FILED

2017 MAY -1 PM 3:39

BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS
CLERMONT COUNTY, OH

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2016 CR 00639**
vs.	:	**Judge McBride**
NICHOLAS NELSON	:	**DECISION/ENTRY**
Defendant	:	

Darren D. Miller, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103

Brian T. Goldberg, attorney for the defendant Nicholas Nelson, Schuh & Goldberg, LLP, 2662 Madison Road, Cincinnati, Ohio 45208

This cause is before the court for consideration of the motion to suppress filed by the defendant Nicholas Nelson on January 3, 2017.

On January 3, 2017 the defendant filed a motion for leave to file a motion to suppress, and on the same date, he filed his motion to suppress evidence seized from the defendant's hotel room at the Red Roof Inn.

On January 26th, the court granted the motion for leave to file, and on March 8th, the court held an evidentiary hearing on the motion to suppress. Counsel made oral argument following the hearing, and on March 15th the defendant filed a memorandum in support of his motion to suppress. The state then filed a motion in opposition to the

defendant's motion to suppress on March 29th, and the defendant filed a reply memorandum on April 5th. The court took the motion to suppress under advisement on April 6th.

Upon consideration of the motion to suppress, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

STANDARD OF REVIEW

A motion to suppress is defined as "a device used to eliminate from a criminal trial evidence that has been secured illegally, generally in violation of the Fourth Amendment (search and seizure), the Fifth Amendment (privilege against self-incrimination), or the Sixth Amendment (right to assistance of counsel, right of confrontation, etc.) of the United States Constitution."[1] When a defendant's motion to suppress is successful, the principal remedy for a constitutional violation is to exclude the evidence from the criminal trial.[2]

Pursuant to Crim.R. 12(C), before trial "any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue."[3] A motion to suppress evidence "on the ground that it was illegally obtained" must be made prior to trial.[4] "[W]hen a defendant's motion to

---

[1] *State v. Scruggs*, 12th Dist. Clinton No. CA2005-11-042, 2007-Ohio-6416, ¶ 4, citing *State v. French*, 72 Ohio St.3d 446, 449-50 (1995).
[2] *State v. Haines*, 12th Dist. Clermont No. CA2003-02-015, 2003-Ohio-6103, ¶ 8.
[3] Crim.R. 12(C).
[4] Id.

suppress attacks the validity of a search conducted under a warrant, the defendant bears the burden of proof."[5]

A motion to suppress typically "presents mixed questions of law and fact."[6] In reviewing such a motion, "the court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses."[7]

FINDINGS OF FACT

On November 3, 2016, the defendant Nicholas Nelson was indicted on the following counts: 1) trafficking in heroin in violation of R.C. 2925.03(A)(1), a felony of the fourth degree; 2) trafficking in cocaine in violation of R.C. 2925.03(A)(1), a felony of the fourth degree; 3) trafficking in heroin in violation of R.C. 2925.03(A)(2), a felony of the second degree; 4) possession of heroin in violation of R.C. 2925.11(A), a felony of the second degree; 5) trafficking in cocaine in violation of R.C. 2925.03(A)(2), a felony of the fifth degree; and 6) possession of cocaine in violation of R.C. 2925.11(A), a felony of the fifth degree. The present motion only deals with evidence concerning counts 4, 5, & 6.

The above charges arise from events occurring on October 27, 2016. On that date, Agent Bryan Taylor, a Union Township Police Officer and member of the Clermont County Narcotics Task Force, submitted an affidavit for a search warrant in the

---

[5] *State v. Wilson*, 8th Dist. Cuyahoga No. 94691, 2011-Ohio-707, ¶ 21, citing *State v. Wild*, 10th Dist. Franklin No. 2009 CA 83, 2010-Ohio-4751.
[6] *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5373, 797 N.E.2d 71, ¶ 8.
[7] *Id.*, citing *Burnside*, 2003-Ohio-5373 at ¶ 8.

Clermont County Municipal Court. The essence of Agent Taylor's statement in the affidavit is the following:

On October 27th, Agent Taylor had been working in plain clothes in the area of Red Roof Inn located at 4035 Mt. Carmel Tobasco Road, Cincinnati, Ohio 45255. At approximately 6:00 P.M. on that date, Agent Taylor observed the defendant exit the Red Roof Inn office and walk to the rear side of the building, which is the side that Room 109 is on.

Moments later, Agent Taylor saw a black Dodge Charger drive up from behind that side of the building, and it parked behind a second building. The defendant exited the vehicle and again walked to the rear of the building where Room 109 is located.

Several minutes later, Agent Taylor saw the defendant walk back towards the Dodge Charger, and then the defendant again walked back towards the area of Room 109. Agent Taylor believed that it was suspicious that the defendant would park the vehicle away from his location near Room 109 and continue to walk back and forth.

Officers Kresser and Zimmerman initiated surveillance from a nearby McDonald's Restaurant. Agent Taylor moved to the rear of the building where the Dodge Charger was parked by to keep surveillance on the vehicle.

Agent Taylor observed a black Honda being parked next to the Dodge Charger. Officers Kresser and Zimmerman saw the defendant emerge from the rear of the building which contained Room 109. Zimmerman saw the defendant enter the laundry room of the building that the Dodge Charger was parked near. Then a woman wearing a white jacket and black pants, later identified as Christina Richardson, entered the

laundry room also upon exiting the black Honda. A short time later the defendant and Ms. Richardson both exited the laundry room and went separate ways.

Officer Perkins, a uniformed canine officer, made a traffic stop, for driving left of center, of the black Honda containing Richardson as the Honda travelled onto Nine Mile Road. Officer Perkins deployed his narcotics canine, Kaos, around the vehicle, and Kaos alerted to the presence of narcotics in the vehicle.

Officer Perkins had Richardson exit the vehicle, and Richardson admitted to Agent Taylor, after he had arrived at the scene of the traffic stop, that she had gone to the Red Roof Inn to purchase half of a gram of "hard" and a half of a gram of heroin for the Honda's driver. Agent Taylor knew that "hard" was slang for crack cocaine.

Bridget Imjalli, the driver of the black Honda, had an active warrant for her arrest. When Agent Taylor told her she would be arrested, he asked if she had anything concealed, and Ms. Imjalli stated that she had a bag of crack cocaine and heroin inside her vagina. Officer Fedler, who was called to the traffic stop, saw Ms. Imjalli remove a bag of crack cocaine from her vagina. A small bag of heroin was discovered to be on the ground where Ms. Imjalli had been standing, which she advised belonged to her and must have fallen from her vagina.

Meanwhile, Officers Zimmerman and Kresser and Sgt. Williams watched the Red Roof Inn while Agent Taylor was away at the traffic stop of Ms. Richardson. Sgt. Williams saw the defendant walk towards the Dodge Charger and drive out onto Mt. Carmel Tobasco Road.

Sgt. Williams relayed this information to Officer Disbennett, who then conducted a traffic stop of the defendant approximately 50 yards away from the site of the traffic

stop of the black Honda. Officer Disbennett identified the defendant as the driver of the Dodge Charger upon seeing his driver's license, and Taylor was able to observe that the defendant's clothing and vehicle matched what he had seen previously at the Red Roof Inn.

Officer Perkins, after responding to the site of the stop of the Charger, deployed his canine Kaos, who alerted on the vehicle. A search of the vehicle revealed two cell phones and a digital scale, and Officer Perkins informed Agent Taylor of these items.

Agent Taylor then asked Richardson if the defendant was the person she had purchased drugs from, and Richard responded affirmatively. Agent Taylor obtained the phone number from Ms. Richardson that she had used to contact the defendant before the sale. Agent Taylor then dialed the number and walked over to the Dodge Charger. One of the two cell phones in the Dodge Charger began ringing in response to Agent Taylor's call.

Upon questioning the defendant, the defendant advised Agent Taylor that he could "get an ounce of anything we wanted." The defendant also had a Red Roof Inn room key in his pocket. The defendant stated that he was staying in Room 117. Agent Taylor checked with the Red Roof Inn staff, who advised that the defendant was registered to Room 109. The narcotics recovered from Ms. Imjalli were field tested and tested positive for cocaine and heroin.

Agent Taylor became aware that the defendant had a criminal history that included trafficking in drugs, trafficking in cocaine, having weapons under a disability, and other offenses.

At the time that Agent Taylor submitted the affidavit in support of his request for a search warrant, he had been an officer for nine years and had been on the Clermont County Narcotics Task Force for a year. He had received over 400 hours of specialized training in the detection and investigation of suspected drug violators. Based on this training, Agent Taylor included references in his affidavit to various types of evidence that drug traffickers often possess, including packaging material to facilitate drug sales and drug scales to weigh drugs. Agent Taylor also stated in the affidavit that it is common for drug traffickers to hide drugs, contraband, drug sale proceeds, drug transaction records, and drug customer lists in secure locations within their residences, offices, garages, automobiles, storage buildings, safes, and safe deposit boxes to avoid detection. Based on his training and experience, and the facts referred to above, Agent Taylor averred that there was probable cause to believe that evidence and drugs were concealed in Room 109 at the Red Roof Inn.

That same day, October 27th, a judge of the Clermont County Municipal Court issued a search warrant for Room 109 at the Red Roof Inn. Upon searching the room, law enforcement officers seized a bag of marijuana, a bag of tan substance, a digital scale, two cell phone chargers, and a "torn plastic piece."[8]

LEGAL ANALYSIS

The Fourth Amendment to the United States Constitution protects people against "unreasonable searches and seizures," and prescribes that warrants require "probable cause, supported by Oath or affirmation, and particularity in describing the place to be

[8] Defs. Mem. in Supp., pg. 2.

searched, and all persons or things to be seized."[9] Hence, the Fourth Amendment imposes two requirements: (1) that all searches be reasonable and (2) that a warrant may only be issued if there is probable cause and the scope of the warrant is particularized.[10]

Similarly, the Ohio Constitution provides: "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person or things to be seized."[11] The Ohio Supreme Court has held that this provision of the Ohio Constitution affords protection equal to the Fourth Amendment in felony cases.[12]

Crim.R. 41(C) governs the procedural requirements of a search warrant and requires the search warrant to be directed to a law enforcement officer, to command the officer to search within three days, and to designate to whom it should be returned.[13] Similarly, R.C. 2933.24 sets forth requirements for the contents of search warrants, stating: "A search warrant * * * shall show or recite all the material facts alleged in the affidavit, and particularly name or describe the property to be searched for and seized, the place to be searched, and the person to be searched. * * *"

---

[9] Fourth Amendment to the United States Constitution.
[10] (Citation omitted.) *State v. Loung*, 977 N.E.2d 1075, 2012-Ohio-4519, ¶ 22 (12th Dist.). *See State v. Morse*, 12th Dist. Warren No. CA2001-11-099, CA 2001-11-100, 2002-Ohio-3873, ¶ 9 (stating that a judge issuing a search warrant may only do so upon determining that probable cause for the search exists).
[11] Ohio Constitution, Article I, Section 14.
[12] *State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 12, citing *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 10, fn. 1.
[13] Crim.R. 41(C), *Morse*, 2002-Ohio-3873 at ¶ 15.

Issuing magistrates or judges determine whether an affidavit is sufficient to support a search warrant by evaluating the facts alleged in "the four corners of the affidavit" and any oral testimony that may have been provided.[14] This inquiry requires the issuing magistrate or judge to "review the totality of the circumstances 'to make a practical, common-sense' determination whether probable cause is present."[15] The issuing magistrate or judge's duty is to "determine whether 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'"[16] Accordingly, a showing of probable cause requires *less* than a prima facie showing of criminal activity.[17]

The affiant may make reasonable inferences within the supporting affidavit, but the "facts upon which those inferences are based must be disclosed to permit a magistrate's independent review."[18] In turn, when determining whether probable cause exists to support issuing a search warrant, issuing judges or "magistrates may make reasonable inferences."[19]

---

[14] *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1564, 46 N.E.3d 638, ¶ 39, quoting *United States v. Richards*, 659 F.3d 527, 559 (6th Cir. 2011). *See State v. O'Connor*, 12th Dist. Butler No. CA2001-08-195, 2002-Ohio-4122, ¶ 21, citing *State v. Wesseler*, 12th Dist. No. CA96-07-131 (Feb. 17, 1998) (to determine probable cause, the court is limited to the four corners of the affidavit and any recorded testimony made part of the affidavit under Crim.R. 41(C)).
[15] *U.S. v. Ray*, 577 Fed.Appx. 526, 532 (6th Cir. 2014), citing *United States v. Rodriguez-Suazo*, 346 F.3d 637, 644 (6th Cir. 2005). *See United States v. Frazier*, 423 F.3d 526, 532 (6th Cir. 2005), quoting *Illinois v. Gates*, 462 U.S. 213, 231, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). ("The probable cause standard is a 'practical, non-technical conception' that deals with the 'factual and practical considerations of everyday life.'").
[16] *Jones*, 2015-Ohio-483 at ¶ 13, citing *Gates*, 462 U.S. at 238. *See State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 660 (1989) (holding same).
[17] *George*, 45 Ohio St.3d at 329, citing *Sprinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). *See Harris v. U.S.*, 422 F.3d 322, 327, 2005 Fed.App. 0376P (6th Cir. 2005) (explaining that probable cause is not "the quantum of evidence necessary to convict a criminal defendant.").
[18] *Castagnola*, 2015-Ohio-1565 at ¶ 40, citing *State v. Bean*, 13 Ohio App.3d 69, 74, 48 N.E.2d 146 (6th Dist. 1983).
[19] *Id.* at ¶ 41, citing *Gates*, 462 U.S. at 240.

Courts considering whether a search warrant was issued on probable cause courts must likewise "examine the totality of the circumstances."[20] The reviewing court's duty is "simply to ensure that the magistrate had a 'substantial basis for * * * conclud[ing]' that probable cause existed."[21]

When reviewing courts examine a search warrant for probable cause, courts should "accord great deference to the magistrate's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant."[22] Accordingly, the "affidavit must suggest that 'there is reasonable cause to believe that the specific things to be searched for and seized are located on the property to which entry is sought,' and not merely 'that the owner of the property is suspected of a crime.'"[23]

As mentioned above, the magistrate issuing a search warrant must be able to conclude that "given all the circumstances set forth in the affidavit ... there is a fair probability that contraband or evidence of a crime will be found <u>in a particular place</u>."[24] In other words, there "must be 'a nexus between the place to be searched and the evidence to be sought.'"[25] To satisfy the "nexus requirement of probable cause, 'the

---

[20] *Jones*, 2015-Ohio-483 at ¶ 13, citing *Gates*, 462 U.S. at 238. Of note, reviewing courts, in this context, include trial courts conducting a suppression hearing. *See George*, 45 Ohio St.3d at 330.

[21] *Id.*, quoting *Gates*, 462 U.S. at 238. *See State v. Cobb*, 12th Dist. Butler No. CA2007-06-153, 2008-Ohio-5210, ¶ 24, citing *State v. Akers*, 12th Dist. Butler No. CA2007-07-163, 2008-Ohio-4164 (explaining that the reviewing court "need only ensure that the magistrate had a substantial basis for concluding that the probable cause existed.").

[22] *Id.* at ¶ 14, quoting *George*, 45 Ohio St.3d 325, at paragraph two of the syllabus. *See State v. Landis*, 12th Dist. Butler No. CA2005-10-428, 2006-Ohio-3538, ¶15, citing *George*, 45 Ohio St.3d at 330 (holding same).

[23] *Barry*, 565 F.3d at 339, citing *United States v. McPhearson*, 469 F.3d 518, 524 (6th Cir. 2006).

[24] (Emphasis added.) *U.S. v. Berry*, 565 F.3d 332, 338 (6th Cir. 2009).

[25] *Frazier*, 423 F.3d at 532, quoting *U.S. v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (en banc).

circumstances must indicate <u>why</u> evidence of illegal activity will be found in a particular place.'"[26] In making the probable cause determination, the issuing magistrate "'may give considerable weight to the conclusion of experienced law enforcement officers regarding where a crime is likely to be found and is entitled to draw reasonable inferences about where evidence is likely to be kept.'"[27] Furthermore, a "magistrate may infer a nexus between a suspect and his residence, depending upon 'the type of crime being investigated, the nature of things to be seized, the extent of an opportunity to conceal the evidence elsewhere and the normal inferences that may be drawn as to likely hiding places.'"[28]

"The mere fact that someone is a drug dealer is not alone sufficient to establish probable cause to search their [*sic*] home."[29] However, a "nexus exists between a drug dealer's criminal activity and the dealer's residence when some reliable evidence exists connecting the criminal activity to the residence."[30] "Although a defendant's status as a drug dealer, standing alone, does not give rise to a fair probability that drugs will be found in the defendant's home, * * * there is support for the proposition that status as a drug dealer plus observation of drug activity near defendant's home is sufficient to establish probable cause to search the home."[31] On the other hand, if the only evidence connecting the illegal activity to the residence is unreliable, e.g. uncorroborated

---

[26] (Emphasis added.) *Barry*, 565 F.3d at 338, citing *U.S. v. Carpenter*, 360 F.3d at 594.
[27] *Ray*, 577 Fed.Appx. at 532, quoting *Rodriguez-Suazo*, 346 F.3d at 644.
[28] *U.S. v. Williams*, 544 F.3d 683, 687 (6th Cir. 2008), quoting *U.S. v. Savoca*, 761 F.2d 292, 298 (6th Cir.1985).
[29] *U.S. v. Gunter*, 266 Fed.Appx. 415, 418 (6th Cir. 2008).
[30] Id. at 419.
[31] *Barry*, 565 F.3d at 339, citing *McPhearson*, 469 F.3d at 532-533.

statements by a confidential informant, then probable cause to search the residence is lacking.[32]

In consideration of these principles, the Sixth Circuit Court of Appeals has upheld warrants "authorizing a search of a residence despite only limited connection between the residence and drug related activity."[33] For instance, a sufficient nexus existed in a case where the defendant lied about his address while being questioned by the police, and the warrant-affiant (an experienced narcotics officer) averred that the reason for hiding the correct address could be that additional evidence may be located at the residence.[34]

In another example, the Sixth Circuit Court of Appeals found a nexus to search a drug trafficker's residence where the warrant-affidavit described the investigating law enforcement officer's significant experience in narcotics investigations, the officer averred that in his experience drug dealers typically keep evidence of their crime at their residence, and the affidavit described an incident where law enforcement agents observed the defendant visiting his residence right before he traveled to the site of a drug sale.[35] The Sixth Circuit Court of Appeals has also noted that the defendant's status as a known drug dealer can be considered as a factor favoring probable cause.[36]

---

[32] *Gunter*, 266 Fed.Appx at 419, citing *Frazier*, 423 F.3d at 533.
[33] *Id.* .
[34] *Id.*, citing *United States v. Caicedo*, 85 F.3d 1184 (6th Cir. 1996).
[35] *Id.*
[36] *See United States v. Miggins*, 302 F.3d 384, 393-394 (6th Cir. 2002) (finding a warrant contained probable cause to search a defendant's apartment even though no drug activity was observed occurring there, citing the fact that the defendant was a known drug dealer and had recently signed for drugs delivered via FedEx to a different home); *Berry*, 546 F.3d at 339 (finding that there was probable cause to search a defendant's home for drugs where the defendant was a known drug dealer based on a prior conviction, he had recently been arrested for a probation violation, officers discovered crack cocaine in his car, the defendant was renting his residence under an alias and paid in cash, and the affiant-officer stated that vehicles parked on the premises of the places where controlled substances are found or sold often contain

The Twelfth District Court of Appeals examined the sufficiency of probable cause to search a defendant's hotel room for evidence of drug trafficking in *State v. Redelman*, 12th Dist. Clinton No. 2012-04-010, 2013-Ohio-657. In *Redelman*, the investigating officer averred in the warrant-affidavit that (1) drug dealers told an undercover officer earlier that day that they had to get more drugs from a hotel where the defendant was staying, (2) the dealers identified that their source was from Indiana and at the hotel, (3) the investigating officer observed the drug dealers' vehicle parked next to a vehicle with Indiana plates at a Holiday Inn Express, (4) the investigating officer independently confirmed that the defendant was involved in drug trafficking, and (5) the investigating officer confirmed with the hotel that the defendant was staying in room 215.[37] The appellate court found that, under the totality of the circumstances, the facts asserted in the affidavit supported the issuing judge's conclusion that there was a fair probability that evidence or contraband related to criminal activity would be found in the defendant's hotel room.[38] Moreover, the court held that, even if probable cause had been lacking, the search should be upheld because the good faith exception to the exclusionary rule applied.[39]

---

controlled substances). *Cf.* *McPhearson*, 469 F.3d 518 (finding that an affidavit lacked probable cause by failing to establish the requisite nexus between the defendant's home and drugs where the affidavit did nothing more than state where the defendant resided in the home and that the defendant was arrested for a non-drug offense with a quantity of crack cocaine on his person; the court noted this was not a case where it was independently corroborated that the defendant was a known drug dealer).

[37] *State v. Redelman*, 12th Dist. Clinton No. 2012-04-010, 2013-Ohio-657, ¶¶ 3-5.

[38] Id. at ¶ 45.

[39] Id. at ¶ 46. *See State v. Phillips*, 10th Dist. Franklin No. 15AP-1038, 2016-Ohio-5944, ¶¶ 25-26 (finding probable cause to search the defendant's home for evidence of drug trafficking where officers observed the defendant go into his home immediately following a drug transaction, officers observed the defendant leave the residence immediately preceding to a site of a second drug transaction, the confidential informant involved in the drug transactions was reliable, and the attesting officer had significant experience in narcotics investigations).

By contrast, in *State v. Cole*, 2d Dist. Montgomery No. 23058, 2009-Ohio-6131, the Second District Court of Appeals found that probable cause was lacking to search a defendant's residence for evidence of drug trafficking. Police officers had discovered drug paraphernalia and substantial quantities of marijuana in the defendant's vehicle, which the defendant's roommate had been driving.[40] The car also contained bills addressed to the defendant's apartment and other paperwork indicating the defendant's address.[41] On this basis, a search warrant for the defendant's residence was obtained and evidence of drug trafficking was seized from the residence.[42] On appeal, the court found that probable cause was not established to search the defendant's home based solely on "the individual's possession of a significant quantity of drugs or other evidence of drug trafficking."[43] Instead, the court concluded that there must "exist some additional evidentiary link between the suspected drug activity and the suspect's home" to establish probable cause.[44] Even so, the court found that the seized evidence should not be excluded based on the good faith exception to the exclusionary rule.

In turning to the case at bar, the defendant claims that the evidence seized from Room 109 of the Red Roof Inn must be suppressed because the warrant was based on less than probable cause. More specifically, the defendant maintains that the affidavit contained no nexus between evidence of the defendant's alleged drug trafficking and Room 109, which the defendant claims he was using as his residence. The defendant

---

[40] *State v. Cole*, 2d Dist. Montgomery No. 23058, 2009-Ohio-6131, ¶ 2.
[41] Id. at ¶ 5.
[42] Id. at ¶ 6.
[43] Id. at ¶ 26.
[44] Id. *See State v. Perez*, 32 N.E.3d 1010, 2015-Ohio-1753 (2d Dist. 2015) (finding that there were inadequate facts to issue a search warrant of a defendant's storage unit where there was no nexus between the defendant and the storage unit; it was insufficient that the defendant had been found to have evidence of drug trafficking in his apartment).

highlights that a status as a drug trafficker is insufficient to create a nexus to the hotel room. The defendant also highlights that, although he was seen in the area of Room 109, no officer saw him actually enter or exit the room, no informant told the police the defendant conducted drug deals from the hotel room, and no hotel employees observed heavy traffic entering and exiting the room.

The defendant is correct that being a drug dealer is not, in and of itself, sufficient to establish probable cause to search the defendant's home, or in this, case hotel room.[45] However, it is untrue that law enforcement officers needed to have observed the defendant entering or exiting Room 109 before probable cause existed to search it. As mentioned above, a defendant's "status as a drug dealer plus observation of drug activity <u>near</u> defendant's home is sufficient to establish probable cause to search the home."[46]

In this case, police officers did observe drug activity <u>near</u> the defendant's hotel room. The defendant was seen walking back and forth between his Dodge Charger and the side of the Red Roof Inn building that contained Room 109. Furthermore, Agent Taylor observed and later confirmed that a drug sale occurred minutes after Agent Taylor saw the defendant walking multiple times between the Dodge Charger and the area where Room 109 was located.[47]

Additionally, when questioned about the Red Roof Inn, the defendant lied to the investigating police officers, stating that he was staying in Room 117, not Room 109. This information would have allowed the issuing judge to make the reasonable

---

[45] *Gunter*, 266 Fed.Appx. at 418.
[46] (Emphasis added.) *Barry*, 565 F.3d at 339, citing *McPhearson*, 469 F.3d at 532-533.
[47] *See Gunter*, 266 Fed.Appx at 419.

inference that the defendant may be lying about his room because he wanted to avoid the police finding additional evidence of drug trafficking.[48]

Moreover, the issuing judge could permissibly "give considerable weight to the conclusion of experienced law enforcement officers" about where evidence of a crime is likely kept.[49] Here, Agent Taylor averred in his affidavit that he received considerable training to be on the Narcotics Task Force, and that evidence of drug trafficking is commonly hidden in secure places, such as residences, safes, and safe deposit boxes. The warrant requested to search Room 109, which was a secure place that the defendant had a key to, as well all any boxes or safes inside.

Finally, the defendant's status as a known drug dealer also supports the issuing judge's conclusion that probable cause existed.[50] This is not a case where the only evidence supporting probable cause is the fact that the defendant was a known drug dealer with a history of drug trafficking. As discussed, there were other facts buttressing the probable cause finding that there was a nexus between potential evidence of drug trafficking and the defendant's hotel room.

The instant case is akin to *State v. Redelman*, in which the Twelfth District Court of Appeals found that a warrant to search a hotel room for drug trafficking evidence was supported by probable cause. Similar to *Redelman*, in the present investigating officers learned of a drug deal that occurred at the hotel earlier that day, the defendant's vehicle was parked at the hotel, the investigating officer ind ependently confirmed that the defendant had a history of drug trafficking, and the investigating officer confirmed with hotel staff which hotel room the defendant was residing in. In this case, the defendant

---

[48] Id., citing *Caicedo*, 85 F.3d 1184.
[49] *Ray*, 577 Fed.Appx. at 532, quoting *Rodriguez-Suazo*, 346 F.3d at 644.
[50] *See Miggins*, 302 F.3d at 393-394 (6th Cir. 2002), *Berry*, 546 F.3d at 339.

was also caught lying to police officers about which hotel room was his, which supports the state's argument that probable cause existed.

Although this is a close case, the court is mindful that "doubtful or marginal cases in this area should be resolved in favor of upholding the warrant." [51] When the averments in the affidavit are read together, the court finds that the affidavit contains sufficient information to allow the issuing judge to draw the conclusion that evidence of drug trafficking was likely to be found in the defendant's hotel room at the Red Roof Inn.

However, even if there was not probable cause to search the defendant's hotel room, the court finds that the good faith exception to the exclusionary rule would apply, and therefore the evidence seized from the hotel room would still be admissible. The Fourth Amendment does not explicitly exclude evidence obtained in contravention of its requirements, but there exists a "judicially crafted exclusionary rule [that] mandates suppression of evidence obtained from a constitutional violation."[52] However, whether the exclusionary rule applies is a separate issue from "the question of whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct."[53]

As such, the exclusionary rule is inapplicable to bar evidence "obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable

---

[51] *Jones*, 2015-Ohio-483 at ¶ 14, quoting *George*, 45 Ohio St.3d at paragraph two of the syllabus; *Landis*, 2006-Ohio-3538 at ¶15, citing *George*, 45 Ohio St.3d at 330.
[52] *U.S. v. Garcia*, 496 F.3d 495, 505 (6th Cir. 2007) citing *Arizona v. Evans*, 514 U.S. 1, 10-11, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995). *See O'Connor*, 2002-Ohio-4122 at ¶ 11 quoting *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961).
[53] *U.S. v. Leon*, 468 U.S. 897, 907, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), quoting *Gates*, 462 U.S. at 223.

cause."[54] This exception, known as the good faith exception, was created because the deterrent purpose of the exclusionary rule is not served when a police officer conducts a search using a warrant in complete good faith.[55]

When a reviewing court finds that a "warrant should not have been issued, it must then determine whether the good-faith exception applies * * *."[56] The good faith exception only applies, however, when the officer's reliance on the magistrate's probable cause determination was objectively reasonable.[57] The good faith exception does not apply in four circumstances:

> "(1) when the affidavit supporting the search warrant contains a knowing or reckless falsity; (2) when the magistrate who issued the search warrant wholly abandoned his or her judicial role; (3) when the affidavit is so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable; or (4) when the warrant is so facially deficient that it cannot reasonably be presumed valid."[58]

A "bare bones" affidavit, which relates to the second and third exceptions, is an affidavit that "merely 'states suspicions, beliefs, or conclusions, without providing some underlying factual circumstances regarding veracity, reliability, and a basis of knowledge."[59] To determine if an affidavit is so "bare bones as to preclude application of the good-faith exception is a less demanding inquiry than the one involved in

---

[54] *George*, 45 Ohio St.3d at paragraph three of the syllabus, citing *Leon*, 468 U.S. 897.
[55] *Id.* at 331, quoting *Leon*, 468 U.S. at 919.
[56] *Phillips*, 2016-Ohio-5944 at ¶ 9, quoting *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, ¶ 32.
[57] *George*, 45 Ohio St.3d at 331, quoting *Leon*, 468 U.S. at 922.
[58] *McPhearson*, 469 F.3d at 525, citing *United States v. Laughton*, 409 F.3d 744, 748 (6th Cir. 2005).
[59] *Id.* at 526, quoting *United States v. Weaver*, 99 F.3d 1372, 1378 (6th Cir. 1996).

determining whether the affidavit provided a 'substantial basis' for the magistrate's conclusion of probable cause."[60]

The Sixth Circuit Court of Appeals has observed that the good faith exception applies where "the affidavit contained a minimally sufficient nexus between the illegal activity and the place to be searched to support an officer's good faith belief in the warrant's validity, even if the information provided was not enough to establish probable cause."[61] The Sixth Circuit Court of Appeals has further concluded that an affidavit to a warrant to search a defendant's home for narcotics evidence lacked an indicia of probable cause, rendering it objectively unreasonable, where the affidavit did not allege that the defendant was involved in drug dealing, did not allege that hallmarks of drug dealing had been witnessed at his home, and did not allege that the investigating officer's experience in narcotics investigations suggested that the amount of narcotics found on the defendant's person suggested a quantity for resale.[62]

Although the defendant claims that the warrant-affidavit is bare bones, and that no reasonably trained police officer could rely on it, the court finds that is not the case. The affidavit is thorough and contains multiple facts that, when taken together, create a nexus to the hotel room. The affidavit discusses Agent Taylor's observations of the drug sale, his discussion with Ms. Richardson and Ms. Imjalli confirming the sale of drugs, the defendant's history of drug trafficking, the discovery of evidence of drug trafficking in the defendant's car shortly after he walked away from the area near Room

---

[60] *Id.* at 526, citing *Laughton*, 409 F.3d at 748-749. *See Frazier*, 423 F.3d at 536, citing *Carpenter*, 360 F.3d at 595 ("This requires a 'less demanding showing than the substantial basis threshold required to prove the existence of probable cause in the first place.'") (Citation omitted.)
[61] *Id.*, citing *Carpenter*, 360 F.3d at 596.
[62] *Id.* at 527.

109, and Agent Taylor's experience on the Narcotics Task Force. On the whole, there is no suggestion that the issuing judge wholly abandoned his or her role or that the affidavit was so lacking in indicia of probable cause that it was objectively unreasonable for investigating officers to believe probable cause existed. As such, even if there was not sufficient probable cause for the issuing judge to issue the search warrant, the good faith exception to the exclusionary rule applies, thus allowing the evidence seized from Room 109 to be admitted at trial.

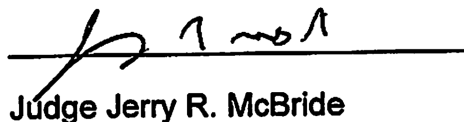
CONCLUSION

For the foregoing reasons, the defendant's motion to suppress is not well-taken and denied.

Counsel are requested to conference and call the Assignment Commissioner (513-732-7108) within three day of the date of this Decision in order to schedule a plea or trial setting, which shall be scheduled and held within ten days of the date of the Decision.

IT IS SO ORDERED.

DATED: 5-1-17



Judge Jerry R. McBride