

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

UNITED STATES OF AMERICA,	:	
	:	
	:	
	:	Criminal Action No.
v.	:	2:24-CR-00011-SCJ-AWH-1
	:	
BOBBY JOE HOLLOMAN	:	
	:	
	:	
Defendant.	:	

ORDER and REPORT AND RECOMMENDATION

This matter is before the undersigned on the following motions filed in Criminal Action No. 2:24-CR-11: Defendant’s Motion to Suppress Evidence [34]; Defendant’s Motion to Dismiss Indictment [36]; and Defendant’s Motion for Return of Property [52].

Procedural Background

Defendant was charged in a three-count Indictment on May 7, 2024. Doc. 1. That Indictment charges Defendant with distributing a controlled substance resulting in serious bodily injury, distributing a controlled substance resulting in death, and possessing a firearm as a convicted felon. See id. at 1–2. Defendant filed on March 31, 2025 a Motion to Suppress Evidence obtained as a result of his warrantless arrest on August 7, 2023. See Doc. 34. Defendant also filed on March

31 a Motion to Dismiss the Indictment. See Doc. 36. On June 24, 2025, the Court held an evidentiary hearing, at which several law enforcement personnel testified. See Doc. 45. On July 8, 2025, Defendant filed a Motion for Return of Property. See Doc. 52. The three motions pending before the Court have been fully briefed and are thus ripe for review.

Background Facts

The Gainesville Police Department investigated an overdose death at the Haven Inn and Suites in Gainesville, Georgia on August 7, 2023. See Doc. 53 at 9; Doc. 56 at 1–2. When Glen Ewing, a detective with the Gainesville Police Department, arrived at the scene, he was informed that a woman named Rachel Dartez had been found deceased in one of the rooms on the property. See Doc. 53 at 9–11. Ewing also learned that another woman, Brittney Bridges, along with Defendant, had been staying in the room where Dartez had been found deceased. Id. at 10. Also present from the Gainesville Police Department was Bryan Majors, a sergeant in the criminal investigation division. Id. at 25.

After speaking with Bridges and Defendant separately, Ewing and Majors began reviewing security system video footage from the property. Id. at 14, 26. The two observed Bridges arriving at the property in a vehicle and entering the room where Dartez was found deceased. Id. at 12, 15. They also observed a man sitting in a chair outside the room, as well as Dartez outside the room in a corridor

before re-entering the room. Id. at 15. Law enforcement observed Defendant coming and going from the room several times, going to a Mitsubishi vehicle in a parking lot on the property, and moving the vehicle to different areas of that parking lot. Id. at 15–16. Law enforcement also observed Defendant pull the Mitsubishi “up close to where a green Honda was parked.” Id. at 16. Defendant was observed getting out of the Mitsubishi and entering the green Honda momentarily before exiting, getting back in the Mitsubishi, and departing from the area. Id. Law enforcement then observed Defendant return to the property, attempt to open the door to the room that Dartez was in, and depart again. Id. Defendant then returned once more, went inside the same room, and departed abruptly to go downstairs to tell the property’s management to call 911. Id.

After reviewing the video footage, Majors exited to the exterior of the property to see if the “dark sedan [green Honda]” was still in the parking lot, which it was. Id. at 27. Majors asked dispatch who owned the car, and dispatch told Majors the car belonged to Heather Adams. Id. Majors spoke with Adams, who gave consent for Majors to search the car. Id. Adams also told Majors that she allowed other people to use her car, including an individual she called “OG,” which law enforcement knew to be a street name for Defendant. Id. at 28. Upon searching the car, Majors found a grocery bag under the seat that Defendant sat in when he was seen entering the car on video surveillance. Id. That bag had a firearm

and drugs inside of it. Id. Adams disclaimed any ownership over the items found in the bag by Majors. Id. at 29.

While Majors was speaking with Adams and searching the vehicle that belonged to Adams, Defendant was “being detained or [was] at least with some officers.” Id. Upon finding the firearm, Majors authorized the arrest of Defendant. Id. Majors did so on the basis that Defendant had “jump[ed] into the seat of the [vehicle owned by Adams], . . . where underneath [Majors] found the gun and the drugs.” Id. Moreover, Majors “knew [Defendant] to be a convicted felon.” Id. Majors authorized Defendant’s arrest for possession of scheduled substances, possession of a firearm by a convicted felon, and possession of a firearm during the commission of a crime.¹

The FBI Special Agent in the case, Michael Baldino, first learned about Defendant’s arrest the day after it occurred. Id. at 42. He received an initial series of reports on August 11, and on August 15 received an additional probable cause statement from the Gainesville Police Department. Id. Baldino submitted a draft search warrant for Defendant’s cell phone to an Assistant United States Attorney on August 21. Id. at 43. The search warrant for Defendant’s cell phone was ultimately submitted to and signed by the Court on August 23. See id. at 51–52.

¹ Majors in his testimony before the Court stated that while he did not know whether he gave a list of charges, those were “the thoughts that [he] had” when authorizing Defendant’s arrest. See Doc. 53 at 29–30.

That warrant permitted Baldino to execute a search of the phone prior to September 6, 2023. Id. at 52; see also Gov’t Ex. 8 at 1. As of Baldino’s testimony before this Court on June 24, 2025, law enforcement still had not obtained access to, or extracted any data from, Defendant’s cell phone. Doc. 53 at 52–53.

Discussion

I. Defendant’s Motion to Dismiss the Indictment [36]

Defendant filed a Motion to Dismiss the Indictment on March 31, 2025. See Doc. 36. That motion argued that Rozier—which had denied a facial Second Amendment challenge to the felon in possession of a firearm statute, 18 U.S.C. § 922(g)(1)—had been undermined to the point of abrogation by the Supreme Court’s decisions in Bruen and Rahimi. See Doc. 36 at 1 (citing United States v. Rozier, 598 F.3d 768 (11th Cir. 2010); N.Y. State Rifle & Pistol Assoc., Inc. v. Bruen, 597 U.S. 1 (2022); United States v. Rahimi, 602 U.S. 680 (2024)).

As Defendant now concedes, the Eleventh Circuit has recently and expressly rejected this argument. United States v. Dubois, 139 F.4th 887 (11th Cir. 2025); Def. Reply, Doc. 58 at 10 (“Binding precedent now requires this Court to deny [Defendant’s] motion to dismiss.”). Because the Court and both parties agree that binding Eleventh Circuit precedent dictates that Rozier was not abrogated by Bruen or Rahimi, it is **RECOMMENDED** that Defendant’s Motion to Dismiss

Indictment [36] be **DENIED**. See Dubois, 139 F.4th at 893 (“*Bruen* did not abrogate *Rozier* . . . *Rahimi* also did not abrogate *Rozier*.”).

II. Defendant’s Motion to Suppress Evidence [34]

Defendant moves to suppress “any evidence obtained from [his] arrest[,] including his phone.” Doc. 56 at 14. First, Defendant contends that his arrest was unlawful because there was no probable cause to support it. See id. at 6–8. As a result, Defendant argues that the search and seizure of the phone violated his Fourth Amendment rights and that any evidence obtained therefrom should therefore be suppressed. Id. at 8. Defendant also argues that, in the alternative, should the Court find that the arrest was lawful, “his phone should still be suppressed because there was an unlawful delay in obtaining a search warrant for it.” Id. at 9 (quoting United States v. Jacobsen, 466 U.S. 109, 124 (1984)).

In response, the Government first argues that probable cause existed to arrest Defendant and that, as a result, his arrest was lawful. See Doc. 57 at 4–5. In support of this argument, the government contends that the officers on scene observed Defendant enter a car where the drugs and firearm were found. See id. at 4. The Government adds that an officer on scene “knew [Defendant] to be a convicted felon.” Id. The government adds that the delay in obtaining a warrant was not unlawful. See id. at 6–10.

A. Probable Cause

“A warrantless search is presumptively unreasonable.” United States. v. McGregor, 31 F.3d 1067, 1068–69 (11th Cir. 1994). A warrantless search is “per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” Mincey v. Arizona, 437 U.S. 385, 390 (1978). One such exception is a search incident to a lawful arrest. See, e.g., Riley v. California, 573 U.S. 373, 382 (2014). Indeed, “the fact of a lawful arrest, standing alone, authorizes a search” of the person arrested. Michigan v. DeFillippo, 443 U.S. 31, 35 (1979).

