

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CASE NO. 25-5078

UNITED STATES OF AMERICA,
Plaintiff/Appellee,
v.

LEE SCOTT HOLT,
Defendant/Appellant.

APPEAL FROM UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
THE HONORABLE JOHN F. HEIL, CHIEF U.S. DISTRICT JUDGE,
CASE NO. 4:24-CR-00050-JFH-1.

OPENING BRIEF OF DEFENDANT/APPELLANT

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PRIOR OR RELATED APPEALS

No previous or related appeals exist.

STATEMENT OF JURISDICTION

Lee Scott Holt, the Defendant/Appellant, was charged by indictment with criminal violations of United States law, over which the United States District Court for the Northern District of Oklahoma had jurisdiction pursuant to 18 U.S.C. § 3231. Mr. Holt was convicted after a jury trial of: one count of Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8); one count of Possession of Methamphetamine with Intent to Distribute in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii)(II), 851; one count of Maintaining a Drug Involved Premises in violation of 21 U.S.C. §§ 856(a)(1) and 856(b); and one count of Possession of a Firearm in Furtherance of a Drug Trafficking Crime in violation of 18 U.S.C. §§ 924(c)(1)(A)(i).

The district court imposed a sentence of a total of 180 months in custody consisting of 120 months each as to Counts One, Three and Four. to run concurrently with each other, and 60 months as to Count Five to run consecutively to Counts One, Three, and Four followed by eight years of supervised release comprised of three years as to each of Counts One and Four, five years as to Count Five, and eight years as to Count Three, all running concurrently to each other.

The district court entered the Judgment in a Criminal Case on April 21, 2025. Attachment I.¹ The notice of appeal was timely filed May 13, 2025. *Id.* at 7; *see* Fed. R. App. P. 4(b). This Court’s jurisdiction derives from 28 U.S.C. § 1291, granting circuit courts power to review all final judgments of district courts.

STATEMENT OF THE ISSUES

I. Whether the district court erred both in its factual and legal conclusions in denying Mr. Holt’s Motion to Suppress evidence seized in the search of his home.

II. Whether the district court erred in its application of *Rovario v. United States*, 353 U.S. 35 (1957) and Fed. Crim. P. 41 to deny of Mr. Holt’s Motion to Compel disclosure of the identity of a confidential informant.

¹ Record references in this brief, including transcript references, are based on volumes and page numeration in the record on appeal.

STATEMENT OF THE CASE

The charges in this case were based on the evidence seized from Mr. Holt and his co-defendant's home on August 29, 2023. Vol I at 182. Prior to this search and seizure, Oklahoma Bureau of Narcotics (OBN) Agent Tara Winter presented identical affidavits for search warrants to both the Cherokee National Tribal Court and Tulsa County District Court on August 23, 2023. *Id.* at 178. A Cherokee Nation Judge authorized the Cherokee Nation warrant that day. *Id.* However, the Tulsa County Judge requested additional details and information which required Agent Winter to submit two revised affidavits before the Tulsa County Judge approving and issuing a search warrant the following day on August 24. *Id.*

The Indictment filed on February 20, 2024 charged Mr. Holt with one count of Possession of Methamphetamine with Intent to Distribute in violation of 21 USC 841(a)(1) and 841(b)(1)(B)(viii); one count of Felon in Possession of a Firearms and Ammunition in violation of 18 U.S.C. 922(g)(1) and 924(a)(8); one count of Maintaining a Drug-Involved Premises in violation of 21 U.S.C. 856(a)(1) and 856(b); and one count of Possession of a Firearm in Furtherance of Drug Trafficking Crimes in violation of 18 U.S.C. 924(C)(1)(A)(i). A Superseding Indictment was filed on March 19, 2024, which was largely the same as the initial Indictment but specifically identified additional prior convictions of Mr. Holt.

On May 9, 2025, Mr. Holt filed his Motion to Suppress the fruits of the August 29, 2023, search. The only affidavit submitted to the Cherokee Nation was identical to the first submitted to the Tulsa County Judge. Each affidavit named Mr. Holt as the suspect and indicated that he was a member of the Cherokee Nation. Vol. I at 133-34. The Probable Cause portion of these affidavits state:

“In the month of June 2023, Oklahoma Bureau of Narcotics Agents had a GPS tracking device attached to a vehicle of a known distributor of methamphetamine. Based on the GPS tracker data, investigators developed this location, 117 N 21st St in Collinsville, Tulsa County, Oklahoma, as a possible target source supply for methamphetamine.” *Id.*

The affidavits further describe the results of a trash pull conducted at the residence on August 21st, including pictures of one baggie, six syringes, and several items of mail bearing the names of Mr. Holt and co-defendant, Jennifer Harrington. *Id.* After then describing Mr. Holt’s criminal history, the affidavits stated that: “Based off all the evidence collected in this investigation, I believe illegal controlled substances are being sold and housed at the residence at 117 N 21st St in Collinsville, Tulsa County, Oklahoma 74021.” *Id.*

The Cherokee Nation Judge authorized a warrant based upon this affidavit on the same day. *Id.* at 124-25. The Tulsa County Judge requested further information be added. *Id.* at 125. The Tulsa County Judge was not satisfied with the affidavit until the third submission and issued a Warrant on August 24. *Id.*

Specifically, the Tulsa County Judge requested additional information regarding the investigation which led to placing a GPS tracker on a vehicle that was then found to visit Mr. Holt's home several times over a period of months. *Id.*

After extensive briefing and an evidentiary hearing, the district court denied Mr. Holt's Motion to Suppress in its Opinion and Order entered on July 21, 2024. *See* Attachment 2. In this Opinion and Order the district court found that the Cherokee Nation warrant contained sufficient indicia of probable cause so that law enforcement's reliance upon it was reasonable and concluded that the good faith exception to the exclusionary rule applied. Vol I at 306-08. The district court further concluded that the search of Mr. Holt's home was not "federal in character" so as to require compliance with Fed. R. Crim. P. 41, but that if had, exclusion would not be warranted. *Id.* at 309. Mr. Holt's Motion to Reconsider was filed on July 21, 2025. *Id.* at 342-355. The district court's Opinion and Order denying Mr. Holt's Motion to Reconsider finding the newly submitted evidence did not establish the search was "federal in character" was entered on August 18, 2024. Vol. II at 15-24.

The investigation leading up to the search of Mr. Holt's home involved the use of a confidential informant. Mr. Holt filed a Motion to Compel the government to identify the informant on May 9, 2024. Vol. I at 38-45. After briefing and an evidentiary hearing, the magistrate entered an Opinion and Order compelling the government to disclose the identity of this informant to the defendant. *Id.* at 219-

27. The government's Appeal of this order to compel filed on June 3, 2024, was denied by the district court for failing to demonstrate that the Order was based on a mistake in law or in fact. *Id.* at 279. However, upon the government's Motion to Reconsider filed on July 1, 2024, and over Mr. Holt's objection, the district court vacated the Order to compel. *Id.* at 284-293, 294-300, and 312-320. *See also* Attachment Three.

The case proceeded to trial on August 19, 2024. Counsel for Mr. Holt reasserted his objections to the admission of the seized evidence during the trial. *See i.e.* Vol. III at 90, 91, and 92. At the close of the trial, the jury returned a verdict of guilty as to Mr. Holt for violations of Counts One, Two, Three, Four, and Five of the Indictment. *Id.* at 475. Sentencing was held on April 30, 2025, where the trial court sentenced Mr. Holt to a sentence of a total of 180 months in custody followed by eight years of supervised release. Vol. I. at 458.

SUMMARY OF THE ARGUMENTS

The first issue before this court is whether district court erred both in its factual and legal conclusions in denying Mr. Holt's Motion to Suppress evidence seized in the search of his home. In doing so the district court failed to consider this unique circumstance of the warrant application process in this case therefore misapplying the holding of *United States v. Leon*, 468 U.S. 897 (1984). The district court also made clearly erroneous findings of fact in determining whether Fed. R. Crim. P. 41 was intentionally violated by law enforcement in the process of seeking a warrant in this case.

The second issue is whether the district court erred in its application of *Rovario v. United States*, 353 U.S. 35 (1957) to deny of Mr. Holt's Motion to Compel disclosure of the identity of a confidential informant by limiting its analysis to whether the disclosure would be helpful to the defense at trial. In doing so the district court ignored the confidential informant's usefulness to the defense in its challenges to the searches in this case.

ARGUMENTS

I. Issue One: The District Court Erred in Denying the Motion to Suppress

A. Summary of the Relevant Record

The facts at the heart of this case issue are unusual due to the unique jurisdictional circumstances implicated in criminal cases involving tribal members, tribal land, and state law enforcement officers in northeastern Oklahoma since the Supreme Court’s decision in *United States v. McGirt*, 591 U.S. 894 (2020). It was in this jurisdictional landscape that an Oklahoma State police officer submitted identical affidavits for the issuance of search warrants of an Indian person’s home on tribal land to both a tribal court judge and a state court judge. Vol. I at 133-34. The tribal court judge issued a search warrant based upon the initial affidavit. *Id.* at 124-25. The state court judge, however, required the officer to revise the affidavit two times before issuing a warrant. *Id.*

In proceedings below, the government conceded that the state court warrant was improperly issued because the state court lacked jurisdiction. *Id.* at 183. The federal magistrate tasked with conducting an evidentiary hearing on the defendant’s motion to suppress the fruits of the search warrant found that the warrant was not based upon sufficient probable cause, but nonetheless, the “good faith” exception to the exclusionary rule applied. *Id.* at 198-99. The magistrate further found that the Fed R. Crim. 41 was not violated because no federal agents were

involved until after the search was conducted and Agent Winter testified that she was not sure at the time that she sought the warrants where the case would be prosecuted. *Id.* at 200-201. In response to the defendant's objection to these findings, the district court affirmed the magistrate's findings that good faith applied because the affidavit contained sufficient indica of probable cause. See Attachment 2. The question before this Court is whether it was objectively reasonable for police to rely on the warrant by one court based upon an affidavit identical to one that another court contemporaneously found to be insufficient to establish probable cause. For the reasons set out herein, this Court should find that it was not.

Alternatively, this Court should hold that the district court erred when it held that Agent Winter did not intentionally subvert the procedures for obtaining a federal search warrant as established by Fed. R. Crim. P. 41 as its findings were contrary to the evidence. As such, the district court erred in denying Mr. Holt's Motion to Suppress in light of this intentional Rule 41 violation.

B. Standard of Review

This Court reviews a preserved objection to a lower court's application of the good-faith exception to the warrant requirement de novo. *United States v. Knox*, 883 F.3d 1262, 1268 (10th Cir. 2018). This review is not conducted by viewing the evidence in the light most favorable to the government. *Id.* at 1269 n.4. The factual findings of the lower court are reviewed for clear error. *United States v.*

Nelson, 868 F.3d 885, 889 (10th Cir. 2017). A finding of fact is clearly erroneous when there is no factual support for it the record, or this Court, after reviewing all the evidence, is “left with a definite and firm conviction that a mistake has been made.” *United States v. Johnson*, 43 F.4th 1100, 1107 (10th Cir. 2022) (quoting *United States v. Morales*, 961 F.3d 1086, 1090 (10th Cir.)). The government bears the burden of showing that reliance on a warrant was objectively reasonable. *United States v. Leary*, 846 F.2d 592, 607 n.26 (10th Cir. 1988).

When a defendant seeks suppression of evidence based upon a violation of Fed. Crim. P. 41, this Court reviews the district court’s rulings de novo. *United States v. Kruegar*, 809 F.3d 1109, 1113 (10th Cir. 2015) (citing *United States v. McDowell*, 713 F.3d 571, 574 (10th Cir. 2013)).

C. Controlling Law

The Fourth Amendment safeguards the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. Warrantless searches are per se unreasonable under the Fourth Amendment except under certain established exceptions. *Katz v. United States*, 389 U.S. 347, 357 (1967). Therefore, searches pursuant to warrants are strongly preferred due to the role that a magistrate plays in safeguarding against improper searches by providing detached scrutiny as a foil to the judgment of law enforcement officers in a zealous pursuit of evidence. *United States v. Leon*, 468

U.S. 897, 913-914 (1984).

The exclusionary rule is a judicially created sanction intended to safeguard these rights as a deterrent against future law enforcement conduct. *Id.* at 905-906. In *Leon* the Supreme Court recognized a good-faith exception to the exclusionary rule when law enforcement officers seize evidence in reasonable reliance of a warrant issued by a detached and neutral magistrate. *Id.* at 913. The principle underlying this exception is that the purpose of the exclusionary rule is to deter misconduct on the part of police, not magistrates or judges. *Id.* at 916. Therefore, suppression or exclusion is not appropriate merely based upon a subsequently invalidated warrant. Rather, the exclusion must have some deterrent effect that would “alter the behavior of individual law enforcement officers or the policies of their departments.” *Id.*

Exclusion fulfills its deterrence purpose only when law enforcement officers have engaged in willful or neglectful conduct resulting in the defendant being deprived of his rights so that suppression by the courts may impress upon the police the need for greater care for the rights of the accused going forward. *Id.* 919. In keeping with this deterrent purpose, evidence should only be suppressed when the police knew or should have known that the search was unconstitutional. *Id.*

When determining whether suppression is appropriate, courts are to consider all the circumstances and presume that law enforcement involved are

reasonably knowledgeable regarding the law. *United States v. Leary*, 846 F.2d 592, 607 (10th Cir. 1988) (citing *Leon*, 468 U.S. at 919 n. 20). However, “it must be remembered that the knowledge and understanding of law enforcement officers and their appreciation for constitutional intricacies are not to be judged by the standards applicable to lawyers.” *United States v. Cardall*, 773 F.2d 1128, 1133 (10th Cir. 1985). The determination of good faith on the part of law enforcement in a challenge to a search pursuant to a warrant is confined to the content of the affidavit, any information shared with the issuing court and the warrant application process. *United States v. Knox*, 883 F.3d 1262, 1272 (10th Cir. 2018).

Fed. R. Crim. P. 41 governs the appropriate process to obtain a federal search warrant. *Kruegar*, 809 F.3d at 1112. This rule mandates that officers apply for a warrant to a federal magistrate in the appropriate district, or to a state court judge if a federal magistrate is not available. For the purposes of determining if a Rule 41 violation has occurred, this Circuit has found that a state search warrant is not federal in character if there is no indication that a federal prosecution is anticipated at the time of the search. *United States v. Sadlowski*, 948 F.3d 1200, 1204 (10th Cir. 2020) (citing *United States v. Barrett*, 496 F.3d 1079, 1090-91 (10th Cir. 2007)). Suppression of evidence derived from a Rule 41 violation is warranted when it rises to the level of a Fourth Amendment violation, when defendant demonstrates prejudice, or when there is evidence of intentional disregard for the provisions of

Rule 41. *Kruegar*, at 1114. The purpose of the exclusionary rule is furthered by suppression due to Rule 41 violations because it deters law enforcement from seeking and obtaining warrants in violation of Rule 41. *Id.* at 1117.

D. The District Court Erred in Applying the Good Faith Exception

In adopting the Report and Recommendation and overruling Mr. Holt's objections, the district court opted not to decide whether the underlying warrant was supported by probable cause. Vol. I at 308. In a footnote the district court dismissed Mr. Holt's argument that the magistrate's finding of good faith was undermined by the Tulsa County Judge's contemporaneous refusal to issue a search warrant based upon an affidavit identical to that approved of by the Cherokee Nation Judge. In doing so, the district court misconstrued the argument as simply based on "an errant, overly rigid view of probable cause." *Id.*

The Supreme Court in *Leon* identified certain instances where good faith would not apply, such as when the issuing magistrate wholly abandons their judicial role or is misled by the affiant. *Leon*, at 923. However, the question ultimately turns on whether the conduct of the police was objectively reasonable. *Id.* at 924. As recognized by the *Leon* court, reasonable minds may disagree on the question of whether an affidavit establishes probable cause. *Id.* at 914. This understanding is the basis for the deference afforded to a magistrate's finding of probable cause by reviewing courts. *Id.* The question here, however, is not whether

reasonable judges may differ in their probable cause determinations. The question is whether it is objectively reasonable for a police officer to rely on one magistrate's finding of probable cause when another magistrate concurrently finds probable cause to be lacking.

Agent Winter submitted identical affidavits in application for search warrants to both the Cherokee Nation Tribal Court and to a Tulsa County District Judge on the same day. Vol. I at 127. At the evidentiary hearing, Agent Winter testified that she sought the Tulsa County warrant because Mr. Holt's co-defendant, Ms. Harrington, was not a tribal member. *Id.* at 125. This testimony confirmed that Agent Winter was aware that the state court did not have jurisdiction over Mr. Holt. On cross-examination, Agent Winter conceded that only Mr. Holt's name appeared in the affidavits. *Id.* at 133-134.

The Cherokee Nation Judge issued a search warrant based upon this initial affidavit the day it was received. *Id.* at 124. However, the Tulsa County District Judge required additional facts. *Id.* at 125. In total the Tulsa County Judge required two additional revisions before issuing a warrant. *Id.* at 127. Despite the multiple revisions to the affidavit to obtain the Tulsa County warrant, the only search warrant that was executed was the one issued by the Cherokee Nation Judge. *Id.* at 303. The government conceded that the Tulsa County warrant was invalid because the Tulsa County Judge lacked jurisdiction to issue it. *Id.* at 157-58. Therefore, the

Report and Recommendation and the Orders denying the motion to suppress addressed only the Cherokee Nation affidavit and warrant as to whether the *Leon* good faith exception applied.

Magistrate Little held in her Report and Recommendation that the affidavit submitted to the Cherokee Nation warrant lacked probable cause, but the good faith exclusionary rule was applicable because “there is no evidence that Agent Winter presented false or misleading information or that she lacked a good-faith belief that the warrant was properly issued by a neutral Cherokee Nation judge.” Vol. I at 198.

In his Objection to the Report and Recommendation, Mr. Holt argued that it was objectively unreasonable for police to rely upon the Cherokee Nation when the affidavit was both lacking in indicia of probable cause and had been contemporaneously rejected by another judge. *Id.* at 228-35. The government argued that good faith should apply because Agent Winter “was trying to do the right thing and cover her bases by getting both warrants.” *Id.* at 160.

Judge Heil’s first Opinion and Order did not disturb the Report and Recommendation’s finding that the Cherokee Nation affidavit lacked probable cause but concluded good faith was applicable on the basis of the affidavit submitted to the Cherokee Nation being “not so ‘bare bones’ as to render official belief in the existence of probable cause entirely unreasonable.” *Id.* at 308. Neither the magistrate

nor district judge contended with what affect the concurrent rejection of the affidavit by a different judge should have on the determination of whether law enforcement's reliance on a warrant is objectively reasonable.

“In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient.” *Leon*, at 921. “A warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.” *Id.* at 922 (internal quotations removed). But reliance on a magistrate's probable cause determination must be objectively reasonable. *Id.*

In *United States v. Gonzales*, 299 F.3d 1225, 1230 (10th Cir. 2005), this Circuit noted that law enforcement officers are required to use their professional judgment and are presumed to have a reasonable knowledge of the law. Therefore, this Circuit determines if police acted in good faith reliance upon a warrant by considering if “a reasonably well trained officer would have known that the search was illegal” despite the warrant being approved by a magistrate. *Id.* (citing *Leon*, 468 U.S. at 922 n. 23). When considering whether evidence should be excluded, the Supreme Court has emphasized that suppression is appropriate if the officers involved “had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.” *United States v. Otero*, 563 F.3d 1127, 1133-34 (10th Cir. 2009) (quoting *Herring v. United States*, 555 U.S.

135 (2009).

This is not the usual case. Unlike most cases where a judicial opinion that an affidavit lacks sufficient probable cause is handed down well after the search is performed, Agent Winter was put on notice of the affidavit's deficiencies first when Tulsa County Judge declined to issue a warrant based on the initial affidavit, and again when the judge rejected the second version. Based upon the revisions requested by the Tulsa County Judge, specifically seeking details regarding the GPS data that both the magistrate and district judge found insufficient in addition to the Tulsa County judge, it would be apparent to well-trained officers that the facts the rejecting judge found lacking were germane to establishing probable cause. *See* Vol. I at 128. *Compare*, Vol. I at 70-75, and 76-81.

The district court erred in finding that the affidavit approved by the Cherokee Nation court "provided sufficient indicia of probable cause" to render Agent Winter's reliance on the warrant reasonable. As the magistrate had correctly concluded, once the wholly conclusory statement about GPS tracking is stricken the trash pull and a stale conviction from 6 years past in the affidavit did not suggest drug trafficking was occurring at the home. *See* Vol. I at 185-95. Finally, district court erred in finding that Agent Winter's reliance on the warrant reasonable without considering whether such reliance was in light of the concurrent rejection of the same affidavit by another judge.

E. Suppression is appropriate to deter future misconduct by police.

i. Agent Winter's misconduct in pursuing the search warrants in this case should be deterred.

In discussing the purpose of exclusion in deterring the behavior of individual police officers and police departments, the *Leon* court noted that “one could argue that applying the exclusionary rule in cases where the police failed to demonstrate probable cause in the warrant application deters future inadequate presentations or ‘magistrate shopping’ and thus promotes the ends of the Fourth Amendment.” *Leon* at 918. Agent Winter’s conduct in pursuing the search warrants in this case is the type of behavior the exclusionary rule is intended to deter as it suggests forum or magistrate shopping rather than “covering her bases” as the government urged below.

Agent Winters testified that she sought a state warrant because Mr. Holt’s codefendant was not a tribal member. Vol. I at 133-34. However, this testimony was directly contradicted by the fact that the affidavits submitted to the state court mentioned Mr. Holt as the target, not his co-defendant. *See, Id.* at 76-81. To agree with the district court that Agent Winter was just “covering her bases” one needs to conclude that she mistakenly believed that a warrant that she authored naming only Mr. Holt to be issued by the Tulsa County Judge would be valid despite the jurisdictional map created by *McGirt* being settled law at the time. However, this

conclusion is incompatible with Agent Winter's statement that she sought the Tulsa County warrant because Mr. Holt's codefendant was not a tribal member. This testimony by Agent Winter indicates that she was aware that the Tulsa County Judge did not have jurisdiction over Mr. Holt and his home. By seeking a warrant she knew to be illegal, she engaged in the type of conduct *Leon* suggested should be deterred. In light of Agent Winter's conduct in seeking to obtain a search warrant for Mr. Holt's home that she knew to be improper, this Court should find that the good faith exception is not applicable.

ii. Alternatively, Agent Winter's conduct warrants exclusion for intentionally failing to comply with Fed. R. Crim. P. 41.

As evidenced by the facts and testimony developed in the evidentiary hearing, Agent Winter submitted affidavits to the Tulsa County Court aware that any warrant issued by that court would not be valid as to Mr. Holt. This supports Mr. Holt's argument that she sought to circumvent the requirements of Fed. R. Crim. P. 41. In denying Mr. Holt's Motion to Suppress on Rule 41 grounds the district court consistently found it reasonable that Agent Winter sought a state warrant because it was "entirely understandable that Agent Winter would be unsure whether the case would ultimately be prosecuted by the State of Oklahoma, the Cherokee Nation, or the federal government." Vol. II at 23. This finding, however, ignores Agent Winter's testimony that indicated she was aware that Mr. Holt could not be the target of a state prosecution resulting from the search warrant issued by the Tulsa County

Judge. *See* Vol. I at 133-34. And that after multiple revisions, Agent Winter never identified Ms. Harrington as the target in the Tulsa County warrant. *See Id.* at 76-81.

The trial court erred when it found it reasonable to believe that a law enforcement officer in the Northern District of Oklahoma years after the Supreme Court's holding in *McGirt* would mistakenly contemplate that a search conducted of a tribal member's home in Indian Country would result in prosecution in state court. Agent Winter's testimony demonstrated she knew Mr. Holt would not be prosecuted in state court. Because she had this knowledge and sought a state warrant in conjunction with a tribal warrant, the only logical conclusion is that she acted intentionally to avoid complying with Rule 41.

iii. Suppression is appropriate to deter future conduct.

Under either scenario described above, deterrence of future similar conduct by Agent Winter and others would promote the ends of the Fourth Amendment by emphasizing law enforcement's obligation to be reasonably knowledgeable about the law and have due regard for the constitutional rights of those that they encounter.

II. Issue Two: The District Court Erred in Denying the Motion to Compel

A. Summary of the Relevant Record

Mr. Holt sought the disclosure of the confidential informant in this case in conjunction with his efforts to suppress the evidence seized in a search of his home. Vol. I at 38-45. At the evidentiary hearing conducted by Magistrate Little, Agent Winter testified that the investigation which led to the search of Mr. Holt's home involved a confidential informant used to conduct controlled buys of narcotics from a person named Michael Leach. Vol. I at 120. In its initial Opinion and Order granting Mr. Holt's request for disclosure, the district court recognized that the government relied on evidence provided by the confidential informant to obtain the search warrant that resulted in the seizure of the evidence from Mr. Holt's home stating:

The CI was not just a tipster or a person uninvolved or distant from the evidence upon which the plaintiff relies to prosecute these defendants. The CI and information supplied by the CI were central to the inception of the investigation and charging the defendants in this case. Fairness dictates that the defendants should be able to identify the CI and consider the CI's involvement, test whether additional information was allegedly conveyed by Mr. Leach, determine whether the CI has additional knowledge (or lack thereof) relating to the defendants, determine whether the CI obtained any further information about Leach's alleged supplier, determine whether any additional context was provided that would support the plaintiff's theory that "up the hill" meant Collinsville or the defendant's house or something else, and test the credibility of the CI and the strength of the information

provided by the CI about Leach’s alleged supplier.” *Id.* at 225-26.

In consideration of these findings and the *Rovario* standard that disclosure is warranted when helpful and relevant to the defense or necessary to the case’s fair determination the district court ordered the disclosure of the confidential informant’s identity. *Id.*

The government filed an appeal of the district court’s order for disclosure which was initially denied for failure to demonstrate that the order was contrary to law or clearly erroneous. *Id.* at 279. The government then filed a motion to reconsider and defense counsel timely objected. Accepting the government’s newly advanced argument that it would not “introduce testimony or evidence concerning Michael Leach, the confidential informant, or the pre-search investigation” at trial, the district court concluded that “any marginal relevance that the confidential informant may have had in this case falls away.” *Id.* at 319.

B. Standard of Review

This Court reviews the denial of a motion to disclose the identity of a confidential informant for abuse of discretion. *United States v. Robinson*, 993 F.3d 839, 847 (10th Cir. 2021) (citing *United States v. Vincent*, 611 F.3d 1246, 1251 (10th Cir. 2010)).

C. Controlling Law

The Supreme Court recognized in *Rovario v. United States* that the government's privilege to withhold the identity of a confidential informant and related information must give way where the information "is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause." 353 U.S. 53, 60 (1957). Rather than pronouncing a fixed rule as to when disclosure is warranted, the *Rovario* court established a balancing test that weighs the public's interest in protecting confidential sources against the accused right to prepare and present a defense. *Id.* at 62. A proper balancing "depend[s] on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." *Id.* Disclosure is not required if the informant is not a witness or participant in the crime charged. *United States v. Halbert*, 668 F.2d 489 (10th Cir. 1982). When an informant is merely a tipster disclosure is also not required. *United States v. Morales*, 908 F.2d 565, 568 (10th Cir. 1990).

D. The District Court Erred in its Application of *Rovario*.

By focusing primarily on the presentation of evidence at trial, the district court misapplied the standard established in *Rovario* and therefore abused its discretion in reversing the order to disclose the identity of the confidential informant.

Nothing in the *Rovario* opinion requires that the identity of the

confidential informant be helpful to the defense *only* if it is to be presented at trial. Indeed, in consideration of the scope of the government's privilege to withhold the identity of informants, the *Rovario* court noted that in its review of prior cases it had found that most cases implicating this privilege involved disputes over the legality of warrantless searches where an informer's communications were claimed to establish probable cause for the search. *Rovario*, at 628. These disputes necessarily are concluded prior to trial before a jury, therefore *Rovario*'s command that the confidential informant privilege give way when relevant and helpful to the defense applies to the preparation of a defense in pretrial matters as well as the presentation of evidence at trial.

The confidential informant and their communications with law enforcement were central to search warrants which were the subject of extensive pretrial litigation. Considering Mr. Holt's challenge to the legality of the search in this case, the disclosure of the confidential informant would have assisted Mr. Holt in challenging the factual basis of the affidavits and the veracity of the affiant, Agent Winter.

As noted by Magistrate Little, Agent Winter's interpretation of "up the hill" in conjunction with GPS data from Michael Leach's car were the basis for her attesting in the Tulsa County affidavits that Mr. Holt's home was suspected of being the source for a known distributor of methamphetamine. Vol. I at 180-81. The

evidence seized pursuant to warrants sought and executed by Agent Winter based on her representations of the information provided by a confidential informant was crucial to the government's case regardless of whether the government presented testimony regarding the pre-search investigation at trial. Both at the evidentiary hearing and in briefing, counsel for Mr. Holt contested Agent Winter's conclusions that the informant's statements that Michael Leach's source for the drugs he sold came from "up the hill" combined with GPS data from Leach's car were indicators that Mr. Holt's home was Leach's source. *See*, Vol. I at 43-45, 167-68, and 271-72.

Ultimately, the district court deprived Mr. Holt the opportunity to adequately challenge Agent Winter's representations of the information derived from the confidential informant which she attested to in seeking the search warrants. Such evidence would have been determinative as to both the issues of probable cause and good faith. Therefore, the district court abused its discretion by concluding that disclosure of the confidential informant would not be helpful to the defense simply because the government attested it would not present evidence regarding the pre-search investigation at trial.

CONCLUSION

This Court should hold that the district court erred in denying Mr. Holt's Motion to Suppress evidence seized in a search of his home and in denying his Motion to Compel disclosure of the government's confidential informant. Because the evidence that Mr. Holt sought to suppress was the basis of the charges in this case, his conviction based upon this evidence should be Vacated.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested. The issues presented warrant the conclusion that oral argument would materially assist this Court's review.

Respectfully submitted,

Julia L. O'Connell, Federal Public
Defender

s/ Stephanie A. Baker

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CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTION

I hereby certify that the digital version of this brief and attachment is an exact copy of any paper copy required to be submitted to the court.

It has been scanned by the most recent version of Symantec Endpoint Protection and according to the program is free of viruses.

All required privacy redactions have been made.

s/ Stephanie A. Baker

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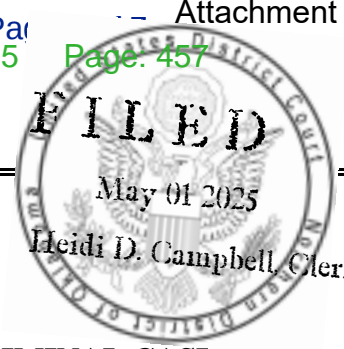
Date: October 2, 2025

s/ Stephanie A. Baker

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd of October 2025, I electronically filed this brief, with attachments, in the Tenth Circuit using the ECF System, which transmitted a Notice of Docket Activity to the following ECF registrant: Thomas Duncombe, Assistant United States Attorney, counsel for Plaintiff/Appellee.

s/ Stephanie A. Baker



AO 245B (Rev. 10/17) Judgment in a Criminal Case
 Sheet 1

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

LEE HOLT
 a/k/a "Timothy Scott Holt"
 a/k/a "Lee Scott Holt"

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24CR00050-1-JFH

USM Number: 06207-062

Jason Daniel Lollman, Malia Castillo, and Christina Hunt
 Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to counts
- pleaded nolo contendere to count(s) which was accepted by the Court.
- was found guilty on counts One, Three, Four and Five of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Felon in Possession of a Firearm and Ammunition	8/29/23	1
21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(viii), 851	Possession of Methamphetamine with Intent to Distribute	8/29/23	3
21 U.S.C. §§ 856(a)(1) and 856(b)	Maintaining a Drug Involved Premises	8/29/23	4
18 U.S.C. § 924(c)(1)(A)(i)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	8/29/23	5

The defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- The Indictment, as to this defendant, is dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

April 30, 2025
 Date of Imposition of Judgment


 Signature of Judge

John F. Heil, III, Chief United States District Judge
 Name and Title of Judge

May 1, 2025
 Date

AO 245B (Rev. 10/17) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Lee Holt
CASE NUMBER: 4:24CR00050-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 180 months. Said sentence shall consist of 120 months as to each of Counts One, Three, and Four, each count to run concurrently, each with the other, and 60 months as to Count Five, to run consecutively to Counts One, Three, and Four.

- The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends the Bureau of Prisons evaluate and determine whether the defendant is a suitable candidate for the most comprehensive substance abuse treatment programs available to him during his term of incarceration, such as the Residential Drug Abuse Program or other similar programs. The Court recommends the Bureau of Prisons evaluate and determine whether the defendant is a suitable candidate for the Career Starter Program or similar vocational training programs during the term of incarceration, and for placement at a facility as close to Tulsa, Oklahoma, as possible.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Lee Holt
CASE NUMBER: 4:24CR00050-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Eight years. Said terms shall consist of three years as to each of Counts One and Four, five years as to count five, and eight years as to Count Three. Said terms shall run concurrently, each with the other.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Lee Holt
CASE NUMBER: 4:24CR00050-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervision, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: Lee Holt
CASE NUMBER: 4:24CR00050-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, property, residence, office, vehicle, cellular telephone, computer, or any other electronic communication device, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. The defendant shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. The defendant must pay the cost of the program or assist (co-payment) in payment of the costs of the program if financially able.
3. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.

U.S. Probation Officer Use Only

A U.S Probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this Judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: Lee Holt
CASE NUMBER: 4:24CR00050-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 400 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this Judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 90 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of \$50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
Firearm and ammunition are forfeited as directed in the Preliminary Order of Forfeiture, Dkt. # 169.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**LEE HOLT,
JENNIFER CHARISA HARRINGTON,**

Defendants.

Case No. 24-CR-0050-JFH

OPINION AND ORDER

Before the Court is Defendants' Joint Objection [Dkt. No. 103] to Magistrate Judge Little's Report and Recommendation [Dkt. No. 97] on Defendants' Motion to Suppress [Dkt. No. 67]. The Government has filed a Response in opposition to Defendants' Objection [Dkt. No. 111], and this matter is ripe for consideration. For the reasons stated below, Defendants' Joint Objection is overruled.

BACKGROUND

On February 20, 2024, Defendants were charged by indictment with felon in possession of a firearm, possession of methamphetamine with intent to distribute, maintaining a drug-involved premises, and possession of a firearm in furtherance of drug trafficking crimes. Dkt. No. 47. On May 9, 2024, Defendant Lee Holt, joined by Defendant Harrington, filed a Motion to Suppress [Dkt. No. 67]. In the Motion to Suppress, Defendants argue that the Cherokee Nation search warrant, which was executed upon their residence and led to their arrest, was issued without probable cause, and, further, that officers could not have relied on the warrant in good faith.

Defendants' Motion to Suppress was referred to Magistrate Judge Christine D. Little. Dkt. No. 70. On May 21, 2024, a hearing was held on Defendants' motion. Oklahoma Bureau of

Narcotics (“OBN”) Agent Tara Winter testified at the motion hearing. Agent Winter testified that in June of 2023, the OBN utilized a confidential informant to purchase methamphetamine from a drug dealer named Mike Leach. Dkt. No. 112, p. 7. Agents began tracking Leach via a GPS device installed on his vehicle and tracked him for approximately 2 months. *Id.* at 8. At some point during this surveillance period, the confidential informant informed the OBN that Leach was meeting with his supplier of methamphetamine who was “up the hill”; that day, Leach was observed going to a residence in Collinsville. *Id.* at 8-9; 53. In total, Leach visited this address – 117 N. 21st Street in Collinsville – approximately nine times during the period in which he was being surveilled; these visits were typically brief in duration. *Id.* at 9.

Agent Winter and another agent next conducted a “trash pull” on the address in question; numerous syringes and plastic baggies that tested presumptively positive for methamphetamine were found. *Id.* at 10. The agents also discovered mail addressed to Defendants in the trash; upon investigating the Defendants’ backgrounds, agents discovered that Holt was a member of the Cherokee Nation and had a criminal history associated with drugs. *Id.* at 10-11.

With this knowledge in hand, Agent Winter sought from the Cherokee Nation District Court a warrant to search Defendants’ address on August 23, 2023. Agent Winter submitted an affidavit, which stated, in part:

In the month of June 2023, Oklahoma Bureau of Narcotics Agents had a GPS tracking device attached to a vehicle of a known distributor of methamphetamine. Based on the GPS tracker data, investigators developed this location, 117 N. 21st St. in Collinsville, Tulsa County, OK 74021, as a possible target source or supply for methamphetamine.

Dkt. No. 67-1.

The affidavit further stated that Agent Winter and another officer performed a “trash pull” at the address to be searched, which yielded two plastic baggies containing residue that tested

positive for methamphetamine, syringes, and mail addressed to both defendants. *Id.* Lastly, the affidavit stated that a records check revealed that Defendant Holt was a convicted felon with “prior charges from multiple states, including Oklahoma, Texas, and Missouri involving weapons, and the possession of controlled dangerous substances.” *Id.* Specifically, the affidavit notes that in 1989 Holt pled guilty to “Illegal Transfer of Machine Gun” in Texas, and, in 2019, Holt pled guilty to “Unlawful Possession of Controlled Dangerous Drug with Intent to Distribute Methamphetamine, Carry Firearms after Conviction / During Probation Possession of a Controlled Dangerous Substance and Possession of Paraphernalia.” *Id.*

On the same day on which she sought a warrant from the Cherokee Nation District Court, Agent Winter also apparently sought a warrant from a Tulsa County Judge using either an identical affidavit to the one submitted to the Cherokee Nation Court, or an affidavit that differed only in that it also noted that the Cherokee Nation District Court had already issued a search warrant. *See* Dkt. No. 112 at 14: 23-24; Dkt. No. 98-1. The Tulsa County Judge requested that further information be added to the initial affidavit that was submitted, and Agent Winter submitted another affidavit that contained additional detail regarding the GPS tracking data that led investigators to suspect Defendants were involved in drug sales. Dkt. No. 112 at 15; Dkt. No. 98-2. Agent Winter testified that she obtained the Tulsa County search warrant because, although Holt is Native American, Harrington is not. Dkt. No. 112 at 12: 16-17; 20: 19-22.

Ultimately, the Cherokee Nation warrant was served upon Holt and executed upon, resulting in the discovery of over 100 grams of methamphetamine, a Rossi firearm, alleged drug proceeds, and scales at Defendants’ residence. Dkt. No. 112 at 13: 6-13. The Cherokee Nation warrant return was filed, but no return of the Tulsa County warrant was filed; the record is unclear whether law enforcement also relied upon the Tulsa County warrant in addition to the Cherokee

Nation warrant. Dkt. No. 112 at 26; Dkt. No. 87 at 9.

On May 28, 2024, Magistrate Judge Little issued a Report and Recommendation that recommended denying Defendant's Motion to Suppress. Dkt. No. 87. In particular, Magistrate Judge Little opined that, though the Cherokee Nation search warrant lacked probable cause, the officers who executed the search warrant nevertheless relied upon the warrant in good faith, and, as such, suppression of the evidence from the execution of the warrant was not justified under *United States v. Leon*, 468 U.S. 897 (1984). Dkt. No. 87, pp. 22, 26. Given that the trial date for this matter was quickly approaching, the time for objections to the Report and Recommendation was curtailed. Dkt. No. 87, at 30-31.¹

Defendants timely objected to Magistrate Judge Little's Report and Recommendation, contending that the good faith exception to the exclusionary rule should not apply because the search warrant affidavit in question was so lacking in indicia of probable cause that no reasonable officer could have relied upon it in good faith. Dkt. No. 103 at 3-8. Defendants further object that suppression of evidence is warranted due to the Government's alleged violation of Fed. R. Crim. P. 41. Dkt. No. 103 at 8-11. The Government filed a response in opposition to Defendants' Joint Objection. Dkt. No. 111.

ANALYSIS

I. Exclusion is not warranted under the good faith exception to the exclusionary rule.

Defendants object to Magistrate Judge Little's recommendation that Defendant's Motion to Suppress be denied because, Defendants argue, Magistrate Judge Little errantly applied the *Leon*

¹ After the trial date in this matter was continued, Defendants were given a further opportunity to supplement their objections to the Report and Recommendation. Dkt. No. 115. No supplemental objection was filed.

good faith exception to the exclusionary rule. After de novo review, this Court cannot agree.

A. Standard of review and applicable legal standards

This Court will “consider de novo” Defendant’s objections to Magistrate Judge Little’s Report and Recommendation. Fed. R. Crim. P. 59(b).

The Fourth Amendment to the United States Constitution protects citizens against unreasonable searches and seizures and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. In assessing whether probable cause exists for the issuance of a warrant, the United States Supreme Court has held that a magistrate must “make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). A “fair probability” is “not an airtight guarantee; nor is it ‘proof that something is more likely true than false.’” *United States v. Jenkins*, 819 F. App’x 651, 658 (10th Cir. 2020) (citing *United States v. Denson*, 775 F.3d 1214, 1217 (10th Cir. 2014)).

Scrutiny of a magistrate’s decision to issue a warrant “should not take the form of *de novo* review,” and the magistrate’s decision “should be paid great deference” by a reviewing court. *Id.* at 236. The reviewing court should simply “ensure that the magistrate had a substantial basis for concluding that probable cause existed.” *Id.* at 238-239 (internal citations omitted).

Exclusion is not warranted in every case in which there has been a violation of the Defendant’s Fourth Amendment rights. In *United States v. Leon*, the United States Supreme Court held that suppression of evidence, even if obtained in violation of the Fourth Amendment, is not

warranted when an officer’s conduct is objectively reasonable and, particularly, “when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope.” 468 U.S. 897, 922 (1984). “In the ordinary case, an officer cannot be expected to question the magistrate’s probable-cause determination or his judgment that the form of the warrant is technically sufficient.” *Id.* at 921. As such, an officer’s acts are presumed to have been taken in good faith when the officer acts pursuant to a warrant. *United States v. Henderson*, 595 F.3d 1198, 1201 (10th Cir. 2010).

Leon describes four circumstances in which exclusion may be warranted, even though the officer’s actions are supported by a warrant:

- (1) where “the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth”;
- (2) where “the issuing magistrate wholly abandoned his judicial role”;
- (3) where an affidavit is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable”; and
- (4) where the warrant is “so facially deficient...that the executing officers cannot reasonably presume it to be valid.”

Leon, 468 U.S. at 923 (internal citations omitted); see also, *United States v. Smith*, 846 F. App’x 641, 645 (10th Cir. 2021).

B. The good faith exception is applicable to these circumstances.

Of the four circumstances envisioned by *Leon*, in which exclusion may nevertheless be warranted despite the officer having obtained and relied upon a warrant, none are applicable to this case. Defendants argue that the affidavit in question was so lacking in indicia of probable cause that Agent Winter could not have reasonably believed that probable cause existed. This is simply not the case.

Agent Winter's Cherokee Nation warrant affidavit presented three bases for probable cause: Winter's representations regarding GPS data, the trash pull evidence, and Defendant Holt's criminal history. Magistrate Judge Little found that Agent Winter's representations regarding GPS data are wholly conclusory and could not contribute to any finding of probable cause. Dkt. No. 87 at 13-14. **This Court agrees that the GPS data did not support probable cause.**

Although not sufficient itself to establish probable cause, Defendant Holt's criminal history is relevant to the probable cause determination,. *See United States v. Artez*, 389 F.3d 1106, 1114-15 (10th Cir. 2004). Arguably, the evidence uncovered by OBN agents in searching Defendants' trash was sufficient, of itself, to justify issuance of the challenged warrant. *See United States v. Colonna*, 360 F.3d 1169 (10th Cir. 2004), *overruled on other grounds by United States v. Little*, 829 F.3d 1177 (10th Cir. 2016); *United States v. Jenkins*, 819 F. App'x 651 (10th Cir. 2020).² But considering Defendant Holt's criminal history - which included prior felony convictions for possession with intent to distribute controlled dangerous substances - in combination with the trash pull evidence, it is conceivable how the tribal court could determine there was probable cause for the issuance of the warrant. *See Colonna; Jenkins, supra*. While Magistrate Judge Little ultimately determined this insufficient to support probable cause (because Holt's drug convictions were somewhat dated), this Court is mindful that it should not apply de novo scrutiny³ to the tribal judge's probable cause determination:

We "accord 'great deference' to the probable-cause assessment of the state court judge who issued the warrant." *United States v. Pulliam*, 748 F.3d 967, 971 (10th Cir. 2014) (quoting *United States v. Biglow*, 562 F.3d 1272, 1281 (10th Cir. 2009). "[A]fter-the-fact, de novo scrutiny' of a magistrate's probable-cause determination

² Unpublished cases are not precedential but may be cited for persuasive value. See Fed. R. App. P. 32.1.

³ Distinction should be drawn between this Court's de novo review of the Magistrate's Report and Recommendation versus a de novo review of the tribal court's probable-cause determination in issuing the warrant. *See Fed. R. Crim. P. 59(b)*.

is forbidden.” *Biglow*, 662 F.3d at 1281 See also *United States v. Pulliam*, 748 F.3d 967, 971 (explaining that we defer to the warrant-issuing judge’s conclusion that probable cause backed the warrant even if probable cause was borderline). Rather, we “review ‘merely to ensure the Government’s affidavit provided a “substantial basis” for reaching that conclusion.’” *United States v. Sadlowski*, 948 F.3d 1200, 1203 (10th Cir. 2020) (quoting *Biglow*, 562 F.3d at 1280).

Jenkins, 819 F. App’x at 658-59. Because the Court finds that the good faith exemption applies here, regardless of the probable cause determination, this Court need not expand further on this issue. If a reviewing court determines that exclusion is not warranted under the good faith exception, then it need not determine whether probable cause existed for issuance of the challenged warrant. See *United States v. Gonzalez*, 399 F.3d 1225, 1228 (10th Cir. 2005).

Defendant Holt’s criminal history, considered alongside officers’ discovery of plastic baggies containing methamphetamine residue within Defendants’ trash provided sufficient indicia of probable cause such that Agent Winter could have reasonably believed that probable cause existed, especially following the tribal court’s issuance of the warrant. Agent Winter’s affidavit was not so “bare bones” as to render official belief in the existence of probable cause entirely unreasonable. *Leon*, 468 U.S. at 926.⁴

⁴ Defendants argue that because the Tulsa County Judge declined to issue a warrant (on an identical warrant affidavit), this should have indicated to Agent Winter that the Cherokee Nation warrant was so lacking in indicia of probable cause that she could not reasonably rely upon it. This does not follow. Defendants’ argument adopts an errant, overly rigid view of probable cause. “[P]robable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.” *Gates*, 462 U.S. at 232. That two judges may make different probable cause determinations upon the same set of circumstances is neither surprising nor particularly meaningful; it certainly does not mean that the more exacting judge must necessarily be correct and the other, incorrect. Moreover, Defendant’s argument ignores the actual good faith standard propounded in *Leon*. Nothing here indicates that the affidavit in support of the Cherokee Nation warrant was “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Leon*, 468 U.S. at 923. Again, Defendant Holt’s criminal history, considered alongside officers’ discovery of plastic baggies containing methamphetamine residue within Defendants’ trash provided sufficient indicia of probable cause.

II. Exclusion is not warranted under Fed. R. Crim. P. 41.

Defendants argue that exclusion is justified because the search of Defendants' home was "federal in character" and, thus, in violation of Fed. R. Crim. P. 41 because it was not supported by a federal warrant. The Court finds that the search in question was not federal in character. Further, even if the warrant were federal in character, exclusion of the seized evidence would not be justified here.

A. The search of Defendants' home was not federal in character.

Fed. R. Crim. P. 41(b)(1) provides: "a magistrate judge with authority in the district—or if none is reasonably available, a judge of a state court of record in the district—has authority to issue a warrant[.]" Rule 41 only applies to searches that are federal in character. *United States v. Millar*, 543 F.2d 1280, 1283 (10th Cir. 1976). A search is federal in character when "federal officers are directly involved in carrying out the search itself and in taking immediate custody of the fruits of the search." *United States v. Bookout*, 810 F.2d 965, 967 (10th Cir. 1987) (citing *United States v. Massey*, 687 F.2d 1348, 1355 (10th Cir. 1982)). A search is "not federal if only state officers participated directly in procuring the warrant, were present during the search itself, and took immediate custody of the fruits of the search." *Bookout*, 810 F.2d at 967 (citing *United States v. Gibbson*, 607 F.2d 1230, 1325 (10th Cir. 1979)).

The search at issue was carried out by state officers, following a state investigation, and pursuant to a warrant issued by the Cherokee Nation. It was not until after the search was conducted and evidence seized that there is any indication of federal involvement. Nor is there any evidence that federal prosecution was envisioned. Defendants argue that because Agent Winter knew that Defendant Holt was a member of the Cherokee Nation, she must have known that federal prosecution would result given the jurisdictional dictates of *McGirt v. Oklahoma*, 140

S. Ct. 2452 (2020). This argument ignores the possibility that the matter could have been prosecuted by the Cherokee Nation. Agent Winter testified that she was “not sure” where prosecution would take place when she sought and executed the warrant at issue. Dkt. No. 112 at 18:15. The Court has been given no reason to disbelieve this testimony. There is no evidence that federal prosecution was envisioned when the search was carried out. Accordingly, the search at issue was not federal in character.

B. Even if the search were federal in character, exclusion would not be warranted here.

Where Fed. R. Crim. P. 41(b)(1) is violated, suppression is warranted only if the rule violation was intentional, prejudicial, or of “constitutional import.” *United States v. Krueger*, 809 F.3d 1109, 1113–14 (10th Cir. 2015). Defendants have not cited any authority indicating that the alleged violation of Rule 41 would constitute a violation of constitutional dimension. A violation of Rule 41 is “prejudicial” in the relevant sense, if absent the violation, “the search might not have occurred or would not have been so abrasive if the Rule had been followed[.]” *Id.* at 1114. Defendants do not argue that they have been prejudiced by the alleged Rule 41 violation. Defendants argue, instead, that circumstances establish that Agent Winter intentionally violated Rule 41 in a “deliberate attempt to avoid seeking approval from a federal magistrate.” Dkt. No. 103 at 11.

First, Defendants suggest that, because Agent Winter knew Defendant Holt was Indian, she must have contemplated federal prosecution. Next, Defendants suggest that, because federal law enforcement became involved in the case after the warrant was executed, Agent Winter must have deliberately violated Rule 41. This Court does not agree. As noted previously, Agent Winter testified that she was unsure where the case would be prosecuted when she applied for and executed the warrant. Dkt. No. 112 at 18:15. Defendants have given this Court no reason to

disbelieve Agent Winter's testimony; the search was conducted on the residence of an Indian and a non-Indian in Indian territory – it is entirely understandable that Agent Winter would be unsure whether the case would ultimately be prosecuted by the State of Oklahoma, the Cherokee Nation, or the federal government. There is no evidence that any alleged violation of Rule 41 was intentional. Under the circumstances here even if there was a violation of Rule 41, exclusion would not be justified under the circumstances here.

CONCLUSION

Upon de novo review of the issues raised in Defendants' Joint Objection to Magistrate Judge Little's Report and Recommendation [Dkt. No. 103], the Court finds that Defendants' Motion to Suppress [Dkt. No. 67] should be denied for all of the reasons set forth above.

IT IS THEREFORE ORDERED that Defendants' Joint Objection [Dkt. No. 103] is overruled, and the Court accepts Magistrate Judge Little's Recommendation that the Motion to Suppress be denied.

Dated this 23rd day of July 2024.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEE HOLT,
JENNIFER CHARISA HARRINGTON,

Defendants.

Case No. 24-CR-0050-JFH

OPINION AND ORDER

Before the Court is the Government’s Motion to Reconsider (“Motion”) [Dkt. No. 118], in which the Government moves this Court to reconsider its Order [Doc. No. 116] denying the Government’s Appeal of Magistrate Judge Little’s Order granting Defendants’ Motion to Compel [Dkt. No. 66].¹ Because the Court is persuaded that it has misapprehended the Government’s position regarding the confidential informant’s role in this matter, and to prevent manifest injustice, the Government’s Motion is granted.

BACKGROUND

On February 20, 2024, Defendants were charged by indictment with being felons in possession of a firearm, possession of methamphetamine with intent to distribute, maintaining a drug-involved premises, and possession of a firearm in furtherance of drug trafficking crimes. Dkt. No. 47. On May 9, 2024, Defendant Lee Holt, joined by Defendant Jennifer Charisa Harrington, filed a Motion to Compel Disclosure of Confidential Informant [Dkt. No. 66].

Defendants’ basis for seeking to discover the identity of the confidential informant rested

¹ The Motion to Compel [Dkt. No. 66] was filed by Defendant Holt, and then properly joined by Defendant Harrington [Dkt. No. 75]. This Court will hereafter refer to the Motion to Compel as Defendants’ Motion.

upon the supposition that, for the Government to prove its case against Defendants, the Government would have to resort to evidence and testimony closely involving the confidential informant. Dkt. No. 66 at 7-8. Defendants' motion was referred to Magistrate Judge Christine D. Little. Dkt. No. 70.

On May 21, 2024, a hearing was held on Defendants' Motion to Compel. Oklahoma Bureau of Narcotics ("OBN") Agent Tara Winter testified at the motion hearing. Agent Winter testified that in June of 2023, the OBN utilized a confidential informant to purchase methamphetamine from a drug dealer named Mike Leach. Dkt. No. 111, p. 7. Agents began tracking Leach via a GPS device installed on his vehicle and tracked him for approximately 2 months. *Id.* at 8. At some point during this surveillance period, the confidential informant informed the OBN that Leach was meeting with his supplier of methamphetamine who was "up the hill"; that day, Leach was observed going to a residence in Collinsville. *Id.* at 8-9; 53. In total, Leach visited this address – 117 N. 21st Street in Collinsville – approximately nine times during the period in which he was being surveilled; these visits were typically brief in duration. *Id.* at 9. Agent Winter and another agent next conducted a "trash pull" on the address in question; numerous syringes and a plastic baggie that tested presumptively positive for methamphetamine were found. *Id.* at 10. The agents also discovered mail addressed to Defendants in the trash; the agents investigated the backgrounds of Defendants and discovered that Lee Holt was a member of the Cherokee Nation and had a criminal history associated with drugs. *Id.* at 10-11. With this knowledge in hand, Agent Winter obtained a search warrant for the address in question.

On this record, Magistrate Judge Little concluded that the Government should be ordered to disclose the identity of the confidential informant in this case. Dkt. No. 100. Magistrate Judge Little concluded that information from the confidential informant was the impetus for the

Government's interest in Defendants and that the confidential informant's claim that Defendants supplied Leach with methamphetamine is the only evidence that Defendants ever actually distributed methamphetamine. Dkt. No. 100, p. 6. The Magistrate Judge further noted that the Government has never represented that it would not either introduce the testimony of the confidential informant or introduce the confidential informant's statements through the case agent. *Id.* at 6-7. Thus, the notion that the Government may introduce at trial testimony or evidence regarding the pre-search investigation (and, hence, closely involving the confidential informant) also formed the basis for Magistrate Judge Little's Order compelling disclosure.

The Government appealed Magistrate Judge Little's Order [Dkt. No. 106], and this Court subsequently denied this appeal. Dkt. No. 116. The Court notes that, throughout all of this briefing, the Government inexplicably failed to state that it would not seek to introduce evidence or testimony concerning the confidential informant and the pre-search investigation into Defendants.

The Government now moves this Court to reconsider its Order denying its appeal of Magistrate Judge Little's Order, arguing that, because it does not seek to introduce testimony or evidence regarding the pre-search investigation into Defendants, the identity of the confidential informant is not relevant to this case and would not be helpful to Defendants.

ANALYSIS

I. Applicable legal standards.

Motions to reconsider in criminal cases are proper and cognizable. *United States v. Randall*, 666 F.3d 1238, 1241 (10th Cir. 2011). Grounds for granting a motion to reconsider include: "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of*

Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000). Additionally, reconsideration may be appropriate where the court “has misapprehended the facts, a party’s position, or the controlling law.” *Id.*

The Court’s review of Magistrate Judge Little’s Order compelling disclosure of the confidential informant is governed by Fed. R. Crim. P. 59(a), which provides that “[t]he district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous.” Fed. R. Crim. P. 59 is derived, at least in part, from Fed. R. Civ. P. 72, and, as such, it is appropriate to take guidance from precedent construing Fed. R. Civ. P. 72. *See United States v. Doby*, 928 F.3d 1199, 1206 (10th Cir. 2019). “The clearly erroneous standard . . . requires that the reviewing court affirm unless it ‘on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). Under the “contrary to law” standard the Court will only set aside a magistrate judge’s order “if it applied the wrong legal standard or applied the appropriate legal standard incorrectly.” *Gray v. Acadia Healthcare Co.*, No. 19-cv-338, 2020 U.S. Dist. LEXIS 254486, at *5, 2020 WL 9597903, at *2 (E.D. Okla. Oct. 1, 2020) (citing *Yeiser v. DG Retail, LLC*, No. 18-cv-320, 2019 U.S. Dist. LEXIS 129554, at *7-8, 2019 WL 3521903, at *3 (D. Colo. Aug. 1, 2019)).

In *Roviaro v. United States*, the United States Supreme Court held that the Government’s privilege against disclosing the identity of a confidential informant must give way, “[w]here the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause [.]” 353 U.S. 53, 60-61 (1957). The Court went on to write that, “no fixed rule with respect to disclosure is justifiable.” *Id.* at 62. Instead, the Court must “balanc[e] the public interest in protecting the flow

of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." *Id.*

II. There are appropriate grounds for reconsidering this Court's prior Order.

Defendants' Motion to Compel [Dkt. No. 66], Magistrate Judge Little's Order [Dkt. No. 100] compelling disclosure, and this Court's prior Order [Dkt. No. 116] all relied upon the importance of the confidential informant to the Government's investigation into the Defendants as a basis for finding that disclosure would be relevant and helpful to the defense. Prior briefing and Orders had presumed that the Government would seek to introduce at trial evidence regarding the pre-search investigation into Defendants. Defendants' Motion to Compel argues that the Government may seek to introduce evidence of its prior investigation to prove that Defendants maintained a drug-involved premises. Dkt. No. 66 at 7-8. Magistrate Judge Little's Order is similarly founded upon the importance to the Government's case of the confidential informant and the Government's pre-search investigation into Defendants. Dkt. No. 100 at 6-8. This Court's prior Order [Dkt. No. 116] denying the Government's appeal was founded upon a similar basis.

The Government now represents as follows regarding its case and its anticipated trial evidence:

The government wishes to clarify that it will not call Michael Leach or the confidential informant to testify at trial. Additionally, the government is not seeking to introduce at trial any evidence involving OBN's investigation before the dates alleged in the superseding indictment, including the GPS data, any part of OBN's pre-search investigation before August 21, 2023, comments Michael Leach made to the confidential informant, the confidential informant's identification of Leach's car, and allegations that methamphetamine the confidential informant purchased from Leach came from Holt and Harrington's home.

Dkt. No. 118 at 4.²

The Government could have clarified this prior to filing this Motion to Reconsider. In fact, one would have expected that this would have been the *very first thing* the Government would have put on the record in front of Magistrate Judge Little. Instead, the Government's briefing has thus far wholly failed to assert this most crucial point. The Government has instead only compounded the confusion – for example, the Government's Trial Brief lists the Leach GPS data as its first exhibit, and the first sentence of its "Factual Statement" references the confidential informant. Dkt. No. 93.

The result has been an immense waste of time and energy over what should have been a relatively simple issue. Were it not for the serious potential consequences at stake – disclosure of the confidential informant could very well put his or her personal safety at risk – this Court might be inclined to deny the Government relief based upon its continued failure to correct the record. Nevertheless, this Court is persuaded that, given the Government's representations, the basis for this Court's previous Order [Dkt. No. 116] denying the Government's appeal was founded upon a misapprehension of the Government's position regarding the role of both the pre-search investigation and the confidential informant in the Government's presentation of its case. An individual's potential safety is at risk, and this Court finds that reconsideration is warranted to prevent manifest injustice that would result from the unnecessary disclosure of the confidential informant. Lastly, the Court will hold the Government to its representations: no evidence of the pre-search investigation into Defendants before August 21, 2023, Michael Leach, or the confidential informant will be admitted at trial.

² The Court would note that it is by no means certain that the Court would even allow such evidence at trial, even if the Government did seek to introduce it. This evidence has minimal relevance to the issue of Defendants' guilt and would tend to confuse the issues, as has already been evident.

Having held that reconsideration is appropriate, this Court will proceed to review Magistrate Judge Little's Order [Dkt. No. 100] in light of the Government's representations that it does not seek to introduce testimony or evidence regarding the pre-search investigation or the confidential informant.

III. The Order compelling disclosure should be set aside, as the identity of the confidential informant is neither relevant nor helpful to Defendants.

Roviaro dictates that disclosure is justified “[w]here the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause [].” 353 U.S. 53, 60-61 (1957). Reviewing the record in this matter, the Court cannot agree that disclosure of the confidential informant's identity in this case would be relevant or helpful to Defendants. Given that no testimony or evidence will be heard concerning the pre-search investigation into Defendants before August 21, 2023, the Court finds that it was both clearly erroneous and contrary to law to find that the identity of the confidential informant would be relevant or helpful to Defendants.

The Defendants have not shown that the confidential informant has knowledge that would be helpful to the defense. Defendants' Motion to Compel argued that it would be helpful to the defense to learn further details regarding the confidential informant's conversations with Michael Leach. But, hypothetically, even if the confidential informant could testify that Michael Leach actually told him that Leach's methamphetamine supplier was a completely different person who had nothing to do with either Defendant, the Defendants would be in an identical position. Defendants are not charged with having sold methamphetamine to Michael Leach specifically. The issues in this case depend upon the nature of the evidence seized from Defendants' home; there is simply nothing that the informant could say that would affect this evidence in any way.

Once it is understood that the Government will not introduce testimony or evidence concerning Michael Leach, the confidential informant, or the pre-search investigation into Defendants, any marginal relevance that the confidential informant may have had in this case falls away. The Court believes that it was a misapplication of the *Roviaro* standards, and hence contrary to law, to determine that the confidential informant's identity would be relevant and helpful to Defendants. The Order compelling disclosure [Dkt. No. 100] should be set aside accordingly.

Disclosure of the confidential informant would be contrary to later Tenth Circuit precedent interpreting *Roviaro*. The Tenth Circuit has unequivocally held that “mere speculation about the usefulness of an informant's testimony is not sufficient” to justify disclosure of a confidential informant. *United States v. Scafe*, 822 F.2d 928, 933 (10th Cir. 1987) (citing *United States v. Zamora*, 784 F.2d 1025, 1030 (10th Cir. 1986); *United States v. Halbert*, 668 F.2d 489, 496 (10th Cir. 1982), *cert. denied*, 456 U.S. 934 (1982)). Defendants' basis for disclosure depended upon the role played by the confidential informant in the pre-search investigation and, particularly, Defendants' desire to learn more about the conversation between Michael Leach and the confidential informant. However, to presume that the confidential informant would have useful information in this regard *is* speculative and, moreover, nothing regarding this pre-search investigation is actually helpful to the defense: the confidential informant cannot affect the evidence discovered in Defendants' home.

The Tenth Circuit has also held that “[d]isclosure of an informant is not required where the information sought from him would be merely cumulative, or where the informant is not a participant in the transaction in question.” *Id.* (citing *United States v. Reardon*, 787 F.2d 512, 517 (10th Cir. 1986); *United States v. Perez-Gomez*, 638 F.2d 215, 218 (10th Cir. 1981)). So long as the Government does not seek to prove that the confidential informant received drugs that

originated from Defendants, the confidential informant was not a “participant in” any alleged transaction with Defendants. This is sufficient of itself to justify denying relief. It was contrary to law Magistrate Judge Little to hold otherwise.

CONCLUSION

The Government has presented sufficient basis for this Court to reconsider its Order [Dkt. No. 116] denying the Government’s Appeal [Dkt. No. 106] of Magistrate Judge Little’s Order compelling disclosure of the confidential informant in this matter.

IT IS THEREFORE ORDERED that the Government’s Motion to Reconsider [Dkt. No. 118] is granted. It is further Ordered that this Court’s prior Order [Dkt. No. 116] denying the Government’s appeal is vacated. The Government’s Appeal [Dkt. No. 106] of Magistrate Judge Little’s Order compelling disclosure of the confidential informant is granted. The Order [Dkt. No. 100] compelling disclosure of the confidential informant is set aside, and Defendants’ Motion to Compel [Dkt. No. 66] is DENIED.

Dated this 25th day of July 2024.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE