

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

UNITED STATES OF AMERICA,

v.

SAMUEL PEREZ-HERRERA,

Defendants.

CRIMINAL ACTION NO.
1:24-cr-00119-TWT-LTW

**MAGISTRATE JUDGE’S FINAL REPORT AND RECOMMENDATION
AND ORDER CERTIFYING THIS DEFENDANT READY FOR TRIAL¹**

This case is before the Court on Defendant Samuel Perez Herrera’s Motion to Suppress Evidence [Doc. 22]. For the reasons discussed below, the undersigned **RECOMMENDS** that the Motion to Suppress be **DENIED**.

BACKGROUND

In August 2021, a cooperating defendant (“CD”) contacted the Drug Enforcement Administration (“DEA”) claiming that an individual he knew as Sammy, who had sold him drugs before, had reached out to him about conducting a drug deal. [Doc. 32 (Suppression Hearing Tr. (“Tr.”)) at 6-7]. DEA agents set up a buy-bust

¹ This Court observes that this Defendant has been indicted with a co-defendant who has not had his initial appearance in this Court, and who does not appear to be in custody at this time.

operation to investigate Sammy. [Id.]. Pursuant to the operation, the CD made several phone calls to Sammy at the phone number 678-933-1400 between August 11 and August 14, 2021, and attempted to arrange a drug deal. [Id. at 7-8, 39].

DEA agents covertly monitored and recorded the CD's calls to Sammy. [Id. at 7-8]. On August 11, 2021, Sammy informed the CD that he had "three kinds of material" for sale: (1) "food for the dog . . . for 31," (2) "cold . . . for 5,000" and (3) "white . . . for 30." [Id. at 11-15]. DEA Task Force Officer Phillip Dillard ("TFO Dillard") testified that, based on his training and experience, this was coded language referring to the sale of heroin for \$31,000 per kilogram, methamphetamine for \$5,000 per kilogram, and cocaine for \$30,000 per kilogram. [Id. at 13-14]. The CD asked during the phone call if it would be possible to buy ten to twenty kilograms of cocaine. [Id. at 14-15]. Sammy responded affirmatively and said that one of his "buddies" would be with him during the transaction. [Id. at 15].

DEA agents ran the phone number ending in -1400 through law enforcement databases and learned that the number was associated with Defendant Samuel Perez-Herrera ("Perez"), who previously was investigated by the Macon DEA office. [Id. at 15-16]. The agents were able to obtain a picture of Perez from the Georgia Crime Information Center ("GCIC"), and the CD confirmed that the picture was of the individual he referred to as Sammy. [Id. at 16]. The CD also told the agents that

Sammy drove a green “jacked-up” Jeep as well as a “black F-250 with a lift and big tires” during their previous dealings. [Id.]. Based on this information, TFO Dillard obtained a search warrant for geolocation tracking data for the -1400 device, a T-Mobile cellphone. [Doc. 36-60]. TFO Dillard swore out the affidavit for the geolocation warrant. [Id.]. Pursuant to the warrant, T-Mobile provided location data from the device beginning on August 12 and ending on August 14. [Id.].

Working with DEA agents, the CD called Sammy on August 13, 2021, placed an order for ten kilograms of cocaine, and scheduled the deal for 10:00 a.m. the following day outside the CD’s residence at 1290 Shanter Trail in Atlanta. [Tr. at 17-18]. To prepare for the deal, TFO Dillard created a WhatsApp group chat that included all personnel involved in the operation, including various DEA agents and Georgia State Patrol (“GSP”) officers. [Id. at 18-20]. On the evening of August 13, TFO Dillard circulated a picture of Perez on the chat and informed all officers of the plan for the operation the next day, stating: “Once [Perez] arrives and calls the CD to confirm he is at the deal location, the CD will make an excuse for not being able to do the deal. Once [Perez] leaves, we will follow and GSP will make the traffic stop.” [Doc. 36-1].