Whether a warrantless arrest is reasonable under the Fourth Amendment turns on whether there existed probable cause to arrest the subject at issue. See, e.g., Williams v. Aguirre, 965 F.3d 1147, 1162 (11th Cir. 2020) (“[T]he only question relevant to the objective reasonableness of a seizure is whether probable cause for *some* crime exists.” (emphasis in original)). Probable cause in this context “is not a high bar.” District of Columbia v. Wesby, 583 U.S. 48, 57 (2018). It does not “require proof beyond a reasonable doubt or even proof by a preponderance of the evidence that the person arrested for a crime is guilty.” Harris v. Hixon, 102 F.4th 1120, 1126 (11th Cir. 2024). Instead, probable cause exists “if the totality of the circumstances could persuade a reasonable officer that there is a

‘substantial chance of criminal activity by the person who is arrested.’ ” Id. (quoting Davis v. City of Apopka, 78 F.4th 1326, 1334 (11th Cir. 2023)).

The Court finds that the arrest was lawful. Here, Ewing and Majors observed on video Defendant enter the car in which the firearm and drugs were ultimately found. See Doc. 53 at 15–16, 28. Majors testified that he authorized Defendant’s arrest on the basis that he “had seen him jump into the seat of the sedan, which turned out to be a Honda Accord, where underneath I found the gun and the drugs[.] [A]nd I knew [Defendant] to be a convicted felon.” Id. at 29. Under these circumstances, a reasonable officer could conclude that there was a substantial chance of criminal activity, specifically performed by Defendant. See Washington v. Howard, 25 F.4th 891, 898 (11th Cir. 2022) (holding that the correct standard to evaluate whether an officer had probable cause to arrest is to “ask whether a reasonable officer could conclude that there was a substantial chance of criminal activity” (alteration adopted) (quotation marks omitted)).

For one, knowledge of a prior conviction can contribute to a finding of probable cause. See United States v. Lindsey, 482 F.3d 1285, 1292 (11th Cir. 2007) (holding that knowledge of police officers that the defendant was previously convicted of armed robbery added to a finding of probable cause to arrest him for being a felon in possession of a firearm); see also Mears v. McCulley, 881 F. Supp. 2d 1305, 1323–24 (N.D. Ala. 2012) (“An individual’s prior convictions support a

finding of probable cause to arrest, so long as the prior conviction had probative value to the arresting officer in concluding that the arrestee committed a crime.”). Majors’s knowledge of Defendant’s status as a felon is at a minimum relevant to Majors’s decision to arrest Defendant for “possession of a firearm by [a] convicted felon.” Doc. 53 at 29. Second, Ewing and Majors observed in video surveillance footage Defendant entering the vehicle in which the firearm was found the same day of Dartez’s death. *Id.* at 15–16. Ewing and Majors even saw Defendant in the footage sit in the seat under which the contraband was found. *Id.* at 28. This level of information, presented to law enforcement, amounted to probable cause.

As was the case in Hixon, Defendant here has not pointed to any evidence that law enforcement “had or were shown but refused to consider” other evidence in making their decision to arrest Defendant. Hixon, 102 F.4th at 1129. Defendant points to the fact that the car was sitting unlocked in an open-air parking lot for months, and the fact that the owner of the car said she had allowed other individuals to drive it while it was operative. See Doc. 56 at 7. While these facts could conceivably cast doubt on whether Defendant in fact placed the firearm and drugs in the car at issue, Defendant’s arguments miss the mark. Ultimately, law enforcement is not required to “take every conceivable step at whatever cost, to eliminate the possibility of convicting an innocent person.” Rankin v. Evans, 133 F.3d 1425, 1436 (11th Cir. 1998) (cleaned up). Ewing and Majors here were thus

not required to, as Defendant suggests, review video surveillance footage from the days or weeks prior to the day of Defendant's arrest. See Doc. 56 at 7. The fact that others could have conceivably had access to the vehicle is not enough to have removed the probable cause that existed to arrest Defendant.

Defendant also argues that "there is no reason to suspect" that he had anything to do with Dartez's overdose. Id. Defendant points to the fact that other individuals can be seen on video footage entering and exiting the room in which Dartez was later found deceased while "engaging in suspicious behavior." See id. at 7–8. But again, probable cause in this context did not require the investigating officers to eliminate every other possible suspect before arresting Defendant.² See Martin v. Wood, 648 F. App'x 911, 916 (11th Cir. 2016) (unpublished) ("Though further investigation may have uncovered evidence exonerating [the defendant], probable cause does not require law enforcement officials to 'take every conceivable step at whatever cost, to eliminate the possibility of convicting an innocent person.' " (quoting Rankin, 133 F.3d at 1436)). Defendant's argument

² Nor does the record indicate at any point that Ewing or Majors received any evidence that would have readily established that they lacked probable cause to arrest Defendant. See Harris, 102 F.4th at 1129 (noting that probable cause will not be found to exist if officers unreasonably and knowingly disregard or ignore evidence or refuse to take an obvious investigative step that would readily establish that they lack probable cause to arrest a suspect). In addition, this argument fails to address the probable cause law enforcement had to arrest Defendant for felon in possession of a firearm.

amounts to an “invitation for us to post hoc superintend the investigation and accept his speculation about what might have been found,” which binding precedent disallows this Court from entertaining. See Hixon, 102 F.4th at 1130–31 (quoting Davis, 78 F.4th at 1351). Majors’s decision to arrest Defendant was supported by probable cause, and Defendant’s argument to the contrary therefore fails.

B. Delay

Defendant alternatively argues that the cell phone should be suppressed “because there was an unlawful delay in obtaining a search warrant for it.” Doc. 56 at 8–9. Citing Eleventh Circuit case law, Defendant argues that the seizure of his phone for seventeen³ days prior to obtaining a warrant was a “significant interference” with his possessory interest in the phone. Id. at 9–10 (citing United States v. Mitchell, 565 F.3d 1347, 1350–51 (11th Cir. 2009)). Defendant adds that the Government has not offered a compelling reason to justify its interference here. See Doc. 56 at 10–11.

³ The Government contends in its briefing that it was in fact a sixteen-day delay. See Doc. 57 at 6. The parties appear to simply be using different methods of counting days. If the day on which the arrest occurred is included, it took 17 days. If the day on which the arrest occurred is excluded, it took 16 days. This one-day difference ultimately has a minimal effect on the analysis.

The Government argues that the delay in obtaining the warrant for Defendant's phone was reasonable. See Doc. 57 at 6–10. It is “constitutionally reasonable for law enforcement officials to seize ‘effects’ that cannot support a justifiable expectation of privacy without a warrant, based on probable cause to believe they contain contraband.” Jacobsen, 466 U.S. at 121–22. But “a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment’s prohibition on ‘unreasonable seizures.’ ” Id. at 124. A temporary warrantless seizure supported by probable cause is reasonable so long as the police proceed to diligently obtain a warrant within a reasonable amount of time. See, e.g., United States v. Laist, 702 F.3d 608, 613 (11th Cir. 2012) (quoting Illinois v. McArthur, 531 U.S. 326, 334 (2001)). When determining whether a delay renders a seizure unreasonable, courts must evaluate the totality of the circumstances presented in each case. See Laist, 702 F.3d at 613.

Laist provides a non-exhaustive list of factors “highly relevant” to the inquiry of whether a delay renders a seizure unreasonable. See id. at 613–14. Those include: (1) the significance of the interference with the person’s possessory interest; (2) the duration of the delay; (3) whether or not the person consented to the seizure; (4) the government’s legitimate interest in holding the property as evidence; (5) whether the police diligently pursued their investigation; (6) the

nature and complexity of the investigation; (7) whether overriding circumstances arose which necessitated the diversion of law enforcement resources to other cases; (8) the quality of the warrant application and the amount of time expected to prepare such a warrant; and (9) any other factor relevant to law enforcement's diligence in obtaining a warrant. See id.

The Court addresses each factor in turn. First, Defendant had a significant possessory interest in his cell phone. As he correctly points out, the Eleventh Circuit has endorsed the idea that individuals have a strong possessory interest in their computers. See Laist, 702 F.3d at 614 (“computers are a unique possession, one in which individuals may have a particularly powerful possessory interest.”). Moreover, cell phones today share many functional and technological similarities with computers. See, e.g., Riley, 573 U.S. at 403 (“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans ‘the privacies of life.’ ”). But while Defendant's possessory interest in his cell phone was strong, it is true that he failed to assert a possessory claim to it until defense counsel recently filed a motion for its return. See Doc. 52. This is legally significant within the Eleventh Circuit in determining an individual's ultimate possessory interest in an item. See Thomas v. United States, 775 F. App'x 477, 490 (11th Cir. 2019) (unpublished) (noting that the defendant's possessory interest was diminished because he “did not request the

return of the [property] during the 33 days it took the government to secure a search warrant.”).⁴ It stands to reason that one who feels his possessory interests have been interfered with might, especially in cases of significant interference, attempt to re-assert his interest in the property sooner rather than later. See, e.g., United States v. Burgard, 675 F.3d 1029, 1033 (7th Cir. 2012) (noting that whether a person from whom an item was taken ever asserted a possessory claim to that item would be helpful, though not essential, evidence that the seizure in fact affected his possessory interests). Thus, while Defendant’s possessory interest here in his cell phone was strong, the Court finds it was somewhat diminished by his failure to seek its return until the recent motion filing.

Second, the duration of time that elapsed between the seizure of the cell phone and the application of the warrant, alone, does not favor either side. Case law dealing with the durational element supports this. Put plainly, other context seems to carry more weight than the mere amount of time elapsed. For example, a 90-minute delay can in some cases be unreasonable. United States v. Place, 462 U.S. 696, 703 (1983). In other cases, a three-month delay can be reasonable. United States v. Stabile, 633 F.3d 219, 235–36 (3d Cir. 2011). Indeed, it is “unwise

⁴ While Thomas is indeed unpublished, as Defendant points out, the Court finds its reasoning (and the other decisions it relies on) persuasive.

to establish a duration beyond which a seizure is definitively unreasonable,” or vice versa. Laist, 702 F.3d at 614.

With respect to the third factor, there is no indication that Defendant consented to law enforcement taking his phone. See generally Doc. 53; see also Gov’t Ex. 3. This factor weighs in Defendant’s favor.

The fourth factor—whether the Government had a legitimate interest in maintaining custody of the cell phone—favors the Government. As the Government points out, the search warrant indicates that Defendant had communicated with another overdose victim the day of that person’s overdose in order to provide the victim with drugs. See Gov’t Ex. 8 ¶ 32. In particular, Baldino states in the affidavit that on the day the victim overdosed, she had contacted “OG,” a known street name for Defendant, via Facebook Messenger in order to obtain methamphetamine. See id. Moreover, Baldino states in his affidavit that, based on his training and experience, he knew that “[d]rug traffickers use cellular telephones” to communicate with each other and to “facilitate their unlawful conduct.” See id. ¶¶ 35–38. Because the agents had reason to believe that the phone may contain incriminating information here, the Government has a legitimate interest in maintaining custody of the cell phone. See, e.g., Laist, 702 F.3d at 616 (noting that agents’ knowledge of the fact that the computer at issue

contained incriminating information enhanced the government’s legitimate interest in maintaining custody of the computer).

The factors relating to diligence in pursuing the investigation and the nature and complexity of the investigation figure prominently in the analysis here. Baldino testified that he initiated his investigation of Defendant on August 8, 2023, received initial reports from the Gainesville Police Department on August 11, and received a probable cause statement from the Gainesville Police Department on August 15. See Doc. 53 at 42, 48–49. Baldino submitted his affidavit to an Assistant United States Attorney on August 21. Id. at 43. While there is not substantial testimony regarding diligence, Baldino did make clear that he opened a case on Defendant the day after Defendant was arrested. See Doc. 53 at 42. This tends towards showing diligence. See, e.g., Laist, 702 F.3d at 616–17 (noting in finding diligence that the special agent had “put the ball in motion the very first day” he had received notice that a warrant would be needed). Defendant does not point to any evidence to contradict Baldino’s assertion on this particular point.

Moreover, Baldino spoke to and received information from Gainesville Police Department officials up until at least August 15. See, e.g., Doc. 53 at 50. While it may be true that Baldino offers no testimony regarding the time period between August 15 and the date on which he ultimately submitted his affidavit—August 21, the Court does not find those six days to be an unreasonable delay or

clearly demonstrative of a lack of diligence. This is especially the case when considering that Baldino testified that he typically handles six to eight active cases, and that the Gainesville Police Department could not have made the warrant request. See id. at 46–47; see also Fed. R. Crim. P. 41(b) (allowing for a warrant application “[a]t the request of a *federal* law enforcement officer or attorney for the government (emphasis added)). The Court does not find this six-day delay, to the extent that period of time actually included no additional investigation on Baldino’s part, unreasonable.

However, while it does appear that Baldino acted diligently, the Court is not convinced that the affidavit at issue involved a *high* level of complexity. The Government is correct to point out that the affidavit included the recitation of various other incidents involving Defendant. See Doc. 57 at 8 (citing Gov’t Ex. 8 ¶¶ 27–33). But Baldino testified that beyond identifying the particular item he wished to search, in this case the cell phone, there was no “material difference” between the probable cause statements and the search warrant application. See Doc. 53 at 51. Thus, while it may be the case that Baldino included various other pieces of information perhaps revealed from additional investigation into Defendant’s criminal history, it appears from testimony that much if not all of that information was in turn provided to Baldino from the probable cause statements created by the Gainesville Police Department. In other words, while the

information in the warrant applications was perhaps complex, that complexity appears to have been handled primarily by the Gainesville Police Department—and thus by August 15.⁵

In sum, Defendant had a significant possessory interest in his cell phone, which was interfered with by its seizure on August 7. This is diminished, however, by the fact that Defendant only recently sought its return to his (or another individual's) possession. The duration of the delay—sixteen to seventeen days, does not point in favor of either party. Third, Defendant did not consent to the seizure. Fourth, the government does have a legitimate interest in holding the cell phone as evidence. Fifth, law enforcement diligently pursued the investigation. The complexity of the investigation, in turn, points in favor of neither party. There is also no evidence that overriding circumstances arose beyond the normal course of Baldino's case load. And because Baldino testified that most if not all of the information included in his affidavit emanated from the probable cause statement

⁵ With respect to the quality of the warrant application and the amount of time one might expect such a warrant to require, the Court does not find this factor persuasive in either direction. While the application is thorough and includes a good deal of information regarding the incident at issue, as well as Defendant's criminal history, it is also relevant that, as Baldino testified, much of the information included in his affidavit can be found in the probable cause statement provided to him by the Gainesville Police Department. See Doc. 53 at 51. The depth of the information in the affidavit, and the fact that the Gainesville Police Department provided much of the information included therein, tend to counterbalance each other.

sent to him by the Gainesville Police Department on August 15, it does not seem that the warrant would take a particularly large amount of time to prepare.

At bottom, the Court must “balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable.” McArthur, 531 U.S. at 331. The ultimate guiding principle in this area is that a temporary warrantless seizure is supported by probable cause, and thus legal, so long as “the police diligently obtained a warrant in a reasonable period of time.” Id. at 326. The factors are non-exhaustive and, while “highly relevant,” not the end-all-be-all. Laist, 702 F.3d at 614. In considering the factors as a whole, as well as the guiding principle above, the Court concludes that the government’s seizure here was not unreasonably delayed.

While Defendant did have a baseline possessory interest in his cell phone, the Court finds that interest rather diminished by the fact that up until June 24, 2025—the day on which Defendant orally motioned for return of the cell phone, Defendant had never sought its return. See Doc. 45. Moreover, the seventeen-day delay, in the context of the rest of the facts relevant to this inquiry, is not exceptionally long. And while Defendant never consented to the seizure of his phone, the government had and still has a legitimate interest in holding the phone as evidence. These facts, coupled with the fact that it appears that Baldino and

other law enforcement acted in a generally diligent manner, point towards denying Defendant's motion to suppress on the basis of unreasonable delay.

It is therefore **RECOMMENDED** that Defendant's Motion to Suppress Evidence [34] be **DENIED**.

III. Defendant's Motion for Return of Property [52]

Defendant moves for the return of his cell phone. See Doc. 52. In particular, he argues first that the phone was seized from his person and belongs to him. See Doc. 56 at 12. Moreover, he contends that there has been "no allegation that the phone was stolen or otherwise unlawfully possessed" at the time of his arrest. Id. at 12–13. While he may not be allowed to possess his cell phone while in custody of the Government, he argues he can authorize the Government to turn his phone over to another individual whom he designates. Id. at 13. Finally, Defendant argues that both (1) the seizure was illegal and (2) the phone has no evidentiary value given the government cannot access its contents. Id. at 13–14.

In response, the Government contends that Defendant cannot have possession of his phone while in custody and that while the Government at times will return property to detained defendants, this is only done when the property is no longer needed as evidence. See Doc. 57 at 10–11. The Government adds that the seizure of the phone was lawful, and that it still needs the phone as evidence. See id. at 11–12.

Federal Rule of Criminal Procedure 41(g) allows a “person aggrieved by an unlawful search and seizure of property” to move for that property’s return. Fed. R. Crim. P. 41(g). To prevail on such a motion, a criminal defendant must demonstrate that (1) he is entitled to lawful possession of the seized property; (2) the property is not contraband; and (3) either the seizure was illegal or the government’s need for the property as evidence has ended. See United States v. McCray, No. 1:15-cr-212-WSD, 2017 WL 3141172, at *12 (N.D. Ga. July 25, 2017).⁶ While criminal proceedings are pending, a defendant has the burden to show he is entitled to the return of property. See, e.g., United States v. Bussey, No. 5:21-CR-9-20, 2024 WL 5233140, at *1 (S.D. Ga. Dec. 27, 2024).

The Court finds that Defendant has not satisfied his burden here with respect to the third element. For one, the Court has already determined in the prior section that the seizure was legal. Moreover, the Government’s need for the property as evidence has not ended. As the Government points out, Baldino testified to the fact

⁶ Defendant argues that this test, which was also stated by the Eleventh Circuit in United States v. Garcon, 406 F. App’x 366 (11th Cir. 2010), is not binding on this court because it is unpublished. Doc. 56 at 12. Defendant adds that he is unaware of any published opinion formally adopting the standard enumerated in Garcon and McCray. Doc. 56 at 12. While it is true that Garcon and McCray are unpublished opinions and that they are thus non-binding on the Court here, the undersigned nonetheless finds them both persuasive and applicable. See 11th Cir. R. 36-2 (noting that while unpublished opinions are not binding precedent, they may be cited as persuasive authority); see also United States v. Riley, 706 F. App’x 956, 963 (11th Cir. 2017) (same).

that law enforcement is still trying to access the phone’s contents. See Doc. 57 at 12 (citing Doc. 53 at 52). Baldino’s affidavit also outlines that law enforcement believes there could be additional relevant evidence on Defendant’s cell phone. See Gov’t Ex. 8 ¶¶ 34–38. It stands to reason that just because the Government has not accessed the phone yet does not mean the phone lacks evidentiary value. While the time period between the deadline of the warrant and Baldino’s testimony is admittedly long, this, alone, still does not remove the potential evidentiary value of the phone and thus the Government’s need for it while charges are still pending. See, e.g., United States v. Dixon, No. 3:20-cr-3-TCB, 2021 WL 1976679, at *2–3 (N.D. Ga. May 18, 2021) (finding reasonable a two-year delay in searching an iPhone in light of the government’s explanation that the delay was “due to the time required for encryption technology to unlock the phone,” and declining to overrule a report and recommendation that ruled the iPhone should not be returned where “the Government has a continuing need for it as evidence”).

Defendant adds that “the [G]overnment has produced no proof that they are likely to ever be able to complete a forensic extraction of” the phone’s contents. Doc. 56 at 13; see also Doc. 58 at 9 (“the [G]overnment has not provided any evidence that it is any closer to accessing the phone’s contents now versus the day of its seizure.”). But the “Fourth Amendment does not specify that search warrants contain expiration dates,” United States v. Gerber, 994 F.2d 1556, 1559 (11th Cir.

1993), and while search warrants are required to have a 14-day deadline for execution, “execution” of the warrant beyond that deadline has been allowed in cases involving passcode-protected cell phones. See Fed. R. Crim. P. 41(e)(2)(A)(i); see also United States v. White, No. 4:22-CR-0017-WMR, 2023 WL 7703553, at *9 (N.D. Ga. Nov. 15, 2023) (noting that while there is a lack of Eleventh Circuit precedent directly on point, “other circuit courts generally hold that a search of a password-protected phone complies with Rule 41(e)(2)(A) so long as officers either seize the phone or take steps to extract the phone’s data within the 14-day period.”). Here, the phone was seized incident to Defendant’s arrest on August 7, 2023, and thus before the warrant was even issued. See Gov’t Ex. 8 at 1, 3. Moreover, Baldino at least suggested in his testimony that steps were taken to access and extract data from the phone prior to the deadline. See Doc. 53 at 53.⁷

As to the issue that no one knows at this point when the phone might be unlocked, the Court finds the reasoning of United States v. Morgan, 443 F. Supp. 3d 405, 410 (W.D.N.Y. 2020), persuasive. There, an iPhone was seized pursuant to

⁷ This second point, while sufficient, is not necessary to the Court’s conclusion. See White, 2023 WL 7703553, at *9 (holding that “so long as officers *either* seize the phone or take steps to extract the phone’s data within the 14-day period,” Rule 41 is satisfied (emphasis added)). Because the phone had been seized within the deadline, it is not necessary for law enforcement to have also taken steps to extract the phone’s data within 14 days to avoid a Fourth Amendment violation.

a warrant in May 2018, and the defendant moved for its return in May of 2020, as law enforcement had not yet successfully unlocked the phone and at the pace it was proceeding, it might have taken “the government 37 years to successfully unlock the iPhone.” Id. The court denied the defendant’s request to return, finding that, while 37 years would certainly be an unreasonable time to retain the phone, because trial was not scheduled to commence until the next year, there was still substantial time for the government to recover data that it could use at trial. Id. Therefore, the court denied the defendant’s motion without prejudice, implicitly holding that any attempts to decrypt the phone while charges remained pending was presumptively reasonable given the government’s interest in accessing the data for use at trial. Id.; see also United States v. Esteim, No. 19-cr-711 (NSR), 2020 WL 6075554, at *8, 15 (S.D.N.Y. Oct. 14, 2020) (finding that the government’s explanation for its delay in searching the defendant’s cellphones—the phones were locked, the defendant had not provided the passwords to unlock the phones, and “efforts to unlock the cellphones ha[d] been unsuccessful to date”—was “meritorious,” noting that the advisory committee credited this basis for delay, and finding that because the government had not yet accessed the phones’ ESI, the motion to return would be denied without prejudice).

The same is true here. Trial has not yet been scheduled in this case, and the Government still has time to decrypt Defendant’s phone for use in these

proceedings. As such, the Government still “needs” this information and still has an opportunity to use any evidence derived from the phone in this matter. McCray, 2017 WL 3141172, at *12. “There may very well come a point where the government's retention of the iPhone is unreasonable—and that may be a time when the government continues to maintain that it needs the iPhone as evidence—but that date has not yet occurred.” Morgan, 443 F. Supp. 3d at 410.

Because Defendant has not demonstrated that the Government’s need for the property as evidence has ended or that the seizure was illegal, it is **RECOMMENDED** that Defendant’s Motion for Return of Property [52] be **DENIED without prejudice**.

IV. Defendant’s Request for a Hearing

Defendant requests in his reply brief “that a hearing be held to address the government’s ongoing possession of the phone and whether there is a reasonable likelihood that the government can make evidentiary use of it in the foreseeable future.” Doc. 58 at 9.

A request for a hearing in connection with a motion for return of property will be granted only when it is clear that “there is an issue of fact necessary for the disposition of the motion.” United States v. Davis, 330 F. Supp. 899, 903 (N.D.

Ga. 1971) (citing Cohen v. United States, 378 F.2d 751, 761 (9th Cir. 1967)).⁸

There does not appear from the briefing or record in this case that there is any issue of fact relevant to the disposition of the motion for return of property. Baldino has already testified that the Hall County Sheriff's Office is "still trying to crack the pass code for that phone using their equipment," Doc. 53 at 53, and the case law cited above does not require that law enforcement have an understanding of when the phone will be unlocked to be in compliance with the Fourth Amendment, especially prior to trial, see supra. In short, this Court was able to resolve Defendant's motion as written. As a result, Defendant's request for a hearing is denied at this time.

Summary

It is **RECOMMENDED** that Defendant's Motion to Dismiss Indictment [36] be **DENIED**.


⁸ While Davis discusses Rule 41(e), which now deals only with motions to suppress, that subsection of the rule at the time of the Davis decision also included motions for return of property. See, e.g., United States v. Howell, 425 F.3d 971, 976 n.3 (11th Cir. 2005) (noting that the motion for return of property portion of Rule 41(e) had been moved to Rule 41(g)); see also Dickens v. Lewis, 750 F.2d 1251, 1255 (5th Cir. 1984) (discussing Rule 41(e) in connection with a motion for return of property, and noting that a hearing on a motion for return of property is required "only if deemed necessary by the trial judge because the facts of the particular case may be in dispute."). Because Davis was discussing a rule that, at the time, involved motions for return of property, and because the substantive language of the rule has not changed, the Court considers Davis applicable here.

It is **RECOMMENDED** that Defendant's Motion to Suppress Evidence [34] be **DENIED**.

It is **RECOMMENDED** that Defendant's Motion for Return of Property [52] be **DENIED without prejudice**. Defendant's Request for Hearing in relation to his Motion [52] is **DENIED**.

IT IS ORDERED that, subject to a ruling by the District Judge on any objections to orders or recommendations of the undersigned Magistrate Judge, this case is **certified ready for trial**.

IT IS SO REPORTED AND RECOMMENDED this 16th day of October, 2025.



Anna W. Howard
United States Magistrate Judge