. [Doc. 528].<sup>1</sup> Peek has filed a motion to suppress a search and seizure pursuant to a traffic stop on March 21, 2022, [Doc. 420], and following preliminary briefing on the issue of standing, see [Docs. 444, 491, & 507],

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<sup>1</sup> The listed document and page numbers in citations to the record refer to the document and page numbers shown on the Adobe file reader linked to the Court’s electronic filing database, CM/ECF.

an evidentiary hearing on the motion to suppress was held on April 3, 2024,<sup>2</sup> and the parties filed post-hearing briefs, see [Docs. 629, 641, & 646]. For the reasons that follow, it is **RECOMMENDED** that Peek's motion to suppress, [Doc. 420], be **DENIED**.

## I. INTRODUCTION

The Drug Enforcement Administration ("DEA") began investigating suspected drug trafficking activities of an organization known as the Paper Gang Family ("PGF") in or about June of 2019. (Tr. at 15-16). The investigation revealed that individuals affiliated with the PGF were distributing several different types of narcotics in multiple kilogram quantities in the Northern District of Georgia and numerous alleged PGF members and associates, including Peek, who used the nickname "Mucho," were identified during the investigation. (Tr. at 16-18). DEA agents identified a neighborhood on Stanford Drive in Ellenwood, Georgia, where PGF members were suspected of conducting drug trafficking activities, and agents installed a remote-operated pole camera in that area. (Tr. at 21-22). Among other things, the pole camera's field of view covered residences associated with Peek

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<sup>2</sup> See [Doc. 596] for a transcript of the evidentiary hearing held on April 3, 2024, which will be referred to as "(Tr. at \_\_)" and cited according to the page number located in the top right corner of the transcript. In addition, the government submitted exhibits at the evidentiary hearing, see [Docs. 521 & 523], which will be referred to as "(Gov't Ex. \_\_)."

and his mother. (Id.).

On March 21, 2022, DEA agents monitoring the pole camera observed Peek and Antonio Harper (“Harper”), another alleged PGF member, meet with an individual who had been identified during the investigation as a narcotics supplier who used the nickname “Gordo.” (Tr. at 23, 26-30). Agents subsequently saw Peek meet with Harper and retrieve what appeared to be a large cereal box from Harper’s vehicle. (Tr. at 31-32; Gov’t Ex. 1 at 1; Gov’t Ex. 11B at 00:40-00:50). Peek first took that cereal box into the passenger compartment of a white Honda Accord that Peek was driving (hereinafter “the white Honda”), and eventually put the cereal box in the trunk. (Tr. at 33). Peek was then seen in the vicinity of the white Honda having a conversation with other alleged PGF associates Arthur Hempen (“Hempen”), an individual agents identified by the nickname “Rock,” and Christian Wash (“Wash”). (Tr. at 33-34; Gov’t Ex. 11C). During that conversation, agents observed via the pole camera bundles of cash stacked up on the center console of the white Honda. (Tr. at 34; Gov’t Ex. 2 at 1).

Based on their training, experience, and knowledge of the investigation, agents believed the activities observed via the pole camera constituted a narcotics transaction involving Peek and other PGF members and associates, (Tr. at 22-36); see also (Gov’t Exs. 1, 2, 3, 11, 11A-11F), and the agents decided to conduct

physical surveillance and initiate a traffic stop of the white Honda to intercept suspected narcotics and drug proceeds, (Tr. at 36). DEA Special Agent Bryan Tice (“Agent Tice”) contacted the Georgia State Patrol (“GSP”) and informed GSP Troopers Michael Bailey (“Trooper Bailey”) and Dillon Graves (“Trooper Graves”) about the suspected narcotics transaction and requested their assistance with a traffic stop of the white Honda. (Tr. at 37, 81, 86). After that request was made, the pole camera showed Peek in possession of the cereal box, which agents suspected contained narcotics, (Tr. at 38; Gov’t Ex. 11E), and agents observed Peek remove white objects having the appearance of narcotics from the cereal box and place them into the trunk of the white Honda, (Tr. at 39; Gov’t Ex. 3 at 1; Gov’t Ex. 11E at 00:00-00:30).<sup>3</sup> Agents also observed Peek retrieve a brown shopping bag from the trunk of the white Honda, put something in it from the passenger compartment of the white Honda, and then return it to the trunk. (Tr. at 41; Gov’t Ex. 11E at 00:54-01:28). The cash that had formerly been visible in the passenger compartment of the white Honda was no longer visible, which led agents to believe that the cash was now in the bag in the trunk. (Tr. at 41). Peek was later

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<sup>3</sup> Although agents viewing the pole camera did not see it at the time, a subsequent review of the pole camera footage revealed that Peek then gave the cereal box to Hempen, but because agents did not see this event in real time, they believed that the cereal box was still in the white Honda on March 21, 2022, when they decided to conduct a traffic stop of the white Honda. (Tr. at 40).

seen on the pole camera removing items from the trunk of the white Honda and placing them into a white plastic grocery bag that he then gave to Hempen. (Tr. at 49-50; Gov't Ex. 11F at 00:00-00:20).

While these transactions were occurring, DEA agents were in contact with each other and with GSP Troopers Bailey and Graves through radio communications and a messaging program known as WhatsApp. (Tr. at 41-42, Gov't Exs. 4, 4A-F). Among other things, messages in the WhatsApp message chain informed Troopers Bailey and Graves that both narcotics and cash were likely to be found in the white Honda prior to the subsequent traffic stop of Peek. (Tr. at 45). Peek then left the Stanford Drive area, and DEA agents and GSP troopers continued to coordinate their surveillance, exchanging logistical information and information regarding Peek's history of flight. (Tr. at 51-53).

Trooper Bailey responded to the vicinity where Peek was under surveillance and waited for additional information pertaining to the traffic stop. (Tr. at 87). Trooper Bailey had prior experience with the PGF investigation, and knew the organization as "the Hellcat Boys," based on their predilection for fast cars and attempts at flight. (Tr. at 85-86, 97). Trooper Bailey observed the white Honda as it passed by him and noticed that "all four windows appeared to be too dark, also the windshield was too dark." (Tr. at 89-90). Trooper Bailey believed that the window tinting was in violation of the Georgia Motor Vehicle Code, and

he initiated a traffic stop of the white Honda. (Id.); see also (Gov't Ex. 8 at 00:00-00:25).

During his initial approach to the vehicle, Trooper Bailey asked Peek to lower his rear driver's side window because the tint was too dark for Trooper Bailey to see into the car. (Tr. at 94-95); see also (Gov't Ex. 8 at 00:50-01:00). During his conversation with Peek, Trooper Bailey noticed a strong odor of marijuana coming from the vehicle, (Tr. at 95-96), and he asked Peek to exit the vehicle, both for officer safety concerns and because of the odor of marijuana, (Tr. at 96-97); see also (Gov't Ex. 8 at 01:35-01:40). During subsequent conversation, Peek said that the white Honda belonged to his girlfriend, (Tr. at 98, 134), and in response to Trooper Bailey's questions about the odor of marijuana, Peek stated that he had smoked marijuana in the car the previous day and that marijuana was still in the car, (Tr. at 100); see also (Gov't Ex. 8 at 03:10-03:55), and Peek consented to Trooper Bailey retrieving the marijuana from the white Honda, (Tr. at 101); see also (Gov't Ex. 8 at 03:25-04:00). Peek was not handcuffed at this point, and he did not appear to be intoxicated. (Tr. at 101-102, 150). During this conversation, Trooper Bailey did not employ any force toward Peek, nor did he make any threats or promises. (Tr. at 102-103, 150).

Around this time, Trooper Graves arrived on the scene of the stop and used an agency-provided window tint meter to check the tint level on the windows of

the white Honda. (Tr. at 100-01, 146-48; Gov't Ex. 8 at 02:27-03:45). Trooper Graves' check revealed that the side windows of the white Honda were not in compliance with Georgia law because the tint was too dark, and he also confirmed the presence of improper tinting on the front windshield. (Tr. at 146-47). Trooper Bailey then retrieved the marijuana from the white Honda in the location where Peek indicated it would be found. (Tr. at 103-104; Gov't Ex. 8 at 04:04-04:17). Trooper Bailey estimated the amount of marijuana to be between seven and eight grams. (Tr. at 104). After examining the marijuana, Troopers Bailey and Graves detained Peek, placing him in handcuffs, but he remained standing next to Trooper Bailey's patrol vehicle. (Tr. at 105-06); see also (Gov't Ex. 8 at 04:15-05:00).

Once Peek was detained, Trooper Bailey searched the white Honda, (Tr. at 106); see also (Gov't Ex. 8 at 05:29-15:50), and he found in the trunk, among other things, a paper bag containing bundles of cash, (Tr. at 108-09; Gov't Ex. 8 at 08:17-08:25). Trooper Bailey found additional bundles of cash in the center console of the white Honda. (Tr. at 112; Gov't Ex. 8 at 15:35-16:04). Peek also had cash on his person. (Tr. at 115); see also (Gov't Ex. 8 at 16:40-16:50). Peek did not provide an explanation for why he was traveling with a large amount of bundled cash. (Tr. at 109-110). After consulting with Agent Tice, Troopers Bailey and Graves confiscated the cash and marijuana from the white Honda and released Peek with

a receipt for the cash and a citation for improper window tint. (Tr. at 115-116).

Peek has filed a motion to suppress, challenging the legality of the traffic stop and subsequent search of the white Honda. [Doc. 420]. The government opposes the motion, [Doc. 641], arguing that Peek has failed to establish standing to bring the motion, [*id.* at 9-11], and even if he had standing, Trooper Bailey lawfully stopped the white Honda based on probable cause that the vehicle's window tint was in violation of Georgia law and because he had reasonable suspicion that Peek was engaged in a drug trafficking crime, and the vehicle was subsequently lawfully searched based on the odor of marijuana emanating from the car after it was stopped, along with Peek's admission that marijuana was in the car, as well as the information from DEA that drugs and/or proceeds of drug trafficking were in the car, [*id.* at 11-22]. For the reasons that follow, it is **RECOMMENDED** that Peek's motion to suppress, [Doc. 420], be **DENIED**.

## II. DISCUSSION

### A. Standing

After Peek filed his motion to suppress, and the government challenged his standing, Peek filed a "verified statement" indicating that he had received permission to possess and drive the white Honda from its owner, "Quincy Jones," a friend of Peek's, although counsel later clarified that the name was a drafting error on his part, and Quincy Banks was the correct name of the owner of the white



Honda. [Docs. 491 & 492]. The government filed a response, arguing that Peek's "verified statement" was insufficient to establish standing, [Doc. 507], and at the outset of the evidentiary hearing, the Court ruled that Peek had made a sufficient showing to merit an evidentiary hearing on his motion, (Tr. at 10), which the government did not contest, (Tr. at 8), but the government continued to argue that Peek had not carried his burden to establish standing to reach the merits of the motion and sought to cross-examine him regarding his verified statement, (Tr. at 10). After Peek's counsel announced that Peek would not be testifying at the evidentiary hearing, the Court confirmed that Peek understood the government's position that he had failed to carry his burden to establish standing and that the issue would be addressed in post-hearing briefs, and afforded Peek the opportunity to present other evidence with respect to his standing. (Tr. at 10-11). However, Peek did not present any evidence on standing at the evidentiary hearing. See [Doc. 596].

The government argues that the Court should not consider Peek's verified statement since he refused to be cross-examined at the evidentiary hearing, [Doc. 641 at 9-10], and even if the statement is considered, it contradicts statements he made to the GSP Troopers at the time of the stop indicating that his girlfriend owned the white Honda, and there is no circumstantial evidence that gives credence to his claim of rightful possession of the vehicle to establish Peek's

standing to contest the search of the white Honda, [id. at 10-11]. Thus, the government contends that his motion to suppress should be denied for lack of standing. [Id. at 11]. Peek argues that “[t]he driver of [a] car borrowed from [a] friend has a legitimate expectation of privacy in the borrowed car, and thus, does have standing to challenge a search of the car,” [Doc. 646 at 2-3 (citation omitted)], and he maintains that his motion and verified statement demonstrate that he was in lawful possession of the vehicle on March 21, 2022, and “[n]either the allegation in the motion or the verified statement have been challenged by any evidence from the [g]overnment that [his] statement is false,” [id. at 2].

The Fourth Amendment of the United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. However, “‘Fourth Amendment rights are personal rights which . . . may not be vicariously asserted.’” Rakas v. Illinois, 439 U.S. 128, 133-34 (1978) (citations omitted) (quoting Alderman v. United States, 394 U.S. 165, 174 (1969)). “Fourth Amendment jurisprudence requires that one challenging as unreasonable a search or seizure must have ‘standing,’ i.e., a legitimate expectation of privacy in the premises searched.” United States v. McCray, CRIMINAL ACTION FILE NO. 1:15-cr-212-WSD/AJB, 2017 WL 9472888, at \*6 (N.D. Ga. June 15, 2017) (citing United States v. Gonzalez, 940 F.2d 1413, 1420 n.8 (11th Cir. 1991)), adopted by 2017 WL 3141172, at \*14 (N.D.

Ga. July 25, 2017). Consequently, to prevail on a claim that the government conducted an unconstitutional search under the Fourth Amendment, Peek must first establish that he had a legitimate expectation of privacy in the place searched or evidence seized that society is prepared to recognize as reasonable. Rakas, 439 U.S. at 133-134; see also California v. Ciraolo, 476 U.S. 207, 211 (1986) (citation omitted) (standing to challenge search requires a subjective expectation of privacy that society would recognize as legitimate); United States v. Baron-Mantilla, 743 F.2d 868, 870 (11th Cir. 1984) (per curiam) (citation omitted). That is, Peek may challenge a search on Fourth Amendment grounds if ““(1) he has a subjective expectation of privacy, and (2) society is prepared to recognize that expectation as objectively reasonable.”” United States v. Bushay, 859 F. Supp. 2d 1335, 1361 (N.D. Ga. 2012) (quoting United States v. Harris, 526 F.3d 1334, 1338 (11th Cir. 2008) (per curiam)), adopted at 1354. Thus, Peek “must establish both a subjective and an objective expectation of privacy,”<sup>4</sup> and he “bears the burden of showing a

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<sup>4</sup> “The subjective prong is a factual inquiry, and requires that a person exhibit an actual expectation of privacy,” while the “objective prong is a question of law, and requires that the privacy expectation be one that society is prepared to recognize as reasonable.” Bushay, 859 F. Supp. 2d at 1362 (citations and internal marks omitted); see also United States v. Durdley, 436 F. App’x 966, 968 (11th Cir. 2011) (per curiam) (unpublished). “An expectation of privacy is reasonable if it has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.” United States v. Dixon, 901 F.3d 1322, 1338 (11th Cir. 2018) (citation and internal marks omitted).

legitimate expectation of privacy in the area searched.” United States v. Suarez-Blanca, Criminal Indictment No. 1:07-CR-0023-MHS/AJB, 2008 WL 4200156, at \*6 (N.D. Ga. Apr. 21, 2008) (citations omitted); see also United States v. Jefferson, Criminal Case No. 1:09-CR-324-WSD-RGV, 2010 WL 3928049, at \*4 (N.D. Ga. May 25, 2010) (citation omitted) (“In other words, [defendant] has the burden to establish that he has standing to challenge the search or seizure.”), adopted by 2010 WL 3927874, at \*9 (N.D. Ga. Oct. 4, 2010), aff’d, 451 F. App’x 833 (11th Cir. 2011) (per curiam) (unpublished).

Peek acknowledged at the evidentiary hearing that he bears the burden of establishing standing, (Tr. at 6), and he relies on the allegations of his motion and his verified statement to satisfy his burden, [Doc. 646 at 1-2]. Peek asserts that “[n]either the allegation in the motion or the verified statement have been challenged by any evidence from the [g]overnment that [his] statement is false.” [Id. at 2]. However, the government was not required to present any evidence on this issue since it is Peek’s burden, yet it did contest his standing and challenged the sufficiency of his showing. See (Tr. at 9-10). Moreover, the Court confirmed at the outset of the hearing that although Peek had made a sufficient showing to merit an evidentiary hearing, he would need to meet the government’s arguments about standing in post-hearing briefing and afforded him the opportunity to present evidence on this point at the hearing, (id.), but Peek declined to testify at

the hearing and did not present any further evidence regarding his standing, (Tr. at 5-6, 8-10, 157). Thus, the Court will evaluate the evidence of record relied on by Peek to determine if he has established standing to challenge the search of the white Honda.

In his motion to suppress, Peek asserted that he “was in lawful possession of the vehicle as authorized by its owner, Quincy Jones,” [Doc. 420 at 1], but on the day he was stopped, he told the GSP Troopers that the white Honda belonged to his girlfriend, (Tr. at 98, 134). However, the motion was not accompanied by an affidavit or other evidence to support that assertion, see [Doc. 420], and the government challenged whether Peek had standing to bring the motion, [Doc. 406]. Peek subsequently submitted a verified statement under oath in which he asserted that he borrowed the white Honda from a friend named “Quincy Jones,” [Doc. 491], but his counsel later clarified that the reference to “Quincy Jones” was a scrivener’s error, and the correct name of Peek’s friend actually is Quincy Banks, [Doc. 492]. As the government correctly points out, Peek has provided inconsistent accounts of how he came to be in possession of the white Honda on the day he was stopped and who actually owned the vehicle. The government sought to cross-examine Peek at the evidentiary hearing regarding these discrepancies, but he declined to testify, (Tr. at 8), and he did not offer any evidence or testimony from his girlfriend or his friend, Quincy Banks, to establish

who actually owned the vehicle and whether the owner allowed Peek to use the vehicle on March 21, 2022, the day he was stopped, (Tr. at 157).

Peek downplays the discrepancy in his accounts about the ownership of the vehicle by asserting that the claim he made to the GSP Troopers about borrowing the car from his girlfriend “was not under oath and was likely made to avoid dragging [] Banks into an incident in which [Peek] realized contraband was about to be located in his car.” [Doc. 646 at 2]. However, this contention undermines Peek’s assertion of standing by suggesting that he was willing to fabricate information about the ownership of the vehicle, and since he was unwilling to be subjected to cross-examination about his current claim that he borrowed the car from Quincy Banks, the record is unclear about who actually owned the vehicle and whether the owner granted Peek permission to use it on the day he was stopped. The government argues that the Court should disregard Peek’s verified statement since he refused to testify and was not subjected to cross-examination about his inconsistent claims of ownership of the white Honda and cites supporting authority. [Doc. 641 at 10 n.6]. While there is support for disregarding the verified statement on the grounds asserted by the government, the Court has considered it instead, along with the other evidence of record, and concludes that Peek has failed to carry his burden of demonstrating that he was lawfully in possession of the vehicle with the permission of the owner since he made

conflicting claims about the ownership of the vehicle, so the record does not demonstrate who actually owned the vehicle or that the owner granted Peek permission to use the vehicle on March 21, 2022. It was Peek's burden to demonstrate standing, but the conflicting evidence in the record simply does not support finding that Peek has demonstrated that he had the permission of the owner of the white Honda to use the vehicle and was in lawful possession of the vehicle when he was stopped. See United States v. Starks, CRIMINAL CASE NO. 3:18-CR-00005-TCB-RGV, 2018 WL 7918058, at \*3 (N.D. Ga. Dec. 4, 2018) (citations and internal marks omitted) (defendant's "failure to present any evidence indicating an expectation of privacy in the [vehicle] means that he has not met his baseline burden to show standing to contest the search"), adopted by 2019 WL 410472, at \*3 (N.D. Ga. Feb. 1, 2019). However, even if the Court credited Peek's claim that he was in lawful possession of the vehicle on the date he was stopped, his motion would still fail on the merits for the reasons that follow.

**B. Traffic Stop and Search of the Vehicle**

Peek argues that "there was insufficient evidence to establish probable cause for the traffic stop," [Doc. 629 at 1, 9-13], and that "there was insufficient evidence to establish a reasonable suspicion of criminal activity to justify the seizure and search" of the white Honda, [id. at 1, 4-9]. He also argues that "nothing occurred at the traffic stop that authorized the search of his vehicle," and he "claims that the

stop was impermissibly prolonged.” [Id. at 1]. The government responds that “GSP Troopers lawfully stopped the [w]hite Honda based on their probable cause to believe that the [ vehicle’s] window tint was in violation of Georgia law and because they had a reasonable suspicion that Peek was engaged in a drug trafficking crime.” [Doc. 641 at 11]. The government also asserts that the GSP Troopers lawfully searched the white Honda “based on the odor of marijuana emitting from the car along with Peek’s admission that marijuana was in the car, as well as the information from DEA that drugs and/or money was in the car,” and “did not impermissibly prolong the stop.” [Id.].

### **1. Probable Cause for the Traffic Stop**

“The Fourth Amendment protects individuals from unreasonable search and seizure.” United States v. Rowls, 402 F. App’x 467, 468 (11th Cir. 2010) (per curiam) (unpublished) (citation and internal marks omitted). The “[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment].” Whren v. United States, 517 U.S. 806, 809-10 (1996) (citations omitted); see also United States v. Purcell, 236 F.3d 1274, 1277 (11th Cir. 2001); United States v. Edenilson-Reyes, Criminal Action File No. 1:09-CR-00361-RWS-AJB, 2010 WL 5620439, at \*9 (N.D. Ga. Oct. 26, 2010), adopted by 2011 WL 195679, at \*1 (N.D. Ga. Jan. 20, 2011).



A traffic stop is reasonable if the officer had probable cause to believe that a traffic violation has occurred, or if the traffic stop is justified by reasonable suspicion in compliance with Terry v. Ohio, 392 U.S. 1 (1968). Edenilson-Reyes, 2010 WL 5620439, at \*9 (citing United States v. Spoerke, 568 F.3d 1236, 1248 (11th Cir. 2009); Purcell, 236 F.3d at 1277); see also United States v. Monzon-Gomez, 244 F. App'x 954, 959 (11th Cir. 2007) (per curiam) (unpublished); United States v. Simmons, 172 F.3d 775, 778 (11th Cir. 1999); United States v. Sierra, Cr. No. 2:10cr183-MEF, 2011 WL 1675217, at \*2 (M.D. Ala. Apr. 19, 2011), adopted by 2011 WL 1675180, at \*1 (M.D. Ala. May 4, 2011), aff'd, 501 F. App'x 900 (11th Cir. 2012) (per curiam) (unpublished). Thus, "[a] traffic stop . . . is constitutional if it is either based upon probable cause to believe a traffic violation has occurred or justified by reasonable suspicion. . . ." <sup>5</sup> Edenilson-Reyes, 2010 WL 5620439, at \*9 (alterations in original) (citations and internal marks omitted); see also United States v. Boyd, 388 F. App'x 943, 947 (11th Cir. 2010) (per curiam) (unpublished); United States v. Woods, 385 F. App'x 914, 915 (11th Cir. 2010) (per curiam)

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<sup>5</sup> Probable cause must be supported by more than a mere suspicion, but does not require the same "'standard of conclusiveness and probability as the facts necessary to support a conviction.'" United States v. Dunn, 345 F.3d 1285, 1290 (11th Cir. 2003) (quoting Wood v. Kesler, 323 F.3d 872, 878 (11th Cir. 2003)). Reasonable suspicion is a less demanding standard than probable cause and requires only a fair probability that illegal activity has occurred. United States v. Sokolow, 490 U.S. 1, 7 (1989).

(unpublished). The government bears the burden of presenting facts to establish that the traffic stop is supported by reasonable suspicion or probable cause. See Welsh v. Wisconsin, 466 U.S. 740, 749-50 (1984); see also United States v. Kelly, No. 1:13-cr-108-WSD-JSA, 2014 WL 1153375, at \*8 (N.D. Ga. Mar. 21, 2014) (citations omitted), adopted at \*4.

An officer's subjective intentions and motives are irrelevant where the officer has probable cause for the stop. See United States v. Mwangi, Criminal File No. 1:09-CR-107-TWT, 2010 WL 520793, at \*3 n.9 (N.D. Ga. Feb. 5, 2010) (citations omitted), adopted at \*1; see also United States v. Arango, 396 F. App'x 631, 632-33 (11th Cir. 2010) (per curiam) (unpublished) (citation and internal marks omitted) ("Where objectively reasonable conditions permit a stop, the officer's motive in making the traffic stop does not invalidate what is otherwise objectively justifiable behavior under the Fourth Amendment."); Miller v. Harget, 458 F.3d 1251, 1260 (11th Cir. 2006) (citations omitted) ("It is well-settled that an officer's subjective motivations do not affect whether probable cause existed"); United States v. Jimenez, No. 2:06-cr-74-FtM-29DNF, 2006 WL 2927477, at \*2 (M.D. Fla. Oct. 11, 2006) (holding that "an officer's belief that he has probable cause or does not have probable cause is simply not a pertinent factor" in determining whether an arrest is lawful). That is, "if the driver of a car has broken a traffic law, no matter how relatively minor, a motion to suppress evidence cannot be based on the argument

that the stop was pretextual.” United States v. Wright, No. CR210-022, 2010 WL 4967468, at \*1 (S.D. Ga. Nov. 5, 2010) (citation omitted), adopted by 2010 WL 4967838, at \*1 (S.D. Ga. Dec. 1, 2010). Moreover, “[t]he propriety of the traffic stop [] does not depend on whether the defendant is actually guilty of committing a traffic offense.” United States v. Sicaire-Sicaire, Criminal Action File No. 4:10-CR-054-HLM, 2011 WL 2710031, at \*5 (N.D. Ga. July 11, 2011) (citation omitted). “Instead, the relevant question is whether it was reasonable for the officer to believe that a traffic offense had been committed.” Id. (citation omitted).

Peek argues that Trooper Bailey did not have probable cause to stop the white Honda he was driving for a window tint violation because Trooper Bailey’s testimony at the evidentiary hearing revealed that he was mistaken about Georgia law regarding the lawful limit for tinting since he testified that “Georgia law requires window tint to be the 32 percent or above, plus or minus 2 percent,” (Tr. at 90), but the relevant statute prohibits “material and glazing when so applied or affixed [to] reduce light transmission through the windshield or window to less than 32 percent, plus or minus 3 percent, or increase light reflectance to more than 20 percent,” [Doc. 629 at 11-12 (emphasis and internal marks omitted) (quoting O.C.G.A. § 40-8-73.1)]. Peek contends that since “‘a mistake of law cannot provide reasonable suspicion or probable cause to justify a traffic stop,’” [id. at 12 (emphasis and citation omitted) (quoting United States v. Chanthasouvat, 342 F.3d

1271, 1279 (11th Cir. 2003))), the traffic stop was unlawful and “everything that followed the unconstitutionally infirm stop is ‘fruit of the poison tree’ and must be suppressed,” [*id.* at 13].

The government responds that “even if Trooper Bailey misremembered the margin of error figures in the tint statute on the day of the stop—and didn’t just slightly misstate them on the witness stand two years later—that mistake of law would not have made the stop unlawful.” [Doc. 641 at 14]. First, the government points out that “Trooper Bailey testified that the [w]hite Honda had window tint applied to its front windshield in addition to the side windows,” [*id.* at 12 (citing Tr. at 89-90)], so regardless of “the percentage of tint on the side and rear windows, this tinting on the windshield of the [vehicle ] was a separate violation of Georgia law, and Trooper Bailey’s noticing its presence alone established probable cause for a traffic stop,” [*id.* (citing United States v. Moody, 240 F. App’x 858, 859 (11th Cir. 2007) (per curiam) (unpublished))]; see also O.C.G.A. § 40-8-73.1(b). Thus, as the government correctly contends, even if Trooper Bailey made “a mistake of law related to the percentage of allowable tint on side windows, he still had a separate basis to execute the traffic stop.” [Doc. 641 at 12-13 (citing United States v. Wilson, 662 F. App’x 693, 694–96 (11th Cir. 2016) (per curiam) (unpublished) (officer’s mistake of law as to one traffic law did not invalidate stop when there was another traffic law also violated))].

The government also asserts that Trooper Bailey's slight misstatement of the percentage of allowable tint on side and rear windows during his testimony "is irrelevant under the totality of circumstances because he still had probable cause to stop Peek" since he "testified that he visually observed the side windows as being too dark and confirmed later that he could not see through the windows, which is the type of objective evidence used by law enforcement to establish probable cause based on tint violations." [*Id.* at 13-14 (footnote and citations omitted)]. Indeed, the government correctly asserts that "when evaluating the legality of the stop, the Court need not determine whether an actual violation of the law occurred, but rather only whether there was probable cause to believe a violation was occurring." [*Id.* at 13 (citing Heien v. North Carolina, 574 U.S. 54, 67 (2014))].

Contrary to Peek's contention, the Court finds that Trooper Bailey had probable cause to believe that the dark tint on the windows of the white Honda violated O.C.G.A. § 40-8-73.1, which provides in relevant part:

Except as provided in this Code section, it shall be unlawful for any person to operate a motor vehicle in this state:

- (1) Which has material and glazing applied or affixed to the front windshield, which material and glazing when so applied or affixed reduce light transmission through the windshield; or
- (2) Which has material and glazing applied or affixed to the rear windshield or the side or door windows, which material and glazing

when so applied or affixed reduce light transmission through the windshield or window to less than 32 percent, plus or minus 3 percent, or increase light reflectance to more than 20 percent.

O.C.G.A. § 40-8-73.1(b).

Peek's argument is "'unpersuasive, as it appears to confuse the standards for probable cause with those for a violation.'" United States v. Reyes, Criminal Case Nos. 1:11-cr-00009-ODE-RGV, 1:11-cr-00060-ODE-RGV, 2011 WL 7070980, at \*6 (N.D. Ga. Aug. 29, 2011) (quoting United States v. Alvarado, No. 8:10-CR-348-T-30TGW, 2010 WL 5262736, at \*4 (M.D. Fla. Nov. 17, 2010), adopted by 2010 WL 5262735, at \*1 (M.D. Fla. Dec. 17, 2010)), adopted by 2012 WL 176488, at \*6 (N.D. Ga. Jan. 19, 2012). The Eleventh Circuit has ruled "that police do not have to ascertain conclusively whether a window-tint violation has occurred before there is probable cause to investigate it.'" Id. (quoting Alvarado, 2010 WL 5262736, at \*4); see also United States v. Weaver, 145 F. App'x 639, 641 (11th Cir. 2005) (per curiam) (unpublished). "In fact, 'the Eleventh Circuit noted that no officer knows the window transmittance percentage based on observation and, thus, if such knowledge was required to establish probable cause, an officer could never stop a vehicle for a violation of this statute independent of another infraction.'" Reyes, 2011 WL 7070980, at \*6 (citation omitted); see also Weaver, 145 F. App'x at 641; Georgia v. Simmons, 640 S.E.2d 709, 712 (Ga. Ct. App. 2006) (citing Ciak v. Georgia, 597 S.E.2d 392, 396 (Ga. 2004)) (noting that the Georgia Supreme Court

has “held that a traffic stop is not rendered improper simply because a field test showed that the window tint did *not* violate the statute”).

The “Court credits the testimony of [Trooper Bailey], and finds that he reasonably believed that [Peek] . . . had illegal window tint in violation of O.C.G.A. §[] . . . 40-8-73.1,” United States v. Whitlock, CRIMINAL ACTION FILE NO. 4:08-CR-00044-RLV-WEJ, 2009 WL 10670976, at \*5 (N.D. Ga. Apr. 22, 2009), adopted by 2009 WL 10676345, at \*1 (N.D. Ga. June 15, 2009), aff’d, 493 F. App’x 27 (11th Cir. 2012) (per curiam) (unpublished), and thus, Trooper Bailey “had probable cause for the stop, regardless of whether the tinting was actually illegal,” United States v. Garcia, 284 F. App’x 791, 793 (11th Cir. 2008) (per curiam) (unpublished) (citations omitted) (finding that the “district court did not err, much less plainly err, by finding that probable cause existed for the traffic stop” where “[a]t the time he decided to stop [defendant’s] truck, [the] Officer [] knew that: (1) Georgia law prohibited excessively tinted windows; (2) he could not see inside the vehicle; and (3) he could not see the driver,” which “was sufficient to lead a reasonable officer to believe that [defendant] had violated [O.C.G.A.] § 40-8-73.1(b) by operating a motor vehicle with window tinting that exceeded the allowable limits”). Thus, whether at the time of the stop Trooper Bailey was mistaken by 1% about the lawful degree of window tinting allowed under Georgia law, he had probable cause to stop Peek’s vehicle based on his observation of the darkened windows of

the vehicle, even if there had not been an actual violation of the statute, and the only means by which the actual tinting could be determined was by use of a tint meter, which in this case revealed a reading of 28%. (Tr. at 123).<sup>6</sup>

## 2. Reasonable Suspicion for the Traffic Stop

The government argues that Trooper Bailey also had reasonable suspicion to stop the white Honda that Peek was driving based on the collective knowledge of law enforcement officers who were investigating the PGF and communicating with the GSP Troopers prior to the stop. [Doc. 641 at 14-17]. Peek disputes the government's contention, arguing that the "speculative testimony" based on the pole camera footage failed to establish reasonable suspicion to support the stop of the vehicle Peek was driving. [Doc. 629 at 5-9]. Even if Trooper Bailey had lacked

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<sup>6</sup> "Since the Court concludes probable cause supported [Trooper Bailey's] decision to stop [Peek's] vehicle, the stop also was supported by reasonable suspicion, a lesser degree of proof than probable cause." United States v. Shirley, Criminal Action File No. 1:10-CR-167-JEC/AJB, 2010 WL 5390138, at \*5 n.8 (N.D. Ga. Nov. 10, 2010), adopted by 2010 WL 5390133, at \*1 (N.D. Ga. Dec. 22, 2010); see also Moody, 240 F. App'x at 859 (finding the officer "reasonably believed, based on his eight years of experience enforcing the window tint statute, that [defendant's] windows were in violation of the window tint law when he observed that he could not (1) see the front passenger's facial features or (2) determine the number of passengers in the back seat" and "[b]ecause he had a reasonable suspicion that the car was in violation of Georgia law, the stop did not violate the Fourth Amendment"); United States v. Johnson, No. CR05-4063-MWB, 2005 WL 2704892, at \*7 (N.D. Iowa Oct. 20, 2005) (citations omitted) (Officer's "observation of the darkly tinted windows on the [vehicle] provided him with at most probable cause and no less than reasonable suspicion to believe that the [vehicle's] windows had an excessive tint, in violation of [state] law, justifying stop of the vehicle.").



probable cause to stop Peek for a traffic offense, the Court finds that “the stop of [his] vehicle was justified by reasonable suspicion based on information obtained through the agents’ collective investigation and surveillance.” United States v. Goldenshtein, Criminal Case No. 1:10-CR-00323-TCB-RGV, 2011 WL 1321573, at \*10 (N.D. Ga. Feb. 22, 2011), adopted by 2011 WL 1257147, at \*1 (N.D. Ga. Apr. 1, 2011).

When an investigative stop is performed by an officer at the direction of other officers, the Court must examine the collective knowledge of all the officers in determining whether there existed reasonable suspicion. Whiteley v. Warden, Wyo. State Penitentiary, 401 U.S. 560, 568 (1971); see also United States v. Mikell, 102 F.3d 470, 474-75 (11th Cir. 1996). It is the government’s burden to demonstrate that the officer had such a basis before initiating the stop. See Welsh v. Wisconsin, 466 U.S. 740, 749-50 (1984); see also United States v. Agarwal, CIVIL ACTION FILE NUMBER 1:17-cr-043-TCB, 2018 WL 2181620, at \*3 (N.D. Ga. May 11, 2018) (citation omitted). As previously stated, “[p]robable cause is not required to justify an investigative stop; reasonable suspicion is sufficient.” United States v. Pineda-Zuniga, CRIMINAL CASE NUMBER: 1:16-CR-00323-2-LMM-JSA, 2017 WL 9477640, at \*5 (N.D. Ga. Aug. 18, 2017) (footnote and citations omitted), adopted by 2017 WL 4074785, at \*3 (N.D. Ga. Sept. 14, 2017). “In deciding whether there is reasonable suspicion, the Court is to consider the collective knowledge of all law

enforcement officers working together, to the extent they maintained at least a minimal level of communication during their investigation.” Id. (citing United States v. Willis, 759 F.2d 1486, 1494 (11th Cir. 1985)).

In this case, agents conducting surveillance observed what they believed to be a drug trafficking transaction involving the white Honda based on their training, experience, and investigation of the PGF. (Tr. at 22-36). Trooper Bailey had been briefed on the PGF investigation and the observations from surveillance via the pole camera earlier in the day, and he was in communication with the agents conducting the surveillance, (Tr. at 41-42; Gov’t Exs. 4, 4A-F), and these “facts provided a specific, concrete, and quite strong basis to conclude that criminal activity was afoot, and that [Peek’s vehicle] was transporting evidence,” Pineda-Zuniga, 2017 WL 9477640, at \*5; see also Goldenshtein, 2011 WL 1321573, at \*11. Thus, the “stop was justified at least by reasonable suspicion.” Pineda-Zuniga, 2017 WL 9477640, at \*5 (footnote and citations omitted); see also United States v. Bully, 729 F. App’x 671, 675 (11th Cir. 2018) (per curiam) (unpublished) (finding agents had reasonable suspicion to initiate a traffic stop after defendant accepted a package containing sham drugs and later exited the residence); United States v. Nunez, 455 F.3d 1223, 1226 (11th Cir. 2006) (per curiam) (finding stop was based on reasonable suspicion since defendant was seen entering a house known to contain a marijuana growing operation and subsequently left with a garbage

bag); United States v. Khan, CRIMINAL CASE NO. 1:17-CR-0040-SCJ, 2018 WL 2214813, at \*7 (N.D. Ga. May 15, 2018) (citation omitted) (finding officers had probable cause to stop vehicle where “prior to the traffic stop of [d]efendant’s car, [the] [t]rooper [] had been contacted by the DEA and was told that someone would be bringing Spice (synthetic marijuana); that on the date in question, [ he] was on stand-by at the DEA’s request; that [ he] had a DEA radio mounted in his car; that the DEA was communicating with [ him] by radio on the day of the [d]efendant’s traffic stop; and that [ he] knew what was happening via the updates over the DEA radio”). Accordingly, Trooper Bailey had probable cause to stop Peek for the window tint violation, and the stop was also justified by reasonable suspicion that the vehicle contained evidence of drug trafficking.

### **3. Scope and Duration of the Traffic Stop**

Peek next argues that the items seized from the white Honda should be suppressed because the GSP Troopers unreasonably prolonged the traffic stop. [Doc. 629 at 13-15]. Peek contends that Trooper Bailey’s actions during the traffic stop “were not reasonably related in scope to the circumstances which justified the traffic stop in the first place” for a window tint violation, and “the duration of the traffic stop (approximately an hour) was not limited to the time necessary to effectuate the purpose of the stop, especially since Trooper Bailey testified that he observed the window tint violation and smelled the marijuana immediately upon

[the vehicle] coming to a stop.” [*Id.* at 14 (emphasis omitted)]. The government responds that “Peek’s argument fails under any construction of the situation surrounding the traffic stop,” [Doc. 641 at 20], because “the traffic stop was based (at least in part), on the collective knowledge of law enforcement related to the PGF investigation,” so “Trooper Bailey’s actions investigating potential narcotics possession were not unrelated to the purpose of the stop, and therefore did not unlawfully prolong that stop or exceed a reasonable scope,” [*id.* (footnote and citation omitted)], but even if the stop had been purely based on the traffic violation, “Trooper Bailey gained reasonable suspicion to conduct unrelated investigatory actions related to narcotics (particularly marijuana) possession immediately upon encountering Peek during the stop when he smelled the distinct odor of marijuana from Peek’s vehicle on his initial approach,” and “therefore had reasonable suspicion (and even probable cause) to investigate Peek’s possession of narcotics, including by questioning Peek about the presence of marijuana,” [*id.* at 21 (citations omitted)]. The Court finds that the scope and duration of the traffic stop were reasonable under the circumstances that confronted Trooper Bailey.

Although an officer may have justification to initiate a traffic stop, the ensuing detention of a vehicle’s occupant must not be excessively intrusive in that the officer’s actions “must be ‘reasonably related in scope to the circumstances which justified the interference in the first place.’” United States v. Boyce, 351 F.3d

1102, 1106 (11th Cir. 2003) (quoting Terry, 392 U.S. at 20); see also United States v. Cantu, 227 F. App'x 783, 785 (11th Cir. 2007) (per curiam) (unpublished). The stop must be of limited duration and “may not last any longer than necessary to process the traffic violation unless there is articulable suspicion of other illegal activity.” Garcia, 284 F. App'x at 794 (citation and internal marks omitted). The duration of the traffic stop “must be limited to the time necessary to effectuate the purpose of the stop.” Purcell, 236 F.3d at 1277 (quoting United States v. Holloman, 113 F.3d 192, 196 (11th Cir. 1997) (per curiam)).

“Asking questions while in the process of writing out a citation or awaiting the response of a computer check, however, does not extend the duration or scope of a valid initial seizure.” Garcia, 284 F. App'x at 794 (citing Purcell, 236 F.3d at 1279-80); see also United States v. Acosta, 807 F. Supp. 2d 1154, 1196-97 (N.D. Ga. 2011) (footnote and citations omitted) (“The duration of a traffic stop may be prolonged to investigate, by the use of computer checks, the driver’s license and the vehicle registration and, for officer’s safety, the criminal history of the driver.”), adopted at 1169. In fact, “[t]he officer can lawfully ask questions, even questions not strictly related to the traffic stop, while waiting for a computer check of registration or examining a driver’s license so long as it does not prolong beyond the time reasonably required to complete that mission.” Cantu, 227 F.

App'x at 785 (alteration, citation, and internal marks omitted).<sup>7</sup> “Ordinarily, when a citation or warning has been issued and all record checks have been completed and come back clean, the legitimate investigative purpose of the traffic stop is fulfilled.” Edenilson-Reyes, 2010 WL 5620439, at \*10 (citation and internal marks omitted).

“However, a traffic stop may last longer than the purpose of the stop would ordinarily permit if an officer, based on specific facts and rational inferences drawn from those facts in light of his training and experience, has an objectively reasonable and articulable suspicion that illegal activity has occurred or is occurring.” United States v. DeJesus, 435 F. App'x 895, 900 (11th Cir. 2011) (per curiam) (unpublished) (citations omitted). That is, “[a]n investigative stop can grow out of a traffic stop so long as the officer has reasonable suspicion of criminal activity to expand his investigation, even if his suspicions were unrelated to the traffic offense that served as the basis of the stop.” United States v. Gomez Serena, 368 F.3d 1037, 1041 (8th Cir. 2004) (citation omitted). As the Supreme Court has held, “[a] seizure justified only by a police-observed traffic violation . . . become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e]

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<sup>7</sup> That is, “[a]n officer’s inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.” Arizona v. Johnson, 555 U.S. 323, 333 (2009) (citation omitted).

mission of issuing a ticket for the violation,” absent either reasonable suspicion or consent. Rodriguez v. United States, 575 U.S. 348, 350-51 (2015) (third and fourth alteration in original) (citation and internal marks omitted).

“[I]f the initial stop was legal, the [officer] had the duty to investigate suspicious circumstances that then came to his attention.” Simmons, 172 F.3d at 779 (second alteration in original) (emphasis, citation, and internal marks omitted).

As previously discussed, the evidence presented at the hearing supports application of the collective knowledge doctrine, and the collective knowledge of the GSP Troopers and the agents investigating the PGF provided reasonable suspicion to prolong the stop and investigation of whether Peek was transporting narcotics or proceeds of drug trafficking in the white Honda. See United States v. Armstrong, No. CR 315-001, 2015 WL 2452901, at \*5-6 (S.D. Ga. May 21, 2015) (finding decision to initially hold defendant for six minutes after he was issued a traffic warning in order to conduct a free air sniff was reasonable at its inception based on the collective knowledge of all officers, which was imputable to the officer conducting the traffic stop and that included information provided by confidential informants that the defendant was a drug courier), adopted at \*1. Moreover, as the government correctly contends, even aside from the collective knowledge doctrine, Trooper Bailey had at least reasonable suspicion to investigate whether Peek had marijuana in the vehicle since Trooper Bailey

detected the odor of marijuana coming from the white Honda after making the stop and Peek admitted that marijuana was inside the vehicle. See United States v. Salley, 341 F. App'x 498, 500–01 (11th Cir. 2009) (per curiam) (unpublished) (odor of marijuana justified additional detention); United States v. Key, CRIMINAL ACTION FILE NO. 1:18-cr-0416-SCJ-AJB, 2019 WL 3099606, at \*6 (N.D. Ga. June 25, 2019) (citations omitted) (“After the vehicle was stopped, the officers detected the odor of marijuana coming from inside the vehicle. As a result, the officers were entitled to further investigate the vehicle’s driver and occupants based on a reasonable suspicion of criminal activity.”), adopted by 2019 WL 3075931, at \*1 (N.D. Ga. July 15, 2019).

Peek also complains about the length of the stop, and “the length of the delay consumed in the conduct of the investigative detention must have been ‘sufficiently limited in scope and duration to remain within the bounds’ permitted by *Terry*.” Simmons, 172 F.3d at 780 (quoting United States v. Hardy, 855 F.2d 753, 758 (11th Cir. 1988)). “Several issues and circumstances are relevant to this analysis, including ‘the law enforcement purposes served by the detention, the diligence with which the police pursue the investigation, the scope and intrusiveness of the detention, and the duration of the detention.’” Id. (quoting Hardy, 855 F.3d at 758); see also United States v. Hernandez, Criminal Case No. 1:12-CR-00322-AT-JFK, 2013 WL 7035606, at \*7 (N.D. Ga. Aug. 12, 2013), adopted



as modified by 2014 WL 111211, at \*1 (N.D. Ga. Jan. 13, 2014), supplemented by, 17 F. Supp. 3d 1255 (N.D. Ga. 2014). As to the first factor, the law enforcement purpose served by prolonging the stop beyond the initial traffic offense was to confirm or dispel the reasonable suspicion that Peek may be transporting narcotics or proceeds of drug trafficking in the vehicle. Trooper Bailey pursued his investigation diligently as he conversed with Peek about the purpose of the stop and upon smelling the odor of marijuana coming from the vehicle when Peek lowered the window, he asked Peek to exit the white Honda for officer safety concerns. (Tr. at 95-97); see also (Gov't Ex. 8 at 01:35-01:40). Trooper Bailey promptly asked Peek about the ownership of the vehicle and mentioned smelling the odor of marijuana coming from the vehicle, (Tr. at 98-99), and Peek said he had smoked marijuana in the vehicle the previous day and that marijuana was still in the vehicle, and Peek consented to Trooper Bailey retrieving the marijuana from the white Honda, (Tr. at 99-101); see also (Gov't Ex. 8 at 03:10-04:00).

Around the same time, Trooper Graves arrived at the stop and proceeded to check the level of tint on the windows of the white Honda, using an agency-provided window tint meter to check the level of tint. (Tr. at 100-01, 146-148; Gov't Ex. 8 at 02:27-03:45). After Trooper Graves confirmed that the tinting on the front windshield and the level of tint on the side windows violated Georgia law, Trooper Bailey retrieved the marijuana from the white Honda in the location

where Peek indicated it would be found. (Tr. 103-104; Gov't Ex. 8 at 04:04-04:17). Trooper Bailey estimated the amount of marijuana was approximately seven to eight grams, (Tr. at 104), and after examining the marijuana, Troopers Bailey and Graves detained Peek, placing him in handcuffs, but he remained standing next to their patrol vehicles, (Tr. at 105-06); see also (Gov't Ex. 8 at 04:15-05:00).

Once Peek was detained, Trooper Bailey searched the white Honda, (Tr. at 106); see also (Gov't Ex. 8 at 05:29-15:50), and he found in the trunk, among other things, a paper bag containing bundles of cash, (Tr. at 108-09; Gov't Ex. 8 at 08:17-08:25). Trooper Bailey found additional bundles of cash in the center console of the white Honda. (Tr. at 112; Gov't Ex. 8 at 15:35-16:04). Peek also had cash on his person. (Tr. at 115); see also (Gov't Ex. 8 at 16:40-16:50). Peek did not provide an explanation for why he was traveling with a large amount of bundled cash. (Tr. at 109-110). After consulting with Agent Tice, Troopers Bailey and Graves confiscated the cash and marijuana from the white Honda and released Peek with a receipt for the cash and a citation for improper window tint. (Tr. at 115-116). The total duration of the stop was less than one hour, and although "[t]here is no rigid time limitation or bright line rule regarding the permissible duration of a *Terry* stop," United States v. Nuckles, Criminal Case No. 1:14-CR-218-ODE-AJB, 2015 WL 1600687, at \*17 (N.D. Ga. Apr. 7, 2015) (citation and internal marks omitted), adopted at \*9, aff'd, 649 F. App'x 834 (11th Cir. 2016) (per curiam)

(unpublished), “detentions of less than one hour have been repeatedly upheld as reasonable,” *id.* (collecting cases). Thus, the duration of the stop in this case was reasonable, and the Court concludes that the purpose of the detention, Trooper Bailey’s diligence in completing the stop to confirm or dispel his reasonable suspicion of illegal activity, “the limited scope of the continued detention beyond that warranted for a ‘normal traffic stop,’ and the overall length of the total detention, all place [Peek’s] detention well within the bounds permitted by *Terry v. Ohio* and its progeny.” *Simmons*, 172 F.3d at 780.

#### **4. Probable Cause to Search the Vehicle**

Finally, Peek asserts that “nothing occurred at the traffic stop that authorized the search of his vehicle,” [Doc. 629 at 1], but he does not further develop this argument, *see [id.]*. The government responds that having properly stopped the white Honda, “Trooper Bailey had probable cause to conduct a warrantless search of the vehicle on a number of bases,” [Doc. 641 at 19], including his detection of marijuana odor coming from the vehicle, Peek’s admission that he had smoked marijuana the prior day and that marijuana was still in the vehicle, and the collective knowledge of the agents investigating the PGF who had observed the suspected narcotics transaction during their surveillance prior to the stop, [*id.* at 17-19].

“The legality of a warrantless automobile search is based on the existence of probable cause to believe that the automobile is carrying contraband subject to forfeiture under the law, and the difficulties of securing a moveable vehicle while a warrant is obtained.” United States v. Thomas, 536 F. Supp. 736, 742 (M.D. Ala. 1982); see also Chambers v. Maroney, 399 U.S. 42, 51-52 (1970); United States v. Alexander, 835 F.2d 1406, 1409 (11th Cir. 1988). Thus, a warrantless search of an automobile is authorized where probable cause coupled with exigent circumstances is present. Thomas, 536 F. Supp. at 742 (citing Coolidge v. New Hampshire, 403 U.S. 443, 458-64 (1970)). Probable cause to search exists “‘when the facts and circumstances would lead a reasonably prudent [person] to believe that the vehicle contains contraband.’” Alexander, 835 F.2d at 1409 (alteration in original) (quoting United States v. Clark, 559 F.2d 420, 424 (5th Cir. 1977)). Exigent circumstances exist by the mere potential mobility of the vehicle. United States v. Nixon, 918 F.2d 895, 903 (11th Cir. 1990) (the requirement of exigent circumstances is satisfied by the “ready mobility” inherent in all vehicles that reasonably appear to be capable of functioning). “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” United States v. Ross, 456 U.S. 798, 825 (1982).

The warrantless search of Peek's vehicle was supported by probable cause to believe it contained contraband.<sup>8</sup> As previously stated, Trooper Bailey testified that he smelled the odor of marijuana coming from Peek's vehicle as he approached to investigate the tinting of the windows on the white Honda. (Tr. at 95-96). In this context, "it is 'clearly established that the recognizable smell of marijuana gives rise to probable cause supporting a warrantless search.'" United States v. Johnson, No. CR407-164, 2007 WL 2874303, \*3 (S.D. Ga. Sep. 26, 2007) (quoting United States v. Lueck, 678 F.2d 895, 903 (11th Cir. 1982)); see also United States v. Hodges, Criminal Action No. 5:07-CR-55 (WDO/HL), 2007 WL 3027360, \*1 (M.D. Ga. Oct. 15, 2007); United States v. Ferguson, No. 2:07-cr-25-WKW, 2007 WL 2746759, \*3 (M.D. Ala. Sep. 20, 2007); United States v. Hamilton, No. CR407-122, 2007 WL 2582233, \*3 (S.D. Ga. Aug. 31, 2007); United States v. Hernandez-Arellano, No. 2:06-cr-147-WKW, 2006 WL 2864406, \*4 (M.D. Ala. Oct. 5, 2006). "At the point marijuana was smelled by [the officer], probable cause to believe a crime had been committed, namely . . . possession of contraband, arose." Lueck, 678 F.2d at 903. Although the odor of marijuana coming from the vehicle alone provided probable cause for the warrantless search in this case, the evidence presented at the hearing established additional facts further supporting probable

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<sup>8</sup> The exigency requirement is satisfied as Peek had just been observed driving the vehicle, demonstrating its mobility. See (Tr. at 89-90).

cause to search the vehicle. Peek admitted that he had smoked marijuana in the vehicle the day prior and indicated that marijuana remained in the vehicle, and his statements supplied probable cause to believe that contraband would be found in the white Honda.<sup>9</sup> See (Tr. at 100-01); see also (Gov't Ex. 8 at 03:10-04:00).

### III. CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Peek's motion to suppress, [Doc. 420], be **DENIED**.

There are no other pending matters before the Magistrate Judge regarding Peek, and the undersigned is aware of no problems relating to the scheduling of his case. However, motions filed by other co-defendants in this case will be addressed in a separate Report and Recommendation, and once all the pretrial motions have been addressed, the case will be certified as Ready for Trial.

**IT IS SO RECOMMENDED**, this 6th day of February, 2025.

  
RUSSELL G. VINEYARD  
UNITED STATES MAGISTRATE JUDGE

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<sup>9</sup> The government also argues that the collective knowledge of the agents investigating the PGF that was communicated to the GSP Troopers prior to the stop supplied probable cause for the search of the vehicle, but the Court need not reach this argument since the evidence presented at the evidentiary hearing supplied probable cause to support the search of the vehicle for the reasons already discussed.