On the morning of August 14, 2021, TFO Dillard assembled a team to surveil the area around 1290 Shanter Trail. [Tr. at 24-25]. Agents and officers were placed at the deal location, as well as at various vantage points where they could monitor the

entrances and exits of the surrounding neighborhood. [Id.]. TFO Dillard stationed himself at a Kroger parking lot across the street from Shanter Trail. [Id.].

The CD initiated another call with Sammy around the time of the planned deal, during which Sammy told the CD he was “ten minutes out” and would be bringing someone with him to the deal. [Id. at 21-22]. Agents and officers continued to monitor the situation, using the WhatsApp chat and radio to share information in real time. [Id. at 25]. For example, agents shared pictures of vehicles entering and exiting the neighborhood around Shanter Trail, which a GSP officer ran through the GCIC database to obtain driver information. [Id.]. At some point on the morning of the planned deal, geolocation data showed the -1400 device to be “in the area of Butts County” approximately fifty miles away from 1290 Shanter Trail. [Id. at 40]. However, it is unclear from the record what time that data was received or reviewed. [See id. at 40-42].

At about 10:18 a.m., an agent circulated a picture of a lifted black truck that was driving around the location of the planned deal. [Id.]. A GSP officer confirmed that the truck, a Ford F-250, was registered to an “Erika Perez.” [Id. at 26-27]. TFO Dillard testified that the name “Perez” was significant because it matched the target’s name, as was the make of the vehicle because it was consistent with one of the cars the CD said Sammy drove during their past dealings. [Id. at 26-27]. In addition, officers reported

observing the truck conduct “heat checks”—that is, driving around the deal location to check for law enforcement—common behavior that TFO Dillard had observed during prior drug investigations. [Id. at 27-28].

The truck eventually drove away from the neighborhood to a nearby BP gas station. [Id. at 28]. Agents followed the truck, took pictures of its driver as he entered and returned from the gas station, and texted the pictures to the WhatsApp group chat. [Id.]. Based on the picture previously obtained from the GCIC, TFO Dillard identified the driver as Perez. [Id. at 28-29]. Agents subsequently followed the truck as it drove back to the deal location and then to the Kroger parking lot, where they observed Perez speaking with an unknown man (later determined to be co-defendant Jesus Valencia Cisneros) driving a maroon Toyota Camry. [Id. at 29-31, Doc. 36-1]. When Perez and Cisneros left the Kroger parking lot in tandem, agents and officers split up and continued to follow them—with one team following Perez and the other following Cisneros—as they drove onto I-285. [Tr. at 31]. At some point, TFO Dillard notified GSP officers that he wanted both vehicles stopped. [Id. at 31].

Pursuant to TFO Dillard’s request, GSP Officer Barrett Smith stopped Perez’s truck after it exited I-285 onto Langford Parkway. [Id. at 62-63, 70]. GSP Officer Smith was part of the WhatsApp chat and thus aware of Perez’s suspected criminal activity involving a planned drug deal. [Id.]. In addition, GSP Officer Smith observed

Perez committing several traffic violations prior to the stop. [Id. at 66-67]. Specifically, GSP Officer Smith observed that the truck's lifted height and oversized tires made the vehicle's suspension higher than the standard two inches permitted under Georgia's motor vehicle code and that the tint on the taillights and windows was too dark. [Id. at 67-70].

After pulling the truck over, GSP Officer Smith asked Perez for his driver's license, and Perez responded by presenting a Mexican identification card. [Id. at 70]. Based on the identification card, GSP Officer Smith identified the driver of the truck as Samuel Perez Herrera. [Id. at 70-71]. After confirming that Perez did not have a valid driver's license, GSP Officer Smith placed him under arrest for driving while unlicensed. [Id. at 71]. During a search incident to the arrest, GSP Officer Smith discovered a blue Motorola cellphone on Perez's person. [Id. at 71-72]. GSP Officer Smith updated the WhatsApp chat with this discovery and seized the phone pursuant to TFO Dillard's request. [Id. at 72]. TFO Dillard testified that he asked GSP Officer Smith to seize the phone because, in his training and experience, drug traffickers often use cellphones to conduct their business and because he believed Perez's phone was used to facilitate the drug deal planned for August 14, 2021. [Id. at 57]. GSP Officer Smith turned the Motorola smartphone over to the DEA. [Id. at 72].

Meanwhile, GSP officers continued to follow Cisneros's Camry, which had separated from Perez's truck and continued driving South. [Id. at 37-38, 48]. After stopping the Camry, officers discovered a hidden compartment in the vehicle which contained ten brick-shaped bundles filled with a substance that field tested positive for cocaine. [Id. at 38]. Cisneros was arrested and booked him into the Clayton County jail, but apparently was mistakenly released without charges and his whereabouts are currently unknown to the Government. [See Doc. 40 at 4-5].

On August 18, 2021, TFO Dillard applied for and obtained a search warrant for the Motorola cellphone seized during Perez's traffic stop. [Doc. 36-61]. Perez subsequently was arrested and indicted on charges of conspiracy and possession with intent to distribute cocaine. [Doc. 1]. He has filed a motion to suppress evidence collected by the Government during its investigation leading up to and during the August 14, 2021 operation, including geolocation data on the -1400 device, evidence collected during his traffic stop, and the search incident to his arrest that day. [Doc. 22]. According to Perez, the Government collected this evidence in violation of the Fourth Amendment. [See Doc. 40 at 5-17].

The undersigned held an evidentiary hearing on the suppression motion on February 26, 2025. [See February 26, 2025 Docket Entry]. The parties then submitted exhibits and post-hearing briefs. [Docs. 36, 37, 40, 46, 47]. Based on a careful review

of the evidence presented at the hearing and the exhibits and briefing submitted by the parties, the undersigned recommends for the reasons set forth below that the motion be denied.

DISCUSSION

I. Traffic Stop

The Fourth Amendment prohibits “unreasonable searches and seizures.” United States v. Braddy, 11 F.4th 1298, 1307-08 (11th Cir. 2021) (citing U.S. Const. amend. IV). A traffic stop for a suspected violation of law is considered a seizure, and under the Fourth Amendment must be supported by a “reasonable suspicion” that the person stopped is breaking the law. Id. at 1308 (quotation marks omitted). That requirement is satisfied when the officer conducting the stop has a “particularized and objective basis for suspecting the particular person stopped” is engaged in criminal activity. Id. (citation and quotation marks omitted). “Even minor traffic violations qualify as criminal activity” and therefore justify a traffic stop. United States v. Campbell, 26 F.4th 860, 880 (11th Cir. 2022). To determine whether an officer’s suspicion of criminal activity cited in support of a traffic stop is reasonable, courts evaluate the “totality of the circumstances surrounding the stop, including the collective knowledge of all officers involved in the stop.” United States v. Bishop, 940 F.3d 1242, 1249 (11th Cir. 2019).

Perez argues GSP Officer Smith's traffic stop of his truck on August 14, 2021, was not justified by a reasonable suspicion of criminal activity and, consequently, that the stop violated the Fourth Amendment. [See Doc. 22 ¶ 14]. According to Perez, the purported justification for the stop had no basis in Georgia's motor vehicle code and was not a reasonable mistake of a provision of law. [Id.]. Further, Perez says, the DEA agents and GSP officers involved in the August 14, 2021 operation had no reasonable basis to believe Perez was engaged in any other illegal activity at the time of the stop. [Id.]. The undersigned is unpersuaded by these arguments.

As an initial matter, the traffic stop of Perez's truck on August 14, 2021, was supported by GSP Officer Smith's independent observations of several traffic violations committed by Perez. A Georgia statute in effect on that date² made it unlawful to "alter the suspension system of any private passenger motor vehicle . . . more than two inches above or below the factory recommendation" or to operate a vehicle on a public roadway "if the suspension system . . . has been altered more than two inches above or below the factory recommendation for such vehicle." See O.C.G.A. § 40-8-6(a) and (b) (2021). Based on the height of Perez's truck and the size

² In his suppression motion, Perez relies on a differently worded version of this statute that did not become effective until July 1, 2024. [See Doc. 40 at 6 (citing O.C.G.A. § 40-8-6 (2024))]. Because it was not in effect at the time of the traffic stop, the language cited by Perez is irrelevant to the analysis.

of its tires, GSP Officer Smith determined that Perez had violated those provisions. [Tr. at 67-68]. Georgia statutes also prohibited the placement and degree of tinting GSP Officer Smith observed on Perez's truck. See O.C.G.A. §§ 40-8-23(b) ("Every motor vehicle . . . shall be equipped with two taillights" which "shall emit a red light plainly visible from a distance of 500 feet to the rear") and 40-8-73.1(b)(2) ("[I]t shall be unlawful for any person to operate a motor vehicle . . . [w]hich has material and glazing applied or affixed to the rear windshield or the side or door windows, which material and glazing 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."). GSP Officer Smith testified that the taillights on Perez's truck were tinted black and that he could not see Perez through the windows despite wearing polarized sunglasses at the time. [Id. at 68-70].

GSP Officer Smith ultimately issued Perez a warning for the suspension and tinting violations, exercising his discretion to arrest Perez for the more serious crime of driving unlicensed, but that does not remove GSP Officer Smith's "initial probable cause to stop the vehicle." United States v. Williams, No. CR408-224, 2008 WL 11384073 at *2 n.5 (S.D. Ga. Dec. 15, 2008). See also United States v. Sicairos-Sicairos, No. 4:10-cr-054-HLM, 2011 WL 2710031 at *5 (N.D. Ga. July 11, 2011) ("The propriety of the traffic stop does not depend on whether the defendant is actually

guilty of committing a traffic offense. Instead, the relevant question is whether it was reasonable for the officer to believe that a traffic offense had been committed.” (citation omitted)). Moreover, even if GSP Officer Smith mistakenly believed Perez was violating various traffic laws, that would not render the stop unreasonable under the Fourth Amendment so long as the mistake was reasonable and in good faith. See Heien v. North Carolina, 574 U.S. 54, 57 (2014) (explaining that a mistake of fact or a reasonable mistake of law does not invalidate a traffic stop under the Fourth Amendment). There is no indication in the record that GSP Officer Smith acted other than in good faith.

Furthermore, GSP Officer Smith had ample information to support a reasonable suspicion of other criminal activity to justify stopping Perez’s truck. [See Tr. at 6-31, 38, 70-72]. GSP Officer Smith learned from the WhatsApp chat that a CD had in the past purchased drugs from a man named Sammy, who the CD confirmed from a GCIC picture was Perez. [Id. at 6-7, 15-16]. GSP Officer Smith also knew that Sammy had used coded language to tell the CD during an August 11, 2021 phone call that he had heroin, methamphetamine, and cocaine for sale, and that he ultimately agreed to sell the CD ten kilograms of cocaine in a drug deal planned for August 14, 2021, at the CD’s Shanter Trail residence. [Id. at 17-18]. GSP Officer Smith was apprised that agents and officers surveilling the deal location saw a black, lifted truck registered to

an individual with the last name Perez enter and conduct heat checks in the Shanter Trail neighborhood, and he received an image of a man agents believed to be Perez captured after the truck drove to a nearby gas station. [Id. at 24-31]. This information, within the collective knowledge of GSP Officer Smith and the other officers and agents involved in the investigation, justified the stop of Perez’s truck based on the suspicion that he was engaged in unlawful drug activity. See United States v. Guzman, No. 1:17-CR-00405-TWT-LTW-2, 2018 WL 7361073 at *7 (N.D. Ga. Dec. 13, 2018) (finding based on similar evidence that a traffic stop was justified because officers “had probable cause to believe that the truck was violating a traffic law and probable cause to believe that the truck contained evidence of an illegal drug transaction”).

II. Motorola Cellphone Search and Seizure

The protection of the Fourth Amendment extends to “anything or place with respect to which a person has a reasonable expectation of privacy.” United States v. Morgan, 143 F.4th 1264, 1271 (11th Cir. 2025) (citation and quotation marks omitted). The Eleventh Circuit has held that the expectation of privacy extends to a person’s cellphone. Id. at 1272 (“[a] person has a Fourth Amendment interest in his cellphone”). That means the Government must have a lawful basis for seizing a cellphone and “must generally secure a warrant” before searching it. Id.

As discussed above, GSP Officer Smith arrested Perez after stopping his truck and discovering that he was driving while unlicensed. [Id. at 70-71]. The stop and the arrest were justified by a reasonable suspicion that Perez was committing traffic violations and engaged in other unlawful activity. See Campbell, 26 F.4th at 880. Upon searching Perez incident to the arrest, GSP Officer Smith found a Motorola cellphone which TFO Dillard requested seized because he suspected it contained evidence of a drug trafficking conspiracy. [Id. at 57, 72]. The Fourth Amendment allows such a warrantless seizure of property when there is probable cause to believe the property “contains contraband or evidence of a crime” and “an applicable warrant exception, such as exigent circumstances.” United States v. Babcock, 924 F.3d 1180, 1186 (11th Cir. 2019). Here, there was probable cause to believe the cellphone discovered on Perez’s person contained evidence of drug trafficking and exigent circumstances due to its discovery during a search incident to Perez’s arrest. See United States v. Graham, 123 F.4th 1197, 1240 (11th Cir. 2024) (“[A] police officer who makes a lawful arrest may conduct a warrantless search of the arrestee’s person. This exception exists in part to prevent the concealment or destruction of evidence. And the Supreme Court has permitted the seizure of a cell phone for that purpose while a warrant is obtained for a search of its contents.” (quotation marks and citations omitted)).

As noted, a warrant generally is required before searching a cellphone, even if the phone was seized in a search incident to an arrest. See Morgan, 143 F.4th at 1271. Perez concedes that the Government obtained a warrant to search the Motorola cellphone seized during his arrest, but he argues the warrant was invalid because the affidavit submitted in its support contained a material omission. [See Doc. 40 at 16]. In support of this argument, Perez points to TFO Dillard’s failure to mention in the affidavit that geolocation data for the device with the phone number ending in -1400 was pinging “fifty miles away from the traffic stop location” on the morning of the buy-bust operation. [Id.]. According to Perez, this fact suggests that he could not have been in possession of the -1400 device at the time of the traffic stop, and there was no suspicion that any other device (such as the Motorola cellphone found on Perez’s person) contained evidence of or was used in furtherance of drug trafficking activity. [Id.].

A warrant affidavit violates the Fourth Amendment if it contains material omissions “made intentionally or with reckless disregard” for the truth. Madiwale v. Savaiko, 117 F.3d 1321, 1326-27 (11th Cir. 1997) (quotation marks omitted). However, “[o]missions that are not reckless, but are instead negligent . . . or insignificant and immaterial” do not invalidate a warrant. Id. at 1327. Moreover, an affidavit supporting a warrant is presumptively valid. United States v. Gamory, 635

F.3d 480, 490 (11th Cir. 2011). A challenge to the veracity of such an affidavit must therefore be supported by a “substantial preliminary showing” that the affiant “knowingly and intentionally” or recklessly omitted material information and that “absent those . . . omissions, probable cause would have been lacking.” Id. (quotation marks omitted).

There is no evidence of a deliberate or reckless omission here. Perez argues TFO Dillard’s affidavit falsely described the Motorola cellphone seized from him at the traffic stop as the “subject telephone” in the recorded conversations with the CD, deliberately omitting the fact that geolocation data showed that particular phone was fifty miles away from the stop location in Butts County on the morning of the buy-bust operation and thus could not have been in Perez’s possession at the time. [Doc. 40 at 16]. However, TFO Dillard testified at the suppression hearing that it was not uncommon for location data for a cellphone not to be in the same location as the device. [Tr. at 40-41]. He stated further that because the investigation during the planned buy-bust was unfolding so quickly, he did not check every single ping from the device on the morning of the operation. [Id. at 42]. Defense counsel never elicited during the suppression hearing the exact time the data showed the -1400 phone to be near Butts County, meaning that Perez could have traveled back to Atlanta with the phone in time for the planned drug deal and subsequent traffic stop. [See id. 40-42]. Thus, based on

TFO Dillard's unrefuted and credible testimony as well as other evidence in the record, it appears that the omission of the geolocation data for the cellphone seized from Perez during the traffic stop was at worst negligent rather than deliberate or reckless. See United States v. Barsoum, 763 F.3d 1321, 1329 (11th Cir. 2014) ("The allegations of deliberate omission must be more than conclusory and must be supported by more than a mere desire to cross-examine." (quotation marks omitted)).

Nor has Perez shown that the omission was material. Indeed, the facts alleged in TFO Dillard's affidavit provide probable cause to search the contents of the Motorola cellphone seized from Perez even assuming it was not the -1400 device. [See Doc. 36-61]. Those facts include a description of: (1) an August 11, 2021 call between the CD and Sammy concerning a planned drug purchase, (2) phone calls over the next few days during which the CD arranged to purchase ten kilograms of cocaine from Sammy on August 14, 2021, at an agreed upon time and location for a price of \$30,000 per kilogram, and (3) TFO Dillard's statement, based on his training and experience, that drug dealers use cellphones to conduct their business. [Id.]. TFO Dillard stated further in the affidavit that: (1) shortly after the time of the planned deal, agents observed a black, lifted Ford truck enter the location identified for the deal, and they learned that the truck was registered to an individual with the last name Perez, (2) the truck conducted heat checks in the neighborhood and then traveled to a nearby BP gas

station and a Kroger parking lot where agents saw Perez speak with Cisneros, (3) the two men left, whereupon agents initiated traffic stops on both vehicles and discovered ten kilograms of cocaine in a hidden compartment in the car driven by Cisneros, and (4) Perez subsequently was arrested for driving without a license and the cellphone at issue in the search warrant was discovered on his person and seized. [*Id.*]. These facts were sufficient to establish a link between the seized Motorola cellphone and a drug trafficking conspiracy even assuming the Motorola cellphone was not the same -1400 device used in prior recorded conversations with the CD. *See Barsoum*, 763 F.3d at 1329 (“The defendant bears the burden of showing that, absent those . . . omissions, probable cause would have been lacking.” (quotation marks omitted)).

Perez also argues that the four-day delay between the seizure of the Motorola cellphone on August 14, 2021, and issuance of the search warrant on August 18, 2021, renders the search unconstitutional. [Doc. 40 at 12-13]. The reasonableness of such a delay is analyzed by reference to several factors, including: “the significance of the interference with the person’s possessory interest, . . . the duration of the delay, . . . whether or not the person consented to the seizure, and . . . the government’s legitimate interest in holding the property as evidence.” *United States v. Laist*, 702 F.3d 608, 613-14 (11th Cir. 2012) (citations and quotation marks omitted). On balance, these factors favor the Government here. First, there is no evidence that Perez requested the

return of his phone during the relatively short delay between its seizure and the issuance of the search warrant, which “undermines [his] claim that his Fourth Amendment rights were impacted.” United States v. Brantley, No. 1:17-cr-WSD, 2017 WL 5988833 at *3 (N.D. Ga. Dec. 4, 2017). In addition, while Perez did not consent to the initial seizure of his phone, the seizure was lawful. See Graham, 123 F.4th at 1240. Further, given the information learned during the investigation concerning Perez and the fact that he was later indicted on federal drug charges, there is no question that the Government had a “legitimate interest in maintaining custody” of the phone “as substantial evidence of a serious federal crime.” Laist, 702 F.3d at 616.

Finally, Defendant argues the search warrant for the Motorola cellphone was unconstitutional because of an untimely return. [Doc. 40 at 15 n.9]. That argument is without merit. Federal Rule of Criminal Procedure 41(f)(1)(D) does not establish a specific time within which a search warrant must be returned, only requiring that it be done promptly. See Fed. R. Crim. P. 41(f)(1)(D). Moreover, “[v]iolations of Rule 41(f) are essentially ministerial in nature and a motion to suppress should be granted only when the defendant demonstrates legal prejudice or that non-compliance with the rule was intentional or in bad faith.” United States v. Henry, 939 F. Supp. 2d 1279, 1290 (N.D. Ga. 2013) (quotation marks omitted). See also United States v. Loyd, 721 F.2d 331, 333 (11th Cir. 1983) (explaining that a technical violation of Rule 41 does

not warrant suppression unless there is evidence of prejudice in the sense that the search would not have occurred if the rule had been followed or intentional and deliberate disregard of the rule). Perez has not shown either.

III. Geolocation Search Warrant

In addition to the above, Perez argues the geolocation data search warrant for the -1400 device was invalid. [See Doc. 22 ¶ 11]. The geolocation search warrant was issued pursuant to the Stored Communications Act (“SCA”), 18 U.S.C. § 2703. According to Perez, the SCA violates the Fourth Amendment because it allows a court to order the disclosure of private information upon a showing of less than probable cause. [See *id.*]. Alternatively, Perez contends that the SCA does not authorize the continuous monitoring of prospective cell phone location data. [*Id.*]. Perez contends further that the affidavit in support of the geolocation search warrant lacks a sufficient probable cause basis. [*Id.* ¶ 12]. All these arguments are meritless.

First, the Eleventh Circuit has held that § 2703 is constitutional. See United States v. Davis, 785 F.3d 498, 511 (11th Cir. 2015) (“Based on the SCA and governing Supreme Court precedent, we too conclude the government’s obtaining a § 2703(d) court order for the production of . . . business records did not violate the Fourth Amendment.”), abrogated on other grounds in United States v. Mapson, 96 F.4th 1323 (11th Cir. 2024). Second, the Government did not receive authorization for

“continuous” monitoring of geolocation data for the device ending with -1400. Instead, the warrant at issue, makes clear that geolocation data would be provided beginning on August 12, 2021 “for a period not to exceed 45 days, or until the investigation is terminated (whichever is earlier).” [Doc. 36-60 at 17]. In this case, geolocation data was last received on August 15, 2021, three days after the warrant was executed. [Doc. 46 at Ex. A].


Finally, Perez does not elaborate or provide any support for his argument that the search warrant for the geolocation data lacked sufficient probable cause. [See Doc. 22 ¶¶ 12, 16]. The facts alleged in the affidavit supporting the geolocation warrant indicated that: (1) DEA agents listened covertly to an August 11, 2021 call between the CD and a man the CD knew as Sammy from whom the CD had previously purchased large quantities of drugs, (2) the CD made the call to Sammy at the device ending with the number -1400, and (3) during the call Sammy used coded language to describe possessing kilogram quantities of heroin, methamphetamine, and cocaine for sale with prices for each. [Doc. 36-60]. These facts were sufficient to establish a link between the telephone number ending in -1400 and potential violations of federal drug laws. See Riley v. California, 573 U.S. 373, 401 (2014) (“Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about . . .

criminals.”) and United States v. Kendricks, No. 1:15-CR-400-MHC-AJB, 2016 WL 5952743 at *7 (N.D. Ga. Oct. 13, 2016) (“[I]t takes no special expertise for a judge to infer that information related to an active criminal enterprise may be contained on a cell phone.”). Accordingly, the geolocation search warrant is not invalid because of a lack of facts indicating probable cause.

CONCLUSION

For the foregoing reasons, the undersigned **RECOMMENDS** that Perez’s Motion to Suppress Evidence [Doc. 22] be **DENIED**. There are no other pending matters for this Defendant, and the undersigned has not been advised of any impediments to the scheduling of a trial for this Defendant. **IT IS FURTHER ORDERED** and **ADJUDGED** that this Defendant is **CERTIFIED READY FOR TRIAL**.

SO ORDERED, REPORTED AND RECOMMENDED, this 18 day of September, 2025.


LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE