

**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-11
	::	
DRESTEN TORON DANIELS	::	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Defendant Dresten Toron Daniels (“Daniels”) is named along with eleven other co-defendants in a twenty-four-count superseding criminal indictment that charges Daniels 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; 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); and one count of possession of a firearm by a prohibited person, in violation of 18 U.S.C. §922(g)(1). [Doc. 528].¹ Daniels has filed a motion to suppress evidence obtained from the search of a residence pursuant to a search warrant issued on April 24, 2023, [Doc. 381], and a motion to suppress evidence obtained from the search of a vehicle

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.

following a traffic stop on December 29, 2022, [Doc. 382], which he perfected regarding his standing, [Doc. 416], and following preliminary briefing on the issue of standing, see [Docs. 442, 446, 472, 476],² an evidentiary hearing on the motion to suppress evidence seized from a vehicle following the traffic stop was held on May 14, 2024,³ and the parties filed post-hearing briefs, see [Docs. 643, 651, & 686]. For the reasons that follow, it is **RECOMMENDED** that Daniels' motions to suppress, [Docs. 381, 382, & 416], be **DENIED**.⁴

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 9-10); [Doc. 381-1 at 8 ¶ 11]. The investigation revealed that individuals affiliated with the PGF were distributing several different types of narcotics in multiple kilogram amounts in the Northern

² Standing was subsequently established as to both motions to suppress, see [Docs. 566 & 604], and the government filed a response in opposition to Daniels' motion to suppress evidence seized from the residence, [Doc. 601].

³ See [Doc. 627] for a transcript of the evidentiary hearing held on May 14, 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. 663 & 664], which will be referred to as "(Gov't Ex. __)."

⁴ Daniels also filed a motion to adopt a co-defendant's motion to suppress pole camera evidence, [Doc. 391], but his motion to adopt was abandoned and withdrawn on February 26, 2024, see [Doc. 480].

District of Georgia and several PGF members and associates, including Daniels, were identified during the investigation. (Tr. at 10-12). 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 12-13, 15). Among other things, the pole camera's field of view covered two residences on Stanford Drive. (Tr. at 16).

On December 29, 2022, DEA Task Force Officer Austin Boswell ("TFO Boswell") was monitoring the pole camera, and he observed a silver Toyota Camry arrive and park in the street in front of 2555 Stanford Drive. (Tr. at 5, 16, 18-19, 22; Gov't Exs. 3-5). A few minutes later, TFO Boswell observed a gray Infiniti SUV arrive and back into the driveway of the 2555 Stanford Drive residence, at which time the driver of the Toyota Camry, Arthur Hempen ("Hempen"), an alleged PGF member, exited the Camry, retrieved a white trash bag from the back seat of the vehicle, and carried it to Christian Wash ("Wash"), another alleged PGF member, who was driving the Infiniti. (Tr. at 10-12, 19-20, 23-26, 38; Gov't Ex. 1). Based on his training and experience, and the nature of the investigation, TFO Boswell believed that the white trash bag, which appeared to have numerous rectangular-shaped objects inside, contained illegal narcotics, and that the interaction between Hempen and Wash constituted a drug transaction. (Tr. at 20, 25-27; Gov't Ex. 1).

TFO Boswell decided to conduct physical surveillance and initiate a traffic stop of the Infiniti to intercept the suspected narcotics. (Tr. at 27-28). Specifically, TFO Boswell contacted members of his DEA group to go to the area to conduct surveillance, and he also contacted the Georgia State Patrol (“GSP”) about the suspected narcotics transaction to request assistance with a traffic stop of the Infiniti. (Tr. at 27-28, 30, 56).

When DEA Task Force Officer Jim Steedle (“TFO Steedle”), along with other agents and officers, arrived to conduct physical surveillance, the Infiniti driven by Wash had moved from the Stanford Drive house to another house in the same neighborhood on Springfield Place. (Tr. at 36-37). TFO Steedle and the other agents and officers followed the vehicle, and they observed the Infiniti return to 2555 Stanford Drive, followed by a white van driven by Mario Peek, another alleged PGF member, and both vehicles then backed into the driveway of 2555 Stanford Drive. (Tr. at 11, 36-39). Shortly thereafter, TFOs Boswell and Steedle observed via the pole camera a black Mercedes sedan back into the driveway of 2555 Stanford Drive next to the Infiniti, and then saw Wash exit the Infiniti, remove a white bag from the Infiniti, and give the white bag to the driver of the black Mercedes, later identified as Daniels, who placed the bag in the spare tire compartment of the black Mercedes. (Tr. at 39-40, 45; Gov’t Exs. 2 & 6); see also (Tr. at 10-11, 44, 69, 82). TFO Boswell testified that it appeared to be the same white

trash bag that Hempen gave to Wash earlier that day, and based on TFO Boswell's training and experience, and the investigation to date, he believed that Daniels arrived at 2555 Stanford Drive to pick up the white trash bag of suspected narcotics. (Tr. at 41, 45-46, 58).

When Daniels left 2555 Stanford Drive in the black Mercedes, law enforcement continued to conduct surveillance of him, and he was observed pulling into a Citgo gas station. (Tr. at 46-47, 75, 123; Gov't Ex. 6 at 1; Gov't Ex. 6A at 7). After observing the black Mercedes leave the gas station, GSP Trooper Brian Harman ("Trooper Harman") began to follow the vehicle as it traveled north on Moreland Avenue, and DEA agents requested he conduct a traffic stop on the vehicle. (Tr. at 59, 75-76, 124, 127). Trooper Harman testified that he "noticed that the Mercedes had extremely dark window tint," and "based off [his] training, knowledge, and experience," he believed there was a window tint violation on the vehicle. (Tr. at 76-77, 125-26); see also (Tr. at 127-28). While Trooper Harman prepared to conduct the traffic stop of the black Mercedes, the vehicle made a left turn and accelerated quickly, cutting off several cars, and as Trooper Harman made the left turn to follow the black Mercedes, the vehicle quickly turned into a scrapyard. (Tr. at 78-79; Gov't Ex. 7 at 00:08-00:010).⁵ Trooper Harman activated

⁵ Trooper Harman testified that the manner in which the black Mercedes made the left turn was a violation of Georgia state law, and the way the vehicle accelerated

the blue lights on his vehicle as he pulled into the scrapyard to initiate a traffic stop of the black Mercedes. (Tr. at 80; Gov't Ex. 7 at 00:10-00:29); see also (Tr. at 48, 57). During his initial approach of the vehicle, Trooper Harman asked Daniels to lower his rear driver's side window because the tint was too dark for Trooper Harman to see into the vehicle. (Tr. at 81, 128; Gov't Ex. 7 at 00:58-01:06). Trooper Harman approached the black Mercedes with a window tint meter in his hand, and he measured the window tint level, which revealed that the tint on the vehicle exceeded the legal limit and was in violation of Georgia law. (Tr. at 81-82, 91, 129, 143; Gov't Ex. 7 at 01:23-01:26). During their conversation, Daniels informed Trooper Harman that he was at the scrapyard to speak to an elderly male who was standing nearby about a car part. (Tr. at 88-89; Gov't Ex. 7 at 01:17-01:21). After he requested Daniels' license, registration, and insurance, Daniels informed Trooper Harman that the black Mercedes was his wife's vehicle and that he was not sure if he had the paperwork, but that the insurance could be located through the vehicle's tag. (Tr. at 90; Gov't Ex. 7 at 01:29-01:36). After informing Daniels that it was a requirement of Georgia law to have proof of insurance, Daniels said that he would call his wife and ask her to send it to him. (Tr. at 90-91; Gov't Ex. 7 at 01:36-02:03).

down the road was suspicious and made it appear that the vehicle was attempting to flee. (Tr. at 78-80); see also (Tr. at 128, 134).

Around this time, GSP Sergeant First Class Michael Allen (“Sergeant Allen”) had pulled in behind Trooper Harman to assist with the traffic stop, and after Trooper Harman informed Sergeant Allen of Daniels’ stated purpose for being at the scrapyard, Sergeant Allen told him that he had spoken to the owner of the scrapyard, who had never seen Daniels before. (Tr. at 89-90, 93-95, 156; Gov’t Ex. 7 at 02:40-02:46; Gov’t Ex. 8 at 01:18-01:34). Shortly thereafter, the elderly man, whom Daniels claimed he was meeting at the scrapyard, walked over to Trooper Harman’s patrol car and informed Trooper Harman that he did not know Daniels. (Tr. at 95, 98; Gov’t Ex. 7 at 02:47-03:08). Based on this information and the manner in which Daniels arrived at the scrapyard, Trooper Harman was suspicious of criminal activity and believed there was something illegal in the black Mercedes. (Tr. at 96-97). Trooper Harman asked Daniels to exit the vehicle to question him further about his stated purpose for being at the scrapyard, and he conducted a frisk of Daniels to ensure Daniels did not have a weapon. (Tr. at 98-99, 132; Gov’t Ex. 7 at 03:14-03:36); see also (Tr. at 142-43). Trooper Harman also asked Daniels for consent to search the black Mercedes, but Daniels declined. (Tr. at 100-01, 134; Gov’t Ex. 7 at 04:28-04:33). By this time, GSP Trooper Micahiah Swain (“Trooper Swain”) had arrived to assist with the traffic stop, and Trooper Harman signaled to Sergeant Allen and Trooper Swain to start a K-9 sniff of the vehicle, and Trooper Swain approached the vehicle with his K-9, Ozon, while Trooper Harman waited

for Daniels, who was not detained or handcuffed and still had access to his cell phone, to provide vehicle registration and insurance. (Tr. at 101, 103-05, 135, 146, 152, 156-57, 161; Gov't Ex. 7 at 04:36-05:47). Trooper Swain then deployed his K-9, who alerted to the odor of narcotics coming from the vehicle. (Tr. at 105-07, 157, 159-60; Gov't Ex. 7 at 05:48-06:24; Gov't Ex. 8 at 04:26-05:00); see also (Tr. at 153-54, 171). Based on the K-9's alert, and to prevent Daniels from fleeing, Trooper Harman made the determination to detain Daniels to conduct a probable cause search of the vehicle. (Tr. at 108-13; Gov't Ex. 7 at 06:28-06:48; Gov't Ex. 8 at 05:09-05:25).

After Daniels was placed in handcuffs, Trooper Harman and Sergeant Allen began to search the vehicle, and Trooper Harman discovered a black, dry-sealed bag that felt like it had smaller bags of marijuana inside. (Tr. at 112-14; Gov't Ex. 7 at 08:12-08:32; Gov't Ex. 8 at 06:50-07:09). Trooper Harman then opened the spare tire compartment, where he discovered a white trash bag that contained five large brick-like objects that, based on his training, knowledge, and experience, he suspected to be cocaine. (Tr. at 114-16; Gov't Ex. 7 at 08:33-08:46); see also (Tr. at 48). Trooper Harman then told Trooper Swain to inform Daniels that he was under arrest for the possession of narcotics that were found in the trunk of the black Mercedes. (Tr. at 115; Gov't Ex. 7 at 08:46-08:48; Gov't Ex. 8 at 07:23-07:24). Trooper Harman took photographs of the suspected narcotics before he removed

them from the vehicle, and the rectangular brick-shaped objects field tested as positive for cocaine. (Tr. at 49-50, 117; Gov't Ex. 6A at 12-15; Gov't Ex. 7 at 09:17-10:26; Gov't Ex. 8 at 08:02-08:03).

Daniels 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, DEA Agent Bryan Tice ("Agent Tice") applied for and was granted a warrant to search various addresses, including 4725 Ferncrest Place, Douglasville, Georgia 30135, which was believed to be Daniels' residence. See [Doc. 381-1]; see also [id. at 57-58; Doc. 601-1 at 2]. In the affidavit in support of the search warrant, Agent Tice attested that he believed that Daniels used 4725 Ferncrest Place "to store evidence related to [the] conspiracy, such as cellular telephones used to contact other members of the organization and records pertaining to the renting of drug stash locations," and to "keep the actual ledgers[.]" [Doc. 381-1 at 58 ¶ 132].

Daniels has filed two motions to suppress, challenging the legality of the traffic stop and subsequent search of the black Mercedes in addition to the search of the residence located at 4725 Ferncrest Place. [Docs. 381 & 382]. The government opposes these motions, arguing that Trooper Harman lawfully stopped the black Mercedes based on probable cause and reasonable suspicion, and that the search warrant for the residence was supported by probable cause, but even if the warrant lacked probable cause, the agents relied on it in good faith.

[Docs. 601 & 651]. For the reasons that follow, it is **RECOMMENDED** that Daniels' motions to suppress, [Docs. 381 & 382], be **DENIED**.

II. DISCUSSION

A. Motion to Suppress, [Doc. 381]

Daniels argues that the affidavit submitted in support of the search warrant for his residence issued on April 24, 2023, "did not on its face contain sufficient information to establish probable cause[.]" [Doc. 381 at 1, 7]. Daniels also argues that the information contained in the search warrant was stale. [*Id.* at 2, 8-9]. Next, Daniels argues that "reliance by the affiant on the magistrate judge's probable cause determination was not objectively reasonable or founded in good faith," and the "affiant knowingly misrepresented some of the material facts which constituted his application for the search warrant." [*Id.* at 2, 6-7]. Finally, Daniels argues that the "affiant knowingly withheld and omitted information which would have negated any indicia of probable cause." [*Id.* at 2, 9-12]. In response, the government contends that Daniels "fails to show that there was no probable cause to support the warrant," but "[e]ven if the warranted lacked probable cause, . . . the agents relied on it in good faith"; that the information contained in the affidavit was not stale; and that Daniels' request for a Franks v. Delaware, 438 U.S. 154 (1978), hearing "should be denied because [he] fails to make a substantial preliminary showing that the affiant, [] Agent [] Tice, deliberately omitted

information or that there would be no probable cause if the omitted facts were included.” [Doc. 601 at 2, 11-30].

1. Misrepresentation of Material Facts, Omitted Information

Daniels argues that he is entitled to Franks hearing because Agent Tice “deliberately omitted information and misled the issuing judge in his affidavit[.]” [Doc. 381 at 10]. Specifically, Daniels contends that Agent Tice “never told the Court that TFO Mark Lusk conducted brief surveillance of [4725] Ferncrest Place on April 5, 2023[,], and did not see any suspicious activity”; deliberately did not distinguish between Daniels’ alleged stash house and 4725 Ferncrest Place; “never provide[d] any context as to why he [thought the] items [sought were] at [4725] Ferncrest Place as opposed to the alleged ‘other’ stash house location”; “never [told] the Court that [4725] Ferncrest Place [was] not owned by [] Daniels”; and “never show[ed] the issuing judge any evidence that implie[d] or suggest[ed] [] Daniels ha[d] continued his participation in the alleged conspiracy after the December 29, 2022[,], traffic stop and seizure.” [Id. at 10-12]. Daniels asserts that if “the Court knew the information that [Agent] Tice deliberately omitted, and if the Court had a more accurate description of the facts, the issuing judge would not have found probable cause to search [the residence] located at [4725] Ferncrest Place.” [Id. at 12].

In response, the government contends that the Court should deny Daniels' request for a Franks hearing "because [he] fails 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." [Doc. 601 at 24]. Specifically, the government asserts that Daniels "provides only conclusory allegations regarding the missing information," but "does not offer any proof that [Agent] Tice acted deliberately or with reckless disregard for the truth, nor does he show that any of the alleged omissions are material" or "that they would have negated probable cause." [Id. at 25-26 (citation omitted)].

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 of 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).

Daniels is not entitled to a Franks hearing because he “has not made a substantial preliminary showing . . . that material information was intentionally and/or recklessly omitted from the affidavit or, alternatively, made a showing that such alleged . . . omissions undermined the probable cause otherwise set forth in the affidavit as necessary for a Franks hearing to be held.” Id., at *7; see also Terzado, 2022 WL 4794874, at *3 (citation omitted) (finding defendant had “not provided any offer of proof, affidavit or other sworn statement to support his allegation that the affiant intentionally or recklessly misrepresented” information in the affidavit). “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 the brief three minute surveillance of the residence, the address of Daniels’ alleged stash house, or the ownership of the residence “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 was no assertion that Daniels was conducting narcotics trafficking transactions from 4725 Ferncrest Place, so the fact that suspicious activity was not observed during three minutes of surveillance of the residence is of no consequence. As for the ownership of the residence, the distinction between the residence and Daniels’ alleged stash house, and the reason Agent Tice believed the items sought would be located at 4725 Ferncrest Place, Agent Tice attested that drug traffickers and money launderers often kept records of their transactions in “secure yet readily accessible place[s],” such “as in homes,” in addition to cellphones and electronic devices that contain contact lists, photographs, videos, text messages, call records, and other valuable information, and geo-location data from Daniels’ ankle monitor supported 4725 Ferncrest Place “being the current residence of [Daniels],” see [Doc. 381-1 at 5-7 ¶ 10, 57-58 ¶¶ 130-32]. Finally, although Daniels contends that Agent Tice “never shows the issuing judge any evidence that implies or suggests [] Daniels has continued his participation in the alleged conspiracy after the December 29, 2022[,] traffic stop and seizure,” [Doc.

381 at 12], Agent Tice attested that a search warrant was obtained for cellular devices seized from Daniels at the time of his arrest on December 29, 2022, and the search revealed that he was in frequent contact with Wash, that he was sending text messages to individuals who appeared to be drug customers, and there were “multiple photographs in his phone of drug ledgers (containing hundreds of thousands of dollars), prices of drugs, and photographs of large amounts of drugs,” [Doc. 381-1 at 58 ¶ 131]; see also [*id.* at 47 ¶ 101]; (Tr. at 118). “Thus, even if the affidavit were revised to include the omitted [information], that revised affidavit would have established probable cause to search [4725 Ferncrest Place],” United States v. Jones, 942 F.3d 634, 641 (4th Cir. 2019) (citation omitted), and Daniels is not entitled to a Franks hearing.

2. Probable Cause

“The Fourth Amendment requires that a search warrant be issued only when there is probable cause to believe that an offense has been committed and that evidence exists at the place for which the warrant is requested.” United States v. Betancourt, 734 F.2d 750, 754 (11th Cir. 1984) (citing Zurcher v. Stanford Daily, 436 U.S. 547, 558 (1978)); see also United States v. Cadet, Criminal Action Nos. 1:11-CR-00522-WBH-LTW, 1:11-CR-00113-WBH-LTW, 2013 WL 504892, at *4 (N.D. Ga. Jan. 16, 2013) (citation omitted), adopted sub nom. Cadet v. United States, Criminal Action Nos. 1:11-CR-113-WBH-2, 1:11-CR-552-WBH, 2013 WL

504815, at *1 (N.D. Ga. Feb. 8, 2013), aff'd, 574 F. App'x 917 (11th Cir. 2014) (per curiam) (unpublished). That is, “[p]robable cause to search a residence requires some nexus between the premises and the alleged crime.” United States v. Graham, CASE NO.: 2:20-cr-47, 2021 WL 2593630, at *9 (S.D. Ga. June 24, 2021) (citation and internal marks omitted), adopted by 2021 WL 4352320, at *5 (S.D. Ga. Sept. 24, 2021), aff'd, No. 22-11809, 2023 WL 5011734 (11th Cir. Aug. 7, 2023). “Probable cause deals ‘with probabilities[, which are] . . . the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” Illinois v. Gates, 462 U.S. 213, 241 (1983) (quoting Brinegar v. United States, 338 U.S. 160, 175 (1949)); see also United States v. Spann, No. 15-20070, 2015 WL 1969111, at *3 (S.D. Fla. May 1, 2015) (citation omitted), aff'd, 649 F. App'x 714 (11th Cir. 2016) (per curiam) (unpublished).⁶

The Eleventh Circuit has explained the Court’s review of the sufficiency of a search warrant as follows:

⁶ “[T]he term probable cause, . . . means less than evidence which would justify condemnation. . . . It imports a seizure made under circumstances which warrant suspicion.” New York v. P.J. Video, Inc., 475 U.S. 868, 876 (1986) (alterations in original) (citations and internal marks omitted). “Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate’s decision.” Id. (citation and internal marks omitted). That is, “probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules,” Gates, 462 U.S. at 232, and “[c]ertainty has no part in a probable cause analysis,” United States v. Frechette, 583 F.3d 374, 380 (6th Cir. 2009) (citation omitted).

When called upon by law enforcement officials to determine the legitimacy of search warrants and their supporting affidavits, issuing magistrates and reviewing courts alike must strike a delicate balance between constitutional guarantees against excessive intrusions into areas of individual freedom and the Government's need to access and to secure relevant evidence in criminal prosecutions. In particular, issuing magistrates are given the unenviable task of making "firing line" decisions that attempt to encourage availment of the warrant process while simultaneously striving to protect citizens from unwarranted governmental interference. In recognition of the difficulty inherent in discharging this responsibility, reviewing courts lend substantial deference to an issuing magistrate's probable cause determinations.

United States v. Miller, 24 F.3d 1357, 1363 (11th Cir. 1994). "Courts reviewing the legitimacy of search warrants should not interpret supporting affidavits in a hypertechnical manner[.]" Id. at 1361 (citation omitted). Instead, "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." Id. (citation omitted); see also United States v. McCullough, Criminal Indictment No. 1:11-CR-136-JEC/AJB-01, 2012 WL 11799871, at *13 (N.D. Ga. Oct. 9, 2012) (citations omitted), adopted by 2014 WL 3955556, at *2 (N.D. Ga. Aug. 13, 2014). Furthermore, "[t]he fact that an innocent explanation may be consistent with the facts alleged . . . does not negate probable cause." United States v. Fama, 758 F.2d 834, 838 (2d Cir. 1985) (citations omitted); see also Adams v. Williams, 407 U.S. 143, 149 (1972) (citation omitted). The burden of establishing that a search warrant is defective is upon Daniels,

United States v. Lockett, 533 F. App'x 957 (11th Cir. 2013) (per curiam) (unpublished) (citation omitted) ("When a search is conducted pursuant to a warrant, the burden is on the defendant to show that the warrant is invalid."); see also Franks, 438 U.S. at 171, and the Court's consideration of Daniels' facial challenge to the search warrant is confined to the four corners of the search warrant affidavit, see United States v. Schulz, 486 F. App'x 838, 841 (11th Cir. 2012) (per curiam) (unpublished) (citation omitted); Donovan v. Mosher Steel Co., Div. of Trinity Indus., 791 F.2d 1535, 1537 (11th Cir. 1986) (citation and internal marks omitted) ("[I]t is elementary that in passing on the validity of a warrant, the reviewing court may consider only information brought to the magistrate's attention — that is, within the four corners of the warrant application.").

Contrary to Daniels' contentions, Agent Tice's affidavit provided sufficient facts to establish probable cause to believe that evidence involving the alleged narcotics trafficking conspiracy among PGF members would be found in Daniels' residence. Agent Tice described the evidence developed during the investigation that established probable cause that Daniels possessed evidence related to the narcotics trafficking conspiracy, including that Daniels was in frequent contact with Wash via iMessage and FaceTime; his phone contained a photo of a screenshot of Wash's face from one of their FaceTime sessions; Daniels' phone contained text messages to individuals who appeared to be drug customers,

providing them with the address for his suspected stash house; and his phone had multiple photographs of drug ledgers, prices of drugs, and photographs of large amounts of drugs. [Doc. 381-1 at 58 ¶¶ 131-32]. The affidavit also presented facts that connected Daniels to the residence where the search warrant was executed, including evidence that Daniels' geo-location data for his ankle monitor frequently placed Daniels at the residence "during the night and early morning hours on a regular basis." [Id. at 57-58 ¶ 130]. Agent Tice further provided information regarding his training and experience with narcotics trafficking investigations and detailed particular characteristics typically associated with drug traffickers and money launderers. [Id. at 5-8 ¶ 10]. Specifically, Agent Tice explained that such individuals commonly maintain records of drug transactions; documents relating to financial transactions; cellphones and electronic devices with contact lists, photographs, videos, text messages, and call records; records of addresses and telephone numbers; and other items, such as controlled substances, jewelry, or other items of value in "secure yet convenient locations such as their homes" and for "lengthy periods of time," since "[d]rug traffickers and money laundering on the scale revealed in this investigation are frequently a continuing activity which spans many years." [Id. at 5-7 ¶ 10].

Thus, contrary to Daniels' arguments that Agent Tice "did not create a nexus between the residence and the evidence sought," [Doc. 381 at 7], the facts set forth

in the affidavit established probable cause to believe that Daniels possessed evidence related to the narcotics trafficking conspiracy at his residence, including drug ledgers that Agent Tice had observed in photographs on Daniels' phone, see [Doc. 381 at 5-7 ¶ 10, 57-58 ¶¶ 130-32], and Agent Tice's training and experience, including information he learned from other law enforcement personnel in other narcotics investigations, regarding the behavioral characteristics of drug traffickers and money launderers, [*id.* at 5-8 ¶ 10], provided adequate support for the Magistrate Judge's finding that the affidavit established probable cause to search Daniels' residence, see United States v. Cunningham, 633 F. App'x 920, 922 (11th Cir. 2015) (per curiam) (unpublished) (finding probable cause supported the police's search warrant for defendant's home where the police had evidence that he "was involved in drug trafficking and law enforcement officials attested that, based on their significant experience with drug investigations, drug traffickers often store[d] evidence of their crimes in their homes"); United States v. Mobely, CRIMINAL ACTION FILE NO. 1:16-CR-145-TWT-JKL-6, 2017 WL 10574358, at *16 (N.D. Ga. Oct. 26, 2017) (citation omitted) (stating that "[c]ommon sense tells us that a person suspected of criminal activity 'tends to conceal fruits and instrumentalities of a crime in a place to which easy access may be had and in which privacy is nevertheless maintained' and that one's residence is such a place"), adopted by 2018 WL 5077755, at *1 (N.D. Ga. Oct. 18, 2018); United States

v. Lisbon, 835 F. Supp. 2d 1329, 1347, 1350 (N.D. Ga. 2011) (finding probable cause supported the magistrate judge’s conclusion “that there was sufficient reason to believe that evidence of [defendant’s] drug trafficking would be found at [his residence]” where the “affidavit clearly established that [he] had committed violations of 21 U.S.C. §§ 841 and 846” and “demonstrated that the . . . apartment was one of [his] residences,” in addition to the fact that the affiant of the affidavit in support of the warrant “had extensive experience in investigating drug traffickers and averred that the residence was a likely hiding place for contraband and evidence of [his] crime”), aff’d sub nom. United States v. Moreno, 559 F. App’x 940 (11th Cir. 2014) (per curiam) (unpublished). In short, the affidavit included sufficient information to establish probable cause to believe that Daniels was in possession of evidence related to the narcotics trafficking conspiracy and that this evidence would be located in his residence. Therefore, Daniels’ contention that Agent Tice’s affidavit did not establish probable cause to search his residence is without merit.

3. Staleness of Information Contained in the Affidavit

Daniels next argues that the information contained in the affidavit was stale. [Doc. 381 at 8-9]. Specifically, Daniels asserts that Agent Tice “failed to present any evidence suggesting ongoing conspiracy activities at [4725] Ferncrest Place between December 29[, 2022, the date of the traffic stop,] and April 24[, 2023, the

date Agent Tice applied for and was granted the search warrant],” which “shows the evidence collected at the . . . traffic stop is insufficiently tied to [4725] Ferncrest Place, thus rendering the information stale.” [Id. at 9]. In response, the government contends that the information contained in the affidavit was not stale “given the complexity of the on-going criminal conspiracy and the nature of the information sought[.]” [Doc. 601 at 17]. The Court agrees with the government.

“For probable cause to exist . . ., the information supporting [] the government’s application for a search warrant must be timely, for probable cause must exist when the [] judge issues the search warrant.” United States v. Harris, 20 F.3d 445, 450 (11th Cir. 1994) (citations omitted); see also United States v. Sanders, No. 1:12-cr-373-WSD-ECS, 2013 WL 3938518, at *2 (N.D. Ga. July 30, 2013) (citations omitted); United States v. Bushay, 859 F. Supp. 2d 1335, 1378 (N.D. Ga. 2012) (citations omitted), adopted at 1355. “There is no particular rule or time limit for when information becomes stale.” United States v. Bervaldi, 226 F.3d 1256, 1265 (11th Cir. 2000) (citations omitted). Instead, “[t]o evaluate staleness claims, [the Court] look[s] at the unique facts of each case and may consider the maturity of the information, the nature of the suspected crime (discrete crimes or ongoing conspiracy), habits of the accused, character of the items sought, and nature and function of the premises to be searched.” United States v. Deering, 296 F. App’x 894, 898 (11th Cir. 2008) (per curiam) (unpublished) (citation and internal marks

omitted); see also United States v. Rojas-Coyotl, Criminal Action No. 1:13-cr-0128-AT-AJB, 2014 WL 1908674, at *5 (N.D. Ga. May 13, 2014) (citation omitted), adopted at *1. “As part of this, courts should recognize the difference between isolated criminal activity (for which the passage of time is more likely to diminish probable cause) and protracted or continuous criminal activity (for which the passage of time is less likely to dissipate probable cause).” United States v. Rau, Case No. 4:18-cr-3-MLB-3, 2020 WL 7488649, at *4 (N.D. Ga. Dec. 21, 2020) (citing Bervaldi, 226 F.3d at 1265).

Daniels’ “staleness argument [] falls flat given [the] continuous and ongoing nature of the alleged criminal activity.” United States v. Mitchell, Civil Action No. 1:16-CR-427-AT-JKL, at [Doc. 1034 at 54] (N.D. Ga. July 12, 2019), adopted by 2020 WL 3888121, at *8 (N.D. Ga. July 10, 2020). Agent Tice attested that the investigation into the PGF began in June 2019 and continued even after Daniels’ arrest, [Doc. 381-1 at 8 ¶ 11]; see also [*id.* at 16 ¶ 30], and thus “[t]he nature and size of the conspiracy militates against [Daniels],” United States v. Davis, No. 2:12cr87-WKW, 2013 WL 322122, at *4 (M.D. Ala. Jan. 10, 2013) (citation and internal marks omitted) (stating that “[p]rotracted and continuous activity is inherent in large-scale drug trafficking operations”). Further, Agent Tice attested that a search of cellphones seized from Daniels on December 29, 2022, showed frequent contact with Wash; text messages to individuals who appeared to be drug

customers of Daniels; and “multiple photographs in his phone of drug ledgers (containing hundreds of thousands of dollars), prices of drugs, and photographs of large amounts of drugs,” and given that drug traffickers and money launderers often “keep [] records of their illegal activities beyond the time during which controlled substances are actually in their possession,” he believed that Daniels’ residence would contain evidence related to PGF’s drug trafficking conspiracy, including cellphones used to communicate with other members of the organization, records pertaining to the renting of drug stash locations, and actual ledgers of drug transactions. [Doc. 381-1 at 5-6 ¶ 10, 58 ¶¶ 131-32].

“Although most of the information contained in the affidavit referred to events which took place [months] . . . before [Agent Tice] applied for the warrant, the affidavit nonetheless alleged a longstanding and protracted criminal conspiracy,” Harris, 20 F.3d at 451 (citation omitted); see also United States v. Fisher-Bland, CRIMINAL ACTION NO. 1:17-cr-00069-SCJ-CMS-1, 2017 WL 6001514, at *4 (N.D. Ga. Nov. 16, 2017) (citations omitted) (stating that in cases in which the suspected criminal activity was not just a one-time incident, “the Eleventh Circuit has found information in search warrant applications of even lengthier delays not to be stale based upon the particular facts and circumstances of those cases,” including a narcotics case and six month delay), adopted by 2017 WL 5997466, at *1 (N.D. Ga. Dec. 4, 2017), and “[g]iven the ongoing nature of the

narcotics distribution conspiracy, the likelihood that the information was stale was diminished,” United States v. Gray, No. 10-cr-20410, 2011 WL 4368843, at *3 (S.D. Fla. May 3, 2011) (citation omitted), adopted by 2011 WL 4368839, at *5 (S.D. Fla. Sept. 19, 2011); see also United States v. Gamory, Criminal File No. 1:08-CR-153-TWT, 2009 WL 855948, at *22 (N.D. Ga. Mar. 30, 2009) (finding “that the information contained in [the] affidavit was not fatally stale because it pertained to an ongoing drug trafficking operation”), aff’d, 635 F.3d 480 (11th Cir. 2011).

4. Good Faith Exception

Even were the search warrant at issue found to be invalid, suppression of the evidence seized from the residence would not be warranted because the agents executing the warrant reasonably relied in good faith on the validity of the warrant. See United States v. Leon, 468 U.S. 897, 919-21 (1984). Under Leon, “the exclusionary rule should not be applied to exclude evidence seized pursuant to a defective search warrant if the officers conducting the search acted in ‘objectively reasonable reliance’ on the warrant and the warrant was issued by a detached and neutral magistrate.” United States v. Sharp, Civil Action File No. 1:14-cr-229-TCB, 2015 WL 4641537, at *14 n.18 (N.D. Ga. Aug. 4, 2015) (citation and internal marks omitted), adopted at *5; see also United States v. Robinson, 336 F.3d 1293, 1295-96 (11th Cir. 2003) (citation omitted).

There are four exceptions to the Leon good-faith doctrine:

(1) where the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for [her] reckless disregard of the truth; (2) where the issuing magistrate wholly abandoned his judicial role in the manner condemned in *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 . . . (1979); (3) where the affidavit supporting the warrant is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where, depending upon the circumstances of the particular case, a warrant is so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.

United States v. Martin, 297 F.3d 1308, 1313 (11th Cir. 2002) (citation and internal marks omitted). Daniels argues that the third exception applies in this case. [Doc. 381 at 6].⁷ Specifically, Daniels contends that the “affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” [*Id.* at 7]. ““To exclude evidence on this ground, the affidavit must be so clearly insufficient that it provided no hint as to why police believed they would find incriminating evidence.”” United States v. Ray, 7:24-cr-00073-ACA-

⁷ Although Daniels also “submits that [the first exception] appl[ies] in this circumstance,” [Doc. 381 at 6], for the reasons previously discussed with respect to Daniels’ requests for a Franks hearing, this exception does not apply. Further, the “first, second and fourth circumstance are not present here – [Daniels] has not shown that Agent [Tice] misled the issuing judge; there is no evidence that the issuing judge abandoned [her] judicial role in issuing the warrant; and the warrant sufficiently describes the person, premises, and property to be searched, and the things to be seized.” United States v. Mayfield, Criminal Action No. 2:16-CR-009-RWS-JCF, Criminal Action No. 2:16-CR-0010-RWS-JCF, 2018 WL 11229147, at *3 (N.D. Ga. May 11, 2018) (citation omitted), adopted by 2018 WL 3371115, at *1 (N.D. Ga. July 10, 2018).

JHE-1, 2024 WL 4614017, at *8 (N.D. Ala. Sept. 26, 2024) (quoting United States v. McCall, 84 F.4th 1317, 1325 (11th Cir. 2023)), adopted by 2024 WL 4604376, at *1 (N.D. Ala. Oct. 29, 2024). Daniels “largely repeats his arguments about the absence of probable cause to support the search warrant,” but “[f]or the reasons already discussed, there was sufficient probable cause set forth in the affidavit to support issuance of the search warrant for the residence,” United States v. Latorre, CRIMINAL CASE NO. 1:20-cr-00272-ELR-RGV, 2020 WL 7685935, at *7 (N.D. Ga. Nov. 23, 2020) (alteration, citation, and internal marks omitted), adopted by 2020 WL 7351222, at *1 (N.D. Ga. Dec. 15, 2020), and “the same facts that support probable cause also supply the indicia of probable cause [Daniels] claims [to be] missing,” Ray, 2024 WL 4614017, at *9. That is, even if the affidavit “was lacking in probable cause[,] there is certainly an indicia of probable cause,” since “[t]here are sufficient, particularized allegations, which lead this Court to conclude that the third scenario would not apply here.” United States v. Gayden, Case No: 6:16-cr-187-Orl-41TBS, 2018 WL 8809238, at *10 (M.D. Fla. June 7, 2018), aff’d, 977 F.3d 1146 (11th Cir. 2020). “Accordingly, the agents executing the warrant were justified in believing in its validity, and evidence seized during the execution would not be subject to suppression under the good faith exception even if the warrant were found to lack probable cause.” Latorre, 2020 WL 7685935, at *7 (citation omitted).

B. Motion to Suppress, [Doc. 382]

Daniels also moves to suppress all items seized by the government pursuant to the traffic stop of his vehicle on December 29, 2022. [Doc. 382]. Specifically, Daniels contends that he was unlawfully seized because there was no traffic violation and no reasonable suspicion to stop his vehicle, and Trooper Harman impermissibly extended the seizure. [*Id.* at 3-5]; see also [Doc. 643 at 4-9]. Daniels also asserts that the K-9 alert was not sufficiently reliable and did not establish probable cause to search his vehicle. [Doc. 382 at 5-6]; see also [Doc. 643 at 9-14]. In response, the government contends that Daniels' Fourth Amendment rights were not violated by the traffic stop because reasonable suspicion existed for the stop based on the collective knowledge of law enforcement, [Doc. 651 at 8-12], and because probable cause existed for the stop based on Daniels' violation of Georgia motor vehicle law, [*id.* at 12-14]. The government also asserts that the GSP Troopers had probable cause to search the black Mercedes because of the reliable K-9 alert, [*id.* at 14-18], and because of the information from the PGF investigation and the totality of other circumstances, [*id.* at 18-19].

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. . . .”⁸ 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) (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

⁸ 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).

behavior under the Fourth Amendment.”); Miller v. Hargett, 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. Sicairos-Sicairos, 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).

Daniels argues that Trooper Harman did not have probable cause to stop the black Mercedes he was driving because he “did not commit any traffic infractions,” and although GSP “stopped him because of suspected window tint violation, [they] never bothered to check the window’s light transmission.” [Doc.

382 at 5; Doc. 686 at 9]. The government asserts that probable cause to stop the black Mercedes was established by the traffic infractions that Trooper Harman observed. [Doc. 651 at 12]. Specifically, the government contends that probable cause existed based on the window tint violation and Daniels' left turn in which he cut off several other vehicles. [*Id.* at 12-14]. The Court agrees with the government.

First, contrary to Daniels' contention, the Court finds that Trooper Harman had probable cause to believe that the dark tint on the windows of the black Mercedes 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)(1)-(2).

Daniels' argument that he "did not commit any traffic infractions," [Doc. 382 at 5], 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 64; State v. Simmons, 640 S.E.2d 709, 712 (Ga. Ct. App. 2006) (citing Ciak v. State, 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 Harman], and finds that he reasonably believed that [Daniels] . . . 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 therefore, Trooper Harman “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”).⁹ Thus, Trooper Harman had probable cause to stop Daniels’ 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 13%, “well below” the legal limit. See (Tr. at 81-82, 91, 125-26, 128-29,

⁹ Contrary to Daniels’ assertion that Trooper Harman “never bothered to check the window’s light transmission,” [Doc. 382 at 5], Trooper Harman testified that he approached the black Mercedes with a window tint meter that “measures the amount of light that’s going through the window” and measured the window tint of the “back passenger’s window on the driver’s side,” which revealed a violation of state law, (Tr. at 81-82, 89, 91, 129).

143); see also (Gov't Ex. 7 at 00:58-01:06, 01:23-01:26). Further, as the government points out, "that was not the only traffic violation Trooper Harman witnessed," [Doc. 651 at 13], since, under Georgia law, "[t]he driver of a vehicle intending to turn to the left within an intersection . . . shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard," O.C.G.A. § 40-6-71, and Trooper Harman testified that Daniels violated this law when he cut off several other vehicles while making a left turn, (Tr. at 78-79, 134); see also (Gov't Ex. 7 at 00:08-00:10), which "provide[d] [another] basis for Trooper Harman to stop the black Mercedes," [Doc. 651 at 14].¹⁰

¹⁰ "Since the Court concludes probable cause supported [Trooper Harman's] decision to stop [Daniels'] 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 United States v. Moody, 240 F. App'x 858, 859 (11th Cir. 2007) (per curiam) (unpublished) (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) (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.").

2. Reasonable Suspicion for the Traffic Stop

The government argues that Trooper Harman also had reasonable suspicion to stop the black Mercedes that Daniels was driving based on the collective knowledge of law enforcement officers who were investigating the PGF and communicated with the GSP Troopers prior to the stop. [Doc. 651 at 8-12]. Daniels disputes the government's contention, arguing that "[n]one of the facts recounted by Trooper Harman and TFO [] Boswell support reasonable suspicion to seize [his] vehicle at a traffic stop"; that TFO Boswell did not know the contents of the white trash bag, nor could he be sure that the white trash bag that was placed into the Infiniti was the same one placed in the black Mercedes; and that Daniels' identity was unknown at the time of the traffic stop. [Doc. 643 at 6-8]. Even if Trooper Harman lacked probable cause to stop Daniels 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 narcotics transaction involving the black Mercedes based on their training, experience, and investigation of the PGF. See (Tr. at 20, 26-28, 36, 39-41, 43-46, 51-52). Trooper Harman 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, see (Tr. at 30-31,

34, 36, 47, 55-56, 69-75, 121-24, 128, 137-39), and these “facts provided a specific, concrete, and quite strong basis to conclude that criminal activity was afoot, and that [Daniels’ 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) (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 Harman had probable cause to stop Daniels for the window tint violation and traffic 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

In his original motion to suppress, Daniels argued that the items seized from the black Mercedes should be suppressed because Trooper Harman unreasonably prolonged the traffic stop. [Doc. 382 at 3-5]. Specifically, Daniels asserted that Trooper Harman “delayed the traffic stop until a K-9 officer could arrive,” and the “delay only served to investigate other crimes rather than to cite [] Daniels for a tint violation and send him on his way.” [Id. at 5]. However, Daniels “neither questioned [g]overnment witnesses about this [alleged] delay at the hearing nor addressed it in [his] post-[h]earing [b]rief.” United States v. Rau, CRIMINAL ACTION FILE NO. 4:18-CR-0003-MLB-WEJ-03, 2020 WL 7687134, at *4 n.6 (N.D. Ga. Sept. 16, 2020), adopted by 2020 WL 7488649, at *6 (N.D. Ga. Dec. 21, 2020); see also United States v. Guzman, CIVIL ACTION NO. 1:17-CR-00405-TWT-LTW-2, 2018 WL 7361073, at *12 (N.D. Ga. Dec. 13, 2018) (citations omitted), adopted by 2019 WL 718371, at *1 (N.D. Ga. Feb. 20, 2019). “Thus, the Court deems any argument about that [alleged] delay abandoned.” Rau, 2020 WL 7687134, at *4 n.6; see also United States v. Nuckles, Criminal Case No. 1:14-CR-218-ODE-AJB, 2015 WL 1600687, at *21 (N.D. Ga. Apr. 7, 2015) (citations omitted)

(finding defendant abandoned argument not raised in post-evidentiary hearing brief), adopted at *1, aff'd, 649 F. App'x 834 (11th Cir. 2016) (per curiam) (unpublished).

Even if Daniels had not abandoned this argument, it is without merit because the evidence presented at the hearing established that Trooper Harman pursued his investigation diligently as he conversed with Daniels about the reason for the stop and requested his registration and proof of insurance, which Daniels did not have with him, see (Tr. at 88-90); see also (Gov't Ex. 7 at 01:29-02:03), and after he learned that details of Daniels' explanation for why he was at the junkyard were contradicted by individuals on the scene, (Tr. at 89-90, 93-95, 98, 156); see also (Gov't Ex. 7 at 02:40-03:08; Gov't Ex. 8 at 01:18-01:34), he reasonably questioned Daniels about those details while waiting for Daniels, who was not detained or handcuffed and still had access to his cell phone, to provide his vehicle registration and proof of insurance, (Tr. at 101, 103-05, 135, 146, 152, 156-57, 161); see also (Gov't Ex. 7 at 03:14-03:36); United States v. Cantu, 227 F. App'x 783, 785 (11th Cir. 2007) (per curiam) (unpublished) (alteration, citation, and internal marks omitted) ("The 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."); 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. Moreover, Trooper Harmon had reasonable suspicion from the totality of the circumstances, including the collective knowledge of the agents conducting the PGF investigation that was communicated to him prior to the stop, that the vehicle contained contraband, and he promptly requested the K-9 open air sniff of the vehicle, which was completed within 7 minutes of the initiation of the stop. (Tr. at 105-07, 157, 159-60); see also (Tr. at 153-54, 171; Gov’t Ex. 7 at 04:36-06:24; Gov’t Ex. 8 at 04:26-05:00). The total duration of the stop before Daniels was arrested when the narcotics were found in the trunk of the vehicle was less than twelve minutes, (Tr. at 115); see also (Gov’t Ex. 7), and although “[t]here is no rigid time limitation or bright line rule regarding the permissible duration of a *Terry* stop,” Nuckles, 2015 WL 1600687, at *17 (citation and internal marks omitted), “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 Harman’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 [Daniels’] detention well within the bounds permitted by *Terry v. Ohio* and its progeny.” Simmons, 172 F.3d at 781.

4. Probable Cause to Search the Vehicle

Finally, Daniels asserts that the K-9 alert was not reliable and did not establish probable cause to search his vehicle. [Doc. 643 at 9-14]. Specifically, Daniels contends that the K-9, Ozon, “is unreliable because he is prone to false alerts and has done so in the past,” was “likely impacted by the location of the traffic stop,” exhibited “markedly different alerts during this traffic stop,” and he “alerts specifically for a reward, not because he detects any specific odor.” [Id. at 12-13]. The government responds that the GSP troopers did have probable cause to search the black Mercedes because of the reliability of the K-9 alert, but “[e]ven holding Ozon’s positive, reliable alert aside, Trooper Harman and the other GSP troopers had probable cause to search the black Mercedes” based “on the facts available to the GSP troopers both prior to the traffic stop and those developed during the stop prior to the search of the” vehicle. [Doc. 651 at 14-19].

“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 (1971)). 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) (citation omitted). 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 Daniels’ vehicle was supported by probable cause to believe it contained contraband.¹¹ As previously stated, Trooper Harman, who had probable cause and reasonable suspicion to stop Daniels’ vehicle, gave Trooper Swain and Sergeant Allen a signal to deploy a K-9 for a free-air sniff of

¹¹ The exigency requirement is satisfied as Daniels had just been observed driving the vehicle, demonstrating its mobility. See (Tr. at 78-79, 123-25).

the black Mercedes, and Trooper Swain deployed his K-9, Ozon, who alerted to the odor of narcotics in the vehicle. (Tr. at 101, 105-08); see also (Gov't Ex. 7 at 04:36-05:47).¹² "After [Trooper Swain] conducted the dog sniff and [K-9 Ozon] alerted to contraband in the vehicle, the officers had probable cause to search the vehicle." United States v. Larche, No. 21-12352, 2024 WL 1508509, at *4 (11th Cir. Apr. 8, 2024) (per curiam) (footnote omitted) (citing United States v. Tamari, 454 F.3d 1259, 1264-65 (11th Cir. 2006)); see also High, 2024 WL 5036710, at *5 (citations omitted) (stating that "probable cause can arise based on a positive alert by a dog specially trained to detect the odor of narcotics"). The officers were "thus authorized under the automobile exception to the warrant requirement to conduct a more extensive search of the [vehicle] because 'the [vehicle] was operational and [they had] probable cause to believe that the vehicle contained evidence of a crime.'" United States v. Anguiano, 791 F. App'x 841, 852 (11th Cir. 2019) (per curiam) (unpublished) (citation omitted).

Daniels challenges the reliability of K-9 Ozon's positive alert. [Doc. 643 at 9-14]. "To show a drug-detection dog's reliability, the government need not satisfy

¹² The fact that K-9 Ozon alerted at the driver's side door when the narcotics were located in the trunk of the vehicle, (Tr. at 108, 114-15), "is of little moment," since K-9 Ozon's "task was to detect odor, which emanates from weak points and not always the closest seam," United States v. High, CRIMINAL CASE NO. 1:23-CR-407-04-SEG-JSA, 2024 WL 5036710, at *6 n.1 (N.D. Ga. Oct. 29, 2024), adopted by 2024 WL 4880523, at *3 (N.D. Ga. Nov. 25, 2024); see also (Tr. at 171).

multiple, inflexible, independent evidentiary requirements.” United States v. Rodriguez, 762 F. App’x 938, 942 (11th Cir. 2019) (per curiam) (unpublished) (citing Florida v. Harris, 568 U.S. 237, 245 (2013)); see also United States v. Hernandez, CASE NO. 23-14031-CR-CANNON/MAYNARD, 2023 WL 7168322, at *4 (S.D. Fla. Oct. 17, 2023) (citation and internal marks omitted) (stating that the “Supreme Court has rejected a strict evidentiary checklist for assessing a K-9’s reliability”), adopted by 2023 WL 7158626, at *1 (S.D. Fla. Oct. 31, 2023). “Rather, the Supreme Court has instructed courts to determine the reliability of a drug-detection dog based on controlled-testing environments, a ‘satisfactory performance in a certification or training program,’ and ‘if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs.’” Rodriguez, 762 F. App’x at 942 (quoting Harris, 568 U.S. at 246-47); see also Hernandez, 2023 WL 7168322, at *4 (citation and internal marks omitted) (“Evidence of a dog’s satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert.”). “Ultimately, we ask whether all the facts surrounding a dog’s alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime.” Rodriguez, 762 F. App’x at 942 (citation and internal marks omitted).

The government “adduced substantial evidence showing [Trooper Swain’s]

and [Ozon's] certifications, and the extent of their training and successful examination results." High, 2024 WL 5036710, at *6; see also (Tr. at 148-53). Specifically, Trooper Swain testified that he was certified as a drug detection K-9 handler through the GSP in October of 2021, which required him and his K-9, Ozon, to complete training sessions together, in addition to yearly recertifications, formal training twice a month, and informal training twice a week. (Tr. at 148-52, 163); see also [Docs. 610-6, 610-7, & 610-8]. Further, Trooper Harman, who had worked with Trooper Swain for five years and was himself a certified K-9 handler, testified that he was familiar with Trooper Swain's K-9 partner, Ozon, and was aware of Ozon's positive alert behavior. (Tr. at 60-67, 103, 106-07). Although Daniels takes issue with K-9 Ozon "exhibit[ing] markedly different alerts during the traffic stop," since, during the initial sniff, Ozon "sits two times," while in the second sniff, "after Trooper Harman places a brick inside the vehicle," Ozon "hops on his hind legs and wags his tail excitedly," [Doc. 643 at 13-14 (citations omitted)], Trooper Swain explained that K-9 Ozon had alerted in that manner before, and it "could just be how the odor [was] pooling," (Tr. at 172-73); see also (Tr. at 107 (Trooper Harman's testimony that an alert is a change in the dog's behavior)).¹³

¹³ Daniels also contends that K-9 Ozon is unreliable since his counsel impeached Trooper Swain's testimony that his "dogs never false alert" with "a previous report where Trooper Swain deployed K-9 Ozon" and he "alerted on a vehicle, but law enforcement found no contraband inside," [Doc. 643 at 11-12 (citations omitted)], but Trooper Swain testified that "when a dog alerts to an odor and

“The Court credits [Trooper Swain’s] testimony that [K-9 Ozon’s] activity demonstrated the likelihood that the odor of narcotics was emanating from somewhere inside the vehicle.” High, 2024 WL 5036710, at *6. Further, “[a]lthough not a sufficient fact to justify probable cause, the alert ended up being accurate, as the [black Mercedes] was in fact carrying [five] bricks of suspected cocaine.” Id. (footnote omitted). Accordingly, the “Court finds that the search [of the black Mercedes] was permissible under the automobile exception and that suppression is not warranted.” Id.; see also Hernandez, 2023 WL 7168322, at *5.¹⁴

there’s a residual odor in the room, [that is], in fact, a correct alert[,]” (Tr. at 165-67, 174), and regardless, as the government points out, Daniels “fails to show how a false alert 10 months after the incident in question bears any relevance to the dog’s reliability during the relevant time period,” [Doc. 651 at 15]. Further, while Daniels argues that “K-9 Ozon was likely impacted by the location of the traffic stop,” [Doc. 643 at 12], Trooper Swain explained that K-9 training occurs “in different areas, different environments, different . . . weathers . . . to keep our dog true and accurate,” (Tr. at 169-70).

¹⁴ 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.

III. CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Daniels' motions to suppress, [Docs. 381, 382, & 416], be **DENIED**.

There are no other pending matters before the Magistrate Judge regarding Daniels, 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 7th day of February, 2025.


RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE