

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

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO.
1:24-CR-00071-MHC-RDC

MACKENLEY PIERRE AND
JERMARI HARRIS,

Defendants.

NON-FINAL REPORT AND RECOMMENDATION

This criminal case is before the Court on Mackenley Pierre and Jermari Harris's Motions to Suppress. Defendant Pierre filed motions to suppress evidence contained within his blue iPhone (Docs. 165, 166, 167, 190)¹ and a black Infinity G37, (Doc. 168). Defendant Harris filed motions to suppress evidence contained within his

¹ The Government has confirmed that no evidence was seized based on the federal search warrant it obtained for Defendant Pierre's iPhone, rendering moot the motion to dismiss submitted in Doc. 190. (Doc. 239 at 1). Defendant Pierre agrees and does not contest dismissal. (Doc. 228 at 2). Accordingly, this motion should be **DENIED** as moot. (Doc. 190).

yellow/creme iPhone, (Docs. 175, 182). He also filed a motion requesting a *Franks* hearing related to his motions, (Doc. 176). An evidentiary hearing to address all of these matters was held on September 5, 2025. (R. 183).

On December 1, 2025, the Government filed a brief challenging the Defendants' standing to bring these claims attacking the searches of the vehicle and their cellphones, (Doc. 215). Both Defendants filed responses to this pleading, (Docs. 228, 230). On February 2, 2026, the Government filed its reply, (Doc. 239). Following careful review of the Government's pleadings, the Defendants' responses, the transcript of the evidentiary hearing (hereafter "Tr.") and the applicable law, these Motions are ripe for judicial review.

Factual and procedural background

On May 15, 2024, Defendants Pierre and Harris, along with co-defendants Willie Holmes and Shaquane Chatman, were named in a five-count Superseding Indictment charging them with Carjacking in violation of 18 U.S.C. §§2119(2) and 2 (Count One) and Brandishing and Discharging a Firearm During a Crime of Violence in violation 18 U.S.C. §§924(c)(1)(A), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), and 2 (Count Two), (Doc. 33). Only Defendants Holmes and Chatman are named in Counts 3-5. (*Id.* at 2-6).

According to the Superseding Indictment, Defendants Holmes, Pierre and Harris “aided and abetted by one another, and others known and unknown to the grand jury, did knowingly take from the presence of ‘T.M.’ by force, violence, and intimidation, with the intent to cause death and serious bodily harm, a motor vehicle, that is, a 2019 Nissan Altima that had been transported, shipped, and received in interstate and foreign commerce, resulting in serious bodily injury that caused a substantial risk of death, extreme physical pain, and protracted loss and impairment of the function of a bodily member, organ, and mental faculty to ‘T.M.’” on August 28, 2022. (Doc. 33 at 1). It also alleges that they knowingly used and carried a firearm “during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United States, that is, carjacking, in violation of Title 18, United States Code, Section 2119, as alleged in Count One of this Indictment, and during and in relation to the commission of said offense, did brandish and discharge a firearm.” (*Id.* at 2).

These charges stem from an Atlanta Police Department (“APD”) investigation into a carjacking that occurred on August 28, 2022. (Tr. at 7). APD officers had been informed that masked assailants driving a black Infinity shot the victim several times before stealing his Nissan Altima. (Doc. 166-1 at 2-3). During the evidentiary hearing, APD Officer Trent Denninger testified that he and his partner - Officer James Douglas - were in the downtown Atlanta area searching for the suspects. (Tr. at 7-8). With the

assistance of APD's surveillance equipment, they located a black Infinity parked on a street near the victim's vehicle. (Tr. at 11-12). They observed three or four individuals standing near the Infinity as they approached in their patrol car. (*Id.* at 20-21). The suspects entered the Infinity and began driving away. (*Id.*). After receiving confirmation that the Infinity was the vehicle possibly involved in the carjacking, and after observing the driver as he committed a traffic offense, Officer Douglas activated his emergency lights in an attempt to conduct a traffic stop. (*Id.* at 15, 22). His bodycam began recording the pursuit. (*Id.* at 14; Gov't Ex. 5). Officer Denninger described the events as follows:

Q. (By Mr. Saul): Okay. Your car is the car that you saw or you and the other officer or officers that first reported seeing the black Infiniti run a red light?

A. (Officer Denninger): Correct.

Q. And at that point, did you turn on the blue lights to try to pull over the black Infiniti or do you just follow – at that point, did you turn on the blue lights?

A. Yes.

Q. Okay. You said that a gun was thrown out of the - - or you believe that a gun was thrown outside of the car; right?

A. Correct.

Q. You said the passenger side?

A. Correct.

(Tr. at 22).

Although the officers briefly lost sight of the Infinity, they found it parked in a parking lot behind an apartment complex. (Tr. at 6). One of the passenger doors of the Infinity was left ajar and no occupants were inside. (*Id.* at 18). The officers noticed a chain-link fence separating the parking lot from several train tracks. (*Id.* at 16-17). Officer Denninger stated that they saw the suspects running from the parking lot after having apparently jumped over the fence. (*Id.* at 17, 23). He and other officers pursued on foot and eventually arrested the Defendants. (*Id.* at 23).

Search warrants were issued by state and federal judicial officers granting permission to search the Infinity and all of the cellphones found within. (Tr. at 34, 36-39, 52-56).² The evidence seized as a result of these searches forms the basis of the Defendants' motions to suppress.

The Parties' contentions

In Defendant Pierre's motions to suppress, he argues that the search of his cellphone was unlawful because "there was no probable cause to link [his] cellphone data to any crime." (Doc. 166 at 1). As a result, he claims, the search warrant affidavit fails to establish a nexus between his cellphone and the alleged offenses. (*Id.* at 2,

² Although three cellphones were seized from the Infinity, only the two identified by the Defendants are relevant to the pending motions. (Tr. at 61).

Doc. 165). He also avers that the search of the Infinity was unlawful because the warrant “does not allege that the Black Infinity G37 was used in the carjacking, [and] it does not provide any information as to why the contents of the Black Infinity G37 would contain potential evidence.” (Doc. 168 at 2). He insists that he maintains standing to bring these claims because his sister gave him permission to drive her Infinity, therefore he was in lawful possession of her car at the time of his arrest. (Doc. 228 at 3). Moreover, he claims he didn’t abandon his expectation of privacy in the vehicle or his cellphone, explaining that even though the Infinity was abandoned by the occupants, that conduct “does not automatically mean that [he] abandoned the car and its contents. [He] had an interest in the car both legally and simply because it was his sister’s car and his property left in the car. [He] did not abandon the Blue iPhone.” (*Id.* at 5) .

Defendant Harris also submits that he has standing to challenge the search and seizure of his cellphone, asserting that when he left his cellphone in the Infinity on the night of his arrest, “it did not mean that he had abandoned his cell phone. Most importantly, he had not abandoned the data that was on his cell phone.” (Doc. 230 at 5). As for the validity of the search warrant granting access to his cellphone data, he argues that the affidavit “contained material omissions and false statements pertaining to [his] conduct...and false statements deliberately made and with reckless disregard

to the truth.” (Doc. 176 at 1). Finally, Mr. Harris requests a *Franks* hearing to address the constitutional claims raised in support of his motion to suppress. (*Id.*).

The Government reiterates that all of the motions should be denied because neither Defendant maintains standing to contest the search of their cellphones or the vehicle, emphasizing that “well-settled Eleventh Circuit case law establishes that both Pierre and Harris abandoned the black Infinity and its contents, including the blue iPhone and yellow/crème iPhone, when they fled from police, left the black Infinity behind, and ran into the Gulch on the other side of a chain-link fence.” (Doc. 239 at 6). Therefore, it continues, they have failed to establish reasonable expectations of privacy required to sustain their Fourth Amendment claims.

Legal Authority and Analysis

The Fourth Amendment prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. To challenge a seizure as violating the Fourth Amendment, a defendant must have “standing,” *i.e.*, a legitimate expectation of privacy in the premises. See, *United States v. Gonzalez*, 940 F.2d 1413, 1420 n. 8 (11th Cir. 1991) and *United States v. Epps*, 613 F.3d 1093, 1097 (11th Cir.2010) (“ [O]nly individuals who have a legitimate expectation of privacy in the area invaded may invoke the protections of the Fourth Amendment.”) (quoting, *United States v. Lee*, 586 F.3d 859, 864 (11th Cir. 2009)). Accordingly, the Fourth Amendment only protects an

individual in a place where he can demonstrate a reasonable expectation of privacy against government intrusion. See, *Katz v. United States*, 389 U.S. 347, 353 (1967). Furthermore, Fourth Amendment rights are personal, and only individuals who have a reasonable expectation of privacy may challenge the validity of a government search. *Rakas v. Illinois*, 439 U.S. 128, 133–34, 143 (1978).

An individual has standing to challenge a search if “(1) he has a subjective expectation of privacy, and (2) society is prepared to recognize that expectation as objectively reasonable.” *United States v. Harris*, 526 F.3d 1334, 1338 (11th Cir. 2008). That is, a defendant must establish both a subjective and an objective expectation of privacy. *United States v. Segura–Baltazar*, 448 F.3d 1281, 1286 (11th Cir. 2006); *United States v. Robinson*, 62 F.3d 1325, 1328 (11th Cir. 1995). The subjective prong is a factual inquiry, *United States v. McKennon*, 814 F.2d 1539, 1543 (11th Cir. 1987), and “requires that a person exhibit an actual expectation of privacy,” *United States v. King*, 509 F.3d 1338, 1341 (11th Cir. 2007) (quoting, *Segura–Baltazar*, 448 F.3d at 1286). The objective prong is a question of law, *McKennon*, 814 F.2d at 1543, and “requires that the privacy expectation be one that society is prepared to recognize as reasonable.” *King*, 509 F.3d 1338, 1341 (11th Cir. 2007). “While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated,

property rights are neither the beginning nor the end of ... [the] inquiry.” *United States v. Salvucci*, 448 U.S. 83, 90-91 (1980) (citation omitted). Other factors to be weighed include whether the defendant has a possessory interest in the object seized or the area searched, whether he has the right to exclude others from that location, whether he has exhibited a subjective expectation that the area would remain free from governmental invasion, whether he employed normal precautions to maintain his privacy, and whether he was legitimately on the premises in question. *United States v. Pitt*, 717 F.2d 1334, 1337 (11th Cir.1983); *United States v. Haydel*, 649 F.2d 1152, 1154–55 (5th Cir. Unit A July 8, 1981)³; *Rawlings v. Kentucky*, 448 U.S. 98, 105, (1980); and *Rakas*, 439 U.S. at 147–49.

The protections of the Fourth Amendment “extend to any thing or place with respect to which a person has a reasonable expectation of privacy.” *United States v. Ross*, 963 F.3d 1056, 1062 (11th Cir. 2020) (en banc) (internal quotation marks omitted). “By contrast, an individual's Fourth Amendment rights are *not* infringed—or even implicated—by a search of a thing or place in which he has no reasonable expectation of privacy.” *Id.* (emphasis in original). For example, a person has no reasonable expectation of privacy—and thus no Fourth Amendment claim—in

³ In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as binding precedent all decisions rendered by the Fifth Circuit before October 1, 1981.

property that he has abandoned. *United States v. Sparks*, 806 F.3d 1323, 1341–42 (11th Cir. 2015) (“Fourth Amendment claims do not lie when the defendant has abandoned the searched property.”), overruled on other grounds by *Ross*, 963 F.3d at 1066. “In determining whether there has been abandonment, the critical inquiry is whether the person prejudiced by the search voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.” *United States v. Ramos*, 12 F.3d 1019, 1022 (11th Cir. 1994) (cleaned up). “Whether abandonment occurred is a question of intent which may be inferred from acts, words and other objective facts.” *Id.* at 1022–23 (internal quotation marks omitted). The Government bears the burden of proving abandonment. *Id.* at 1023.

This Circuit has long-held that a defendant abandons his interest in property he leaves behind if he flees from his car following a police pursuit. See, *United States v. Edwards*, 441 F.2d 749, 750-753 (5th Cir. 1971), (holding that the defendant “abandoned any reasonable expectation to a continuation of his personal right against having his car searched” when he jumped from his car (leaving the lights on and the engine running) and fled on foot from the police). See, e.g., *United States v. Gibbs*, No. 1:17-cr-207-CAP-CMS, 2018 WL 5624314, at *9–10 (N.D. Ga. Oct. 9, 2018) (concluding defendant abandoned any reasonable expectation of privacy he had in a

vehicle and its contents when he fled from the car on foot after a police chase) and *United States v. Hunter*, No. 1:07-cr-310-01-TWT-JFK, 2008 WL 552881, at *7 n. 6 (N.D. Ga. Feb. 25, 2008)(noting that items seized from a vehicle would be admissible because the defendant abandoned his interest in the vehicle when he fled from it following a police pursuit).

Finally, the burden is on a defendant to show by a preponderance of the evidence that he had a legitimate expectation of privacy in the area searched. *Harris*, 526 F.3d at 1338; *United States v. Brazel*, 102 F.3d 1120, 1147 (11th Cir.1997); *United States v. Golphin*, No. 6:10-cr-291-Orl-28GJK, 2011 WL 2446561, at *1 (M.D. Fla. June 15, 2011)(citing, *United States v. Cantley*, 130 F.3d 1371, 1377 (10th Cir.1997))(holding that the movant must demonstrate by a preponderance of the evidence that he has a legitimate expectation of privacy); and *United States v. Bushay*, 859 F. Supp. 2d 1335, 1361–63 (N.D. Ga. 2012)(where court found defendant didn’t have standing to bring a Fourth Amendment claim related to the seizure of his weapon because he “did not take steps to maintain his privacy or possession of the firearm by leaving it in the night stand of a hotel room in which he had no more than a fleeting interest.”).

With these principles in mind, the undersigned turns to the issues raised by the Parties.

Defendants lack standing to contest the searches of their property

As noted above, the Government urges this Court to deny the requested relief because neither Defendant has standing to raise these Fourth Amendment claims. The abandonment of their property when they fled from the officers, it argues, prevents them from establishing that they maintained reasonable expectations of privacy in the vehicle or their cellphones.

The Government's arguments are persuasive. First, the undersigned will assume – *without deciding* – that both Defendants have standing to raise all of these constitutional challenges. However, even assuming this status, their motions should be denied because they both abandoned any privacy interests once they voluntarily left their property behind in their attempt to evade arrest. See, *United States v. Johnson*, 811 F. App'x 564, 569–70 (11th Cir. 2020) (finding that defendant forfeited his right to Fourth Amendment protection in his abandoned property when he exited his car (while it was still in reverse) and took off running from the pursuing police) and *United States v. Harvey*, No. 3:21-cr-019-TCB-RGV, 2022 WL 16579328, at *4–6 (N.D.Ga. Oct. 7, 2022) (where court held that a defendant who fled a traffic stop on foot “relinquished any reasonable expectation of privacy” in the truck he left behind and its contents).

Like the defendants in *Johnson* and *Harvey*, the Defendants in the instant case “may not contest the constitutionality of [the] subsequent acquisition by the police” because they abandoned their property during the officers’ pursuit. *United States v. Cofield*, 272 F.3d 1303, 1306 (11th Cir. 2009); See Also, *United States v. Falsey*, 566 F. App’x 864, 866–67 (11th Cir. 2014) (finding defendant lacked standing to challenge the constitutionality of the search of his car when, “believing that he was being pursued by the police, [he] sped into the parking lot of a business park and then sprinted into the woods, leaving his car unlocked with the key still inside of it,” concluding that the “ ‘only conceivable purpose’ for doing so was ... to disassociate himself from the vehicle and the [items] that were in it.”).

The Defendants do not refute that they were being chased by the officers, nor that their property was left unsecured in the parking lot of an apartment complex; residential housing neither Defendant claims as his home. Because the Defendants’ conduct “constitutes abandonment as a matter of law,” they lack standing to challenge the constitutionality of the subsequent searches. *Falsey* at 868. Accordingly, the Defendants’ Motions to Suppress should be **DENIED**.

Lastly, this Court **RECOMMENDS** that Defendant Harris’s request for an evidentiary hearing be **DENIED**. As previously stated, he has failed to establish that he has standing to challenge the search of his cellphone. As a result, an evidentiary

hearing is not warranted in this case. *United States v. Sneed*, 732 F.2d 886, 888 (11th Cir. 1984) (explaining that Due Process considerations “do not require that a defendant who fails to make the fundamental allegations in his motion to suppress be afforded a pretrial hearing on his motion...where a defendant in a motion to suppress fails to allege facts that if proved would require the grant of relief, the law does not require that the district court hold a hearing independent of the trial to receive evidence on any issue necessary to the determination of the motion.”).

Conclusion


For the reasons stated above, this Court **RECOMMENDS** that Defendant Pierre’s Motions to Suppress (Docs. 165, 166, 167 and 168)⁴ be **DENIED**. It is also **RECOMMENDED** that Defendant Harris’s Motions to Suppress and for a *Franks* hearing (Docs. 175, 176, and 182) be **DENIED**. Having now addressed all referred pretrial matters relating to **Defendant Harris**, and having not been advised of any impediments to the scheduling of a trial as to him, his case is **CERTIFIED READY FOR TRIAL**.

Defendant Pierre’s outstanding Motions to Suppress Statements (Doc. 169, 180) will be resolved after submission of all pleadings and review by this Court. A pretrial

⁴ As previously noted, both Parties agree that Defendant Pierre’s Motion to Suppress (Doc. 190) is moot. Thus, it should be **DENIED** on that basis.

conference will be scheduled to address the remaining motion related to Defendant Pierre's request for personal information concerning the alleged victim. (Doc. 164).

IT IS SO RECOMMENDED this 25th day of February, 2026.



REGINA D. CANNON
United States Magistrate Judge