**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	**No. 1:19-cr-10039-STA**
	)	
PIERRE DEANDRE WOODS,	)	
	)	
Defendant.	)	

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Before the Court is Defendant Pierre Deandre Woods' Motion to Suppress (ECF No. 19) filed on June 6, 2019. The United States of America has responded in opposition. The Court held a hearing on the Motion on July 31, 2019, and at the conclusion of the hearing, took the matter under advisement. For the reasons set forth below, Defendant's Motion is **DENIED**.

BACKGROUND

A federal grand jury sitting in the Western District of Tennessee returned an indictment against Woods on April 15, 2019, charging him with one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g).[1] In his Motion to Suppress, Woods argues that the police lacked probable cause to obtain a search warrant for his car where they discovered the firearm he is accused of illegally possessing. According to Woods