

**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-4
	::	
ALEXAVIER NEGRON,	::	
<i>also known as Lulu</i>	::	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Defendant Alexavier Negron (“Negron”) is named along with eleven other co-defendants in a twenty-four-count superseding criminal indictment that charges Negron with conspiring to possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846, one count 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, and one count of knowingly possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). [Doc. 528].¹ Negron has filed a motion to suppress evidence seized during a search of his residence pursuant to a search warrant issued on April 24, 2023, [Doc. 398], which he perfected regarding his standing, [Doc. 417], and following preliminary

¹ 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.

briefing on the issue of standing, see [Docs. 441, 445, 462, 477, & 525], the Court determined that Negrón had “made an adequate preliminary showing of standing to proceed to the merits of [his] motion” during an evidentiary hearing on April 12, 2024, see [Doc. 565]. The government has since filed a response to Negrón’s motion to suppress, [Doc. 600], and Negrón has filed a reply in support of his motion, [Doc. 633]. For the reasons that follow, it is **RECOMMENDED** that Negrón’s motion to suppress, [Doc. 398], 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. [Doc. 398-1 at 8 ¶ 11].² The investigation involved the use of federal wiretaps, including the monitoring of wire communications over eleven different telephones and electronic communications over two telephones; human sources; and “hundreds of hours of physical/electronic surveillance,” including the installation of a remote-operated pole camera in a neighborhood on Stanford Drive in Ellenwood, Georgia, where DEA agents suspected PGF members conducted drug trafficking activities. [Id. at

² The facts set forth in this section are drawn from the affidavit of DEA Special Agent Bryan Tice (“Agent Tice”) submitted in support of the application for the residential search warrant that is the subject of Negrón’s motion, see [Doc. 398-1], and do not represent findings of fact by the Court.

9-10 ¶¶ 12-14]; see also [id. at 41-44 ¶¶ 90-94]. The investigation revealed that individuals affiliated with the PGF were distributing several different types of narcotics in multiple kilogram amounts in the Northern District of Georgia and several alleged PGF members and associates, including Negron, were identified during the investigation. [Id. at 8 ¶ 11, 11-12 ¶¶ 17, 19-20, 41 ¶ 89]. Specifically, Agent Tice averred that “[t]hrough this investigation, agents [] learned that [Negron] is [a] high ranking member of the PGF and a domestic source of supply” based on, “[f]or example,”: intercepted communications on July 20, 2022, between Negron and co-defendant Rodrigus Williams (“Williams”), also known as “Dreek,” during which Negron asked Williams to meet his girlfriend to pick up money, and when agents ultimately conducted surveillance of Williams and Negron’s girlfriend, they observed Negron’s girlfriend come out of her house carrying a black box which she gave to Williams, and Georgia State Patrol conducted a traffic stop of Williams after he left and “seized approximately \$151,000 (which was in a black shoe box), a 9mm caliber firearm, and a small amount of marijuana”; intercepted communications later that same day between Negron and Williams during which they discussed the traffic stop; a few days later, Negron activated two new telephones and disconnected a telephone number that agents had intercepted; intercepted communications on April 7, 2023, between Negron and an individual whose initials are “V.V.” and who was

identified as “a cocaine source of supply, partner of [Negron], and a close associate of other leaders of the PGF,” during which Negron “told V.V. that he was waiting on six different customers to each pay for a kilogram of cocaine,” asked “V.V. if they were still on schedule to get resupplied drugs on the next day,” which V.V. confirmed, and Negron “told V.V. that he should have money to pay for two to three kilograms of drugs”; intercepted communications on April 10, 2023, between Negron and V.V. during which they discussed money, Negron told V.V. that “he still had three people that owed him money for drugs supplied,” and V.V. told Negron that Williams “had called him the night prior wanting to get four or five kilograms of drugs[.]” [*Id.* at 11 ¶ 17(g), 12 ¶ 20, 41-44 ¶¶ 89-94].

Negron was indicted on April 19, 2023, along with others for conspiracy to possess with intent to distribute controlled substances. [Doc. 1]. On April 24, 2023, Agent Tice applied for and was granted search warrants for various locations, including 2679 Dayview Lane, Atlanta, Georgia, which was believed to be Negron’s residence. See [Doc. 398-1]. In the affidavit in support of the search warrant for 2679 Dayview Lane, Agent Tice attested that he believed the residence contained jewelry that evidenced PGF membership, as well as evidence of money laundering; drug proceeds; and telephones used to conduct drug trafficking based on federal search warrants that were executed for Negron’s iCloud accounts associated with Negron’s cellphone numbers and intercepted telephone calls, in

addition to Agent Tice's knowledge, based on his "training, experience, discussions with other law enforcement personnel and participation in other narcotics investigations involving drugs and U.S. currency," that drug traffickers and money launderers often keep "currency, . . . precious metals, jewelry, [] other items of value, and proceeds of drug transactions" in "secure yet convenient locations such as their homes," in addition to cellphones and electronic devices that contain contact lists, photographs, videos, text messages, call records, and other valuable information. [Id. at 5-7 ¶ 10, 44-45 ¶¶ 96-98]. Agent Tice further explained that he believed 2679 Dayview Lane was Negron's residence since, "on multiple occasions[,] agents ha[d] conducted surveillance and used geo-location data for" Negron's phone which revealed the phone was in close proximity to the residence "during the night and early morning hours on a regular basis," and agents frequently observed Negron's vehicles in the driveway or garage of the residence. [Id. at 44 ¶ 95].

Negron has filed a motion to suppress, challenging the search warrant issued on April 24, 2023, and the resulting search of the residence located at 2679 Dayview Lane. [Doc. 398]. The government opposes the motion, [Doc. 600], arguing that Negron has failed to establish standing to bring the motion, [id. at 11-17], and even if he had standing, Negron has "failed to make a substantial preliminary showing that [Agent] Tice omitted information in the affidavit in bad

faith or that the affidavit would lack probable cause if the information was included,” [*id.* at 17-25]. For the reasons that follow, it is **RECOMMENDED** that Negron’s motion to suppress, [Doc. 398], as perfected, [Doc. 417], be **DENIED**.

II. DISCUSSION

A. Standing

After Negron filed his motion to suppress, the government contested his standing at the pretrial conference, and the Court ordered Negron to perfect his motion to establish his standing to challenge the search of the residence. [Doc. 406]. Negron filed a “Perfected Motion to Suppress to Address Standing,” [Doc. 417 (emphasis and all caps omitted)], arguing that he had standing to challenge the search of 2679 Dayview Lane because he “was an overnight visitor to the residence searched, and he [was] prepared to testify to that effect if called upon,” [*id.* at 2]. The government filed a response, [Doc. 445], arguing that Negron had not presented any “evidence to establish that he had a reasonable expectation of privacy in the residence,” since his perfected motion did “not contain an affidavit or other sworn statement by [Negron] or any other witnesses; nor [were] any copies of documents such as a deed or lease to the residence attached or provided,” and “general, unsworn assertions made by counsel are insufficient proof to establish standing,” but “even if the statement had been sworn, it is vague,

conclusionary, and offers no proof of the facts it strives to establish.” [id. at 10, 12-13].

In his reply brief, Negron asserted that “the evidence amply demonstrate[d] his privacy interests in the home, and he [was] not required to submit any additional evidence to prove his standing to challenge the residential search.” [Doc. 462 at 2]. Specifically, he pointed to the April 24, 2023, warrant application submitted by Agent Tice, which included Agent Tice’s attestation that he believed 2679 Dayview Lane was Negron’s residence based on an intercepted phone call, conducted surveillance, and geo-location data for Negron’s cell phone, in addition to the fact that when law enforcement entered the residence to execute the search warrant, Negron and his girlfriend “were the only two people in the home at that early morning hour, suggesting of course that they either resided there or were at the very least overnight guests at the home,” and Negron was encountered “partially dressed in his underwear” and his personal effects were discovered at the residence. [Id. at 2-4]. Negron asserted that after he was arrested, “the government left the search warrant and property receipts with [his] girlfriend, . . . and likewise turned over the home to [her], who clearly gave every indication that she resided at the home and no indication that [] Negron had broken into the residence or was otherwise there without her permission.” [Id. at 4]. Finally, Negron contended that there was “no rule that [he] must submit a notarized

statement to establish his right to privacy, nor [was] he required to take the stand and testify.” [Id. at 5-6].

The government filed another response in opposition to Negron’s motion to suppress on February 21, 2024, [Doc. 477], arguing that Negron “still ha[d] not alleged facts that would show his reasonable expectation of privacy in [2679] Dayview Lane,” [id. at 3]. Specifically, the government asserted that “[n]one of [Negron’s] allegations, individually or when taken in total, [were] sufficient to establish [his] standing to contest the search of [2679] Dayview Lane” because they did not show: “(1) that [Negron] was an overnight guest of someone who had authority to invite him to be there”; “(2) that he had the right to exclude others from [2679] Dayview Lane”; “(3) that he took normal precautions to maintain his privacy, such as possessing a key”; and “(4) that he was there for personal reasons and not a commercial purpose.” [Id. at 6 (citation omitted)]. The government argued that “[a]t best, the geo-location evidence shows only that [Negron] was present at [2679] Dayview Lane, which is insufficient to establish standing,” and similarly, the fact that Negron was encountered in his underwear and his passport was found at the residence are insufficient to show standing. [Id. at 7-8 (citations omitted)]. Further, the government asserted that the fact that agents gave Negron’s girlfriend property receipts and allowed her to stay at the residence after the search warrant was executed did “not establish the affirmative fact that she

was an occupant who had the authority to invite [Negron] to stay there overnight.” [Id. at 9]. The government concluded by pointing out that Negron had “three opportunities to present evidence to demonstrate his standing to contest the search of [2679] Dayview Lane,” but he “still fail[ed] to allege facts which would show that he [was] entitled to the relief he seeks.” [Id. at 12 (footnote omitted)].

On April 8, 2024, a few days before an evidentiary hearing on his standing was scheduled to occur, see [Doc. 565], Negron filed a “Supplement to Perfected Motion to Suppress,” [Doc. 525 (emphasis and all caps omitted)]. In this document, Negron asserted that on the day of his arrest, he and his girlfriend “were renting the [2679] Dayview Lane residence and sharing responsibility for the bills,” [id. ¶ 1], and he attached an affidavit of Haleigh Bell (“Bell”), who attested that she was in a romantic relationship with Negron at the time of his arrest and they were renting the residence located at 2679 Dayview Lane and shared responsibility for the bills, [Doc. 525-1 at 1]. Negron also attached a certified letter from Comcast providing records that established that Negron was a subscriber at 2679 Dayview Lane for the period from November 1, 2022, through April 30, 2023. See [Doc. 525-2]. Negron thus argued that he was “lawfully present in the residence and had a legitimate expectation of privacy therein sufficient to challenge the search of the residence.” [Doc. 525 ¶ 4]. At the evidentiary hearing on April 12, 2024, the Court determined that Negron had “made an adequate

preliminary showing of standing to proceed to the merits of the motion.” [Doc. 565 at 1].

The government has filed a response to Negron’s motion to suppress in which it continues to contest Negron’s standing to challenge the search of 2679 Dayview Lane. See [Doc. 600]. Specifically, the government argues that Negron “fail[ed] to establish that he had an objectively reasonable expectation of privacy in [2679] Dayview Lane that would allow him to contest the search there[.]” since, although it “agrees that *if* [Negron] rented [2679] Dayview Lane from someone who could convey a leasehold interest, he would have standing,” Negron “has not produced a lease, an affidavit from the lessor, or even identified from whom he leased [2679] Dayview Lane.” [Id. at 13-14 (citations omitted)]. The government asserts that instead, Negron “relies primarily on the affidavit from [] Bell that the two rented the residence,” but “even fully crediting [Bell’s] testimony, [she] also fails to identify from whom she purported[ly] leased [2679] Dayview Lane,” and the record is “thus devoid of any evidence which would allow the Court to find that [Negron] leased [2679] Dayview Lane from someone who could convey that interest.” [Id. at 14-15 (footnote and citations omitted)]. The government contends that Negron “must demonstrate that he rented the property from someone who could convey that interest,” and “[w]hile [it] expected that [Negron] would easily be able to do so, with each response, [Negron] has failed to provide this

information,” and thus, the government “does not believe that [Negron] has provided the evidence which would allow it to agree that [he] has established standing.” [Id. at 17 (citations omitted)]. Therefore, the government argues that “[b]ecause the record on this issue is now closed and there is still no evidence that [Negron] leased the property from someone who had an ownership or leasehold interest in it, the Court should find that [he] failed to meet his burden of establishing standing and should summarily deny his motion.” [Id.].

In his reply brief, Negron argues that the “government’s argument lacks merit, creates its own standard for asserting standing, and is also a misstatement of the law.” [Doc. 633 at 4]. Specifically, Negron contends that “the government has not cited to any binding authority that requires [him] to produce a lease, an affidavit from the lessor, or identify from whom he leased his residence,” and the two cases that the government cites to support its position are either markedly different or nonbinding. See [id. at 4-6 (citations omitted)]. Negron asserts that he “has submitted proof that he was residing in his residence for months, [] that he and his girlfriend were paying the electric bill, gas bill, and cable/internet bill for the home,” and “proof that they had personal and important paperwork connected to the home, such as [his] passport being found in the residence and [] Bell’s driver’s license listing the . . . residence as her home address,” and the “government’s own evidence (including geo-location data placing [] Negron

at/near [2679 Dayview Lane] in early morning/late evening hours) shows that [he] was residing at [2679 Dayview Lane.” [Id. at 6 (footnote and citation omitted)]. Negron argues that “[e]ven without having a written lease or homeowner, [he] has clearly established that he was renting the home and thus had an expectation of privacy that society is prepared to recognize as reasonable,” but “at the very least [he] has established that his girlfriend, [] Bell, was legitimately renting the home (as demonstrated by the utility bills and her driver’s license) and he had her permission to be there.” [Id.]. Negron contends that “the law simply does not require that someone produce a lease, or an affidavit, or testify, or be a homeowner to have an expectation of privacy in their homes,” and “[g]iven the affidavit produced by [] Bell, the bills and documents submitted in support, and the government’s own evidence, [he] was clearly residing at the residence, lawfully present therein, and had a legitimate expectation of privacy sufficient to challenge the search of the residence.” [Id. at 7].

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, Negron 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, Negron 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, Negron “must establish both

a subjective and an objective expectation of privacy,”³ and he “bears the burden of showing a 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).

“The Court concludes that [Negron] has submitted sufficient evidence to show that he had a legitimate expectation of privacy with respect to [2679 Dayview Lane].” United States v. Ray, 541 F. Supp. 3d 355, 380 (S.D.N.Y. 2021). At the very least, Negron’s “status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as

³ “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).

reasonable.” Minnesota v. Olson, 495 U.S. 91, 96-97 (1990). Because “[o]vernight guests are among persons courts have recognized as having a reasonable expectation of privacy[.]” United States v. Gaitor, 2:20-CR-33, 2021 WL 3683897, at *2 (E.D. Tenn. July 16, 2021) (citation omitted), adopted by 2021 WL 3268362, at *3 (E.D. Tenn. July 31, 2021); see also United States v. Maxi, 886 F.3d 1318, 1326 (11th Cir. 2018) (citation omitted) (“An overnight guest has a reasonable expectation of privacy in a residence sufficient to establish standing.”), it “is not necessary that the defendant own the home or be a signatory on a lease or rental agreement; even an overnight guest can have a Fourth Amendment right when he resides at a home ‘with the permission of his host, who is willing to share [her] house and [her] privacy with [her] guest,’” Ray, 541 F. Supp. 3d at 380 (citation omitted) (quoting Olson, 495 U.S. at 99)).

Negron submitted an affidavit by Bell in supplement to his perfected motion to suppress, see [Docs. 525 & 525-1], in which Bell attested that at the time of Negron’s arrest, she was in a romantic relationship with Negron, and they “were renting a place at 2679 Dayview Lane,” [Doc. 525-1 at 1]. Bell averred that she and Negron “shared responsibility for the bills at [the residence],” [id.], and she attached to her affidavit a gas bill dated March 27, 2023, and an electric bill dated March 15, 2023, for the residence in her name, in addition to a piece of mail addressed to her at 2679 Dayview Lane dated April 30, 2023, and her driver’s

license with 2679 Dayview Lane listed as her address, see [id. at 3-6]. Negron also submitted records from Comcast indicating that he was the registered subscriber for internet and cable television services at the residence on the date the search warrant was executed, see [Doc. 525-2], and the record reflects that his passport was located at the residence, see [Doc. 462 at 4]. Finally, the record reflects that when the search warrant was executed at approximately 5:00 a.m., Negron was encountered at 2679 Dayview Lane “partially dressed in his underwear.” [Id. at 3].

“On these facts, [Negron] had reasonable expectations of privacy in [2679 Dayview Lane].” Maxi, 886 F.3d at 1326 (finding the defendant had standing to challenge the search of a duplex where he testified that he lived at both the duplex and his father’s house; lived intermittently at the duplex for the prior three to six months; paid half the rent to the duplex; had a key; and kept certain documents at the duplex, including his Social Security papers, and stating that defendant “was more than just an overnight guest—he was effectively a subtenant”); see also Zayas-Acosta v. Sec’y, Dep’t of Corr., Case No. 8:20-cv-2793-SDM-AAS, 2024 WL 987606, at *7 (M.D. Fla. Mar. 7, 2024) (citations omitted) (finding defendant “held a legitimate expectation of privacy in the residence and had standing to challenge the search of the residence” where the record demonstrated that defendant, “who was [the homeowner’s] friend, stayed at [the homeowner’s] home for two weeks

before the search occurred”); Ray, 541 F. Supp. 3d at 381 (citations omitted) (finding defendant had “said enough to satisfy the constitutional standard for establishing that he had a legitimate expectation of privacy that was implicated by the [g]overnment’s search” where he submitted two declarations in which he averred that he lived at the residence before he was arrested and incarcerated; he was asleep at the residence when agents arrived to conduct the search; and he described the residence as his home); United States v. Estrada, Criminal Action No. 1:06-CR-358-RWS-ECS, 2010 WL 6434088, at *2 n.2 (N.D. Ga. Aug. 2, 2010) (citation omitted) (finding that defendant “provided an affidavit attesting to facts which make a prima facie showing of standing as to [the] residence [of his co-defendant], namely, that he had keys to and was regularly an overnight guest at the apartment; that he contributed to the rent; and that he kept personal items there”), adopted by 2011 WL 1258481, at *1 (N.D. Ga. Apr. 4, 2011); United States v. Bellamy, No. 8:10-cr-58-T-23TBM, 2010 WL 3610437, at *2, *4 (M.D. Fla. June 16, 2010) (citation omitted) (finding defendant “had a justifiable expectation of privacy in the premises at the time the deputies entered the apartment” where he “stayed at [the] apartment on and off and he had stayed there the night before along with his children”), adopted by 2010 WL 3610248, at *1 (M.D. Fla. Sept. 14, 2010), aff’d, 456 F. App’x 863 (11th Cir. 2012) (per curiam) (unpublished). Accordingly, “the Court will proceed to the merits of his arguments for

suppression of the evidence seized from the residence[.]” United States v. Latorre, CRIMINAL CASE NO. 1:20-cr-00272-ELR-RGV, 2020 WL 7685935, at *4 (N.D. Ga. Nov. 23, 2020) (citation omitted), adopted by 2020 WL 7351222, at *1 (N.D. Ga. Dec. 15, 2020).

B. Search Warrant

Negron argues that “[a]ll the evidence obtained from the search of [his] residence was derived directly from an unlawful warrant that contained material misstatements and omissions [in violation of Franks v. Delaware, 438 U.S. 154 (1978)], and therefore, must be suppressed.” [Doc. 398 at 3-4]; see also [Doc. 633 at 7-14]. Specifically, Negron argues that the affidavit submitted in support of the search warrant issued on April 24, 2023, “implies that the \$151,000 seized from [c]o-[d]efendant [Williams’] traffic stop is associated with [] Negron’s residence at 2679 Dayview Lane,” but “that is not the case, and [Agent] Tice knew that was not the case,” since “when [Agent] Tice was seeking a search warrant for multiple iCloud accounts, he specified that [c]o-[d]efendant [Williams] picked up \$151,000 from Quinesha Marshall’s [(‘Marshall’)] residence at [an address other than 2679 Dayview Lane].” [Doc. 398 at 6 (citation omitted)]. Negron contends that Agent Tice “omitted the location details, leaving the Court to come to the reasonable, though erroneous, conclusion that the \$151,000 pickup occurred at [2679 Dayview Lane],” and to “imply [] that the \$151,000 is associated with [] Negron’s residence

is materially misleading,” and similarly, the “failure to provide the true address of the alleged \$151,000 transaction is a material omission.” [Id.]. Negron asserts that “the record is completely devoid of evidence that [] Negron’s residence, [2679 Dayview Lane], was used to further drug trafficking,” and “[b]y misrepresenting the facts, [Agent] Tice deprived the magistrate judge of the ability to weigh whether there was probable cause to support a search warrant for [] Negron’s home.” [Id. at 7].

In response, the government contends that Negron fails to make a substantial showing that would entitle him to a Franks hearing. [Doc. 600 at 17-25]. Specifically, the government argues that Negron does not show Agent Tice omitted information in the affidavit deliberately or in reckless disregard for the truth, since, “in order to show a deliberate omission, [Negron] must show more than that [Agent] Tice knew of information but did not include it,” and Negron fails to show that Agent Tice omitted the address of the \$151,000 pickup “with the purpose of misleading the judge issuing the warrant.” [Id. at 18-19 (citation and internal marks omitted)]. The government asserts that “[w]hen describing the \$151,000 pickup, [Agent] Tice explained that surveilling agents saw [] Marshall ‘come out of *her house*’ with the black box that was later found to contain \$151,000,” and the “fact that [Agent] Tice did not refer to [] Marshall’s house as [2679 Dayview Lane] informed the issuing judge that the money did *not* come from

[2679] Dayview Lane.” [Id. at 19-20 (citation omitted)]. Thus, the government contends that “[w]ithout any reference to [2679] Dayview Lane], there is no basis for believing that [Agent] Tice intended for the issuing judge [to] conclude that [] Marshall was living with [Negron] at [2679] Dayview Lane when describing this incident.” [Id. at 20]. Further, the government points out that “immediately after describing the money pickup, [Agent] Tice relayed that, in July 2022 (the same month as the seizure),” agents intercepted a phone call in which Negron was “discussing that he and his girlfriend were moving into a new house,” and Agent Tice “then connected [Negron] to [2679] Dayview Lane through geo-location data from a phone that [Negron] acquired *after* the \$151,000 seizure,” and thus, “the affidavit indicated that neither [Negron] nor [] Marshall was residing at [2679] Dayview Lane at the time of the \$151,000 seizure.” [Id. (citations omitted)]. The government therefore asserts that Negron “fails to show that [Agent] Tice attempted to connect the \$151,000 seizure with [2679] Dayview Lane.” [Id. at 21]. Finally, the government argues that there was sufficient probable cause to issue the warrant even if the affidavit included Marshall’s address because the address was not material to the finding of probable cause since Agent Tice “focused on [Negron’s] recent drug trafficking activities to connect [2679] Dayview Lane with his criminal activities” in addition to “common practices of large scale drug traffickers” and “did not rely on the \$151,000 money seizure,” and “[t]his more

recent evidence alone provided probable cause to search [2679] Dayview Lane.” [Id. at 21-24 (citations omitted)].

In his reply brief, Negron argues that he “has shown that [Agent] Tice deliberately omitted material facts which, if disclosed, would have eliminated probable cause to support the search warrant.” [Doc. 633 at 7-14 (emphasis omitted)]. Specifically, Negron asserts that “the search warrant affidavit clearly implies that the \$151,000 seized from [c]o-[d]efendant [Williams’] traffic stop is associated with [] Negron’s residence at 2679 Dayview Lane[.]” [Id. at 7-8]. He contends that Agent Tice “knew that was not the case, but to advance his own agenda, deliberately omitted the information that would have clarified the matter for the judge.” [Id. at 8]. Negron argues that it is “clear that [Agent] Tice’s omission was deliberate because in an earlier affidavit to the Court[] when [Agent] Tice was seeking a search warrant for multiple iCloud accounts, he specified that [Williams] picked up \$151,000 from [] *Marshall’s* residence at [an address other than 2679 Dayview Lane],” and similarly, “in *multiple* Title III Wiretap Applications, [Agent] Tice made clear distinctions between [] Negron’s residence, which was not associated with drug activity, and [] Marshall’s residence, which was.” [Id. (footnote and citations omitted)]. Negron asserts that “[w]hile it may not be possible to fully prove [Agent] Tice’s mental state through pleadings alone and without cross-examination, his pattern in past affidavits of *unambiguously*

distinguishing between [] Negron’s residence . . . and [] Marshall’s residence . . . , demonstrates that to get the residential search warrant, [Agent] Tice made a deliberate choice to omit material information with the purpose of misleading the judge issuing the warrant.” [Id. at 11]. Finally, Negron contends that Agent Tice “omitted critical information necessary for the magistrate judge’s probable cause determination,” and the “material omissions . . . were reckless and failed to accurately capture which residence was connected to drug trafficking,” and “[h]ad the material information omitted been presented to the magistrate court, probable cause would have been defeated.” [Id. at 12-13].

In Franks, the Supreme Court held that where “(i) a defendant makes a substantial preliminary showing that an affiant knowingly and intentionally included a false statement in an affidavit or made the false statement with reckless disregard of its truth, and (ii) the false statement was necessary to the finding of probable cause, then a hearing on the affidavit must be held at the defendant’s request.” United States v. Terzado, Case No. 21-CR-60143-SMITH/VALLE, 2022 WL 4794874, at *2 (S.D. Fla. Aug. 2, 2022) (citing Franks, 438 U.S. at 155-56), adopted by 2022 WL 4764108, at *1 (S.D. Fla. Oct. 3, 2022). This standard “also applies to material omissions of fact,” and “[b]oth prongs must be satisfied to warrant a hearing.” Id. (citations omitted) (citing Madiwale v. Savaiko, 117 F.3d 1321, 1327 (11th Cir. 1997)); see also United States v. Kirton, CRIMINAL CASE NO.

1:19-CR-00022-WMR-JFK, 2019 WL 6868978, at *6 (N.D. Ga. Oct. 18, 2019) (stating Franks “is applicable to information omitted from an affidavit for a search warrant”), adopted by 2019 WL 6840132, at *1 (N.D. Ga. Dec. 16, 2019). Further, “[t]o mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine”; “[t]here must be allegations of deliberate falsehood or reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.” Franks, 438 U.S. at 171. “No Franks hearing is required, if, when the omitted information is added to the affidavit, the affidavit’s content still establishes probable cause for the search.” Kirton, 2019 WL 6868978, at *6 (citation omitted).

The Court is not persuaded by Negron’s argument that the omission of Marshall’s address from the affidavit submitted in support of the April 24, 2023, search warrant application was intentional or reckless because Agent Tice included Marshall’s address in prior search warrant and wiretap applications and the omission therefore was material to the Magistrate Judge’s determination of probable cause. First, contrary to Negron’s assertion, the search warrant affidavit does not “impl[y] that the \$151,000 seized from [c]o-[d]efendant [Williams’] traffic stop is associated with [Negron’s] residence at 2679 Dayview Lane,” [Doc. 398 at 6], since Agent Tice specifically stated that agents “observed [Negron’s] girlfriend come out of *her* house[,]” and Agent Tice subsequently provided reasons in his

affidavit that he believed 2679 Dayview Lane was Negron's residence, which did not include the traffic stop and seizure, [Doc. 398-1 at 41 ¶¶ 89-90, 44 ¶ 95]. The mere omission of the street address of Marshall's house, in this context, where "her house" clearly is distinct from Negron's residence at 2679 Dayview Lane that was the subject of the search warrant, does not support an inference of intentional or reckless conduct on the part of the agent to mislead the issuing Magistrate Judge. Moreover, even if the omission were found to be intentional or reckless, Negron "fails to show the inclusion of such information in the affidavit would prevent a probable cause finding." United States v. Pineda, C.A. No. 1:23-cr-114-JJM-LDA, 2024 WL 5166478, at *6 (D.R.I. Dec. 19, 2024). That is, "even if this information was intentionally omitted or omitted with a reckless disregard for the accuracy of the warrant, [Negron] failed to make any showing that it was material to the probable cause in the warrant." United States v. Thompson, No. 3:20-cr-26-BJD-LLL, 2023 WL 8474241, at *7 (M.D. Fla. Oct. 4, 2023) (citation omitted), adopted by 2023 WL 7297403, at *2 (M.D. Fla. Nov. 6, 2023); see also United States v. Moreland, No. 2:09-CR-184-WKW, 2010 WL 4269144, at *4 (M.D. Ala. Oct. 27, 2010) (citation and internal marks omitted) (stating that materiality is "essential no matter how deliberate or reckless the misrepresentations were"). "None of the claimed omitted information on its face is so clearly critical to the probable cause determination that its omission created a presumption of recklessness," and even

if the information regarding Marshall's address "had been included, the warrant affidavit would still have supported the probable cause determination," United States v. Bivins, 560 F. App'x 899, 906 (11th Cir. 2014) (per curiam) (unpublished) (citation omitted), since there is no assertion in the affidavit in support of the search warrant application that Negrón was conducting narcotics trafficking transactions from 2679 Dayview Lane. Instead, Agent Tice attested that he believed evidence that property used in drug trafficking and evidence of Negrón's PGF membership would be located at the residence based on searches of iCloud accounts associated with Negrón's cellphones and intercepted phone calls, [Doc. 398-1 at 44-45 ¶¶ 96-98]; see also [*id.* at 41-44 ¶¶ 89-94],⁴ and Agent Tice attested that based on his "training, experience, discussions with other law enforcement personnel and participation in other narcotics investigations involving drugs and U.S. currency," he knew that drug traffickers and money launderers often keep "currency, . . . precious metals, jewelry, [] other items of value, and proceeds of drug transactions" in "secure yet convenient locations such as their homes," in addition to cellphones and electronic devices that contain contact lists,

⁴ According to the affidavit, intercepted phone calls between Negrón and co-defendants revealed a discussion of the \$151,000 seized from a co-defendant during a traffic stop in addition to discussions between Negrón and others regarding illicit drug sales, and searches of iCloud accounts associated with Negrón's cellphones revealed videos of Negrón wearing expensive jewelry containing the PGF mark and driving his car with a large sum of money in the center console area. See [Doc. 398-1 at 41-45 ¶¶ 90-94, 96-98].

photographs, videos, text messages, call records, and other valuable information, and geo-location data from Negron's cellphone and the fact that Negron's vehicles were frequently observed in the driveway of the residence supported 2679 Dayview Lane being the current residence of Negron, [*id.* at 6-7 ¶ 10, 44 ¶ 95]. "Thus, even if the affidavit were revised to include the omitted [information], that revised affidavit would have established probable cause to search [2679 Dayview Lane]." *United States v. Jones*, 942 F.3d 634, 641 (4th Cir. 2019) (citation omitted). Therefore, Negron is not entitled to a *Franks* hearing, and for the reasons already discussed, the facts set forth in Agent Tice's affidavit provided ample probable cause to support issuance of the search warrant under the deferential standard of review upon a challenge to evidence seized pursuant to a search warrant, *see United States v. Miller*, 24 F.3d 1357, 1361 (11th Cir. 1994) (citation omitted) ("Courts reviewing the legitimacy of search warrants should not interpret supporting affidavits in a hypertechnical manner; rather, a realistic and commonsense approach should be employed so as to encourage recourse to the warrant process and to promote the high level of deference traditionally given to magistrates in their probable cause determinations."), and Negron has not demonstrated otherwise, *see generally* [Docs. 398 & 633].

The Eleventh Circuit has held that a law enforcement officer's "expectation, based on prior experience and the specific circumstances of the alleged crime, that

evidence is likely to be found in a suspect's residence satisfies probable cause." United States v. Bradley, 644 F.3d 1213, 1263-64 (11th Cir. 2011) (per curiam) (unpublished) (citation omitted). In fact, "[t]he affidavit need not allege that any illegal activity occurred at the residence, but should provide a reasonable basis to conclude that the defendant might keep evidence of his crimes at home," United States v. Aguilar, 519 F. App'x 541, 545 (11th Cir. 2013) (per curiam) (unpublished) (citation and internal marks omitted), which is exactly what Agent Tice's affidavit established. In short, the affidavit included sufficient information to establish probable cause to believe that evidence of Negron's alleged crimes would be located in his residence at 2679 Dayview Lane. See United States v. Daniels, CRIMINAL ACTION FILE NO. 1:23-cr-154-TCB-JKL, 2024 WL 5294744, at *15 (N.D. Ga. Sept. 3, 2024) (finding the task force officer's affidavit "established probable cause to believe that evidence of drug trafficking would be present in the residence, and his affidavit [] identified numerous categories of items that, based on his training and experience, are usually involved in drug trafficking"), adopted in part by 2024 WL 5184295, at *10 (N.D. Ga. Dec. 20, 2024); see also United States v. Cunningham, 633 F. App'x 920, 922 (11th Cir. 2015) (per curiam) (unpublished) (finding probable cause supported the search warrant for defendant's home where "the police had evidence that [defendant] was involved in drug trafficking and law enforcement officials attested that, based on their significant experience with

drug investigations, drug traffickers often store evidence of their crimes in their homes"). Therefore, Negron's contention that Agent Tice's affidavit did not establish probable cause is without merit.

III. CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Negron's motion to suppress, [Doc. 398], as perfected, [Doc. 417], be **DENIED**.⁵

There are no other pending matters before the Magistrate Judge regarding Negron, 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

⁵ This Report and Recommendation originally was provisionally filed under seal since the briefing of the motion was under seal due to the discussion of the contents of the sealed search warrant. The parties were granted fourteen days to move to maintain it under seal but have notified the Court that it may be unsealed, provided that one address is redacted, and that redaction has been made in this unsealed version of the Report and Recommendation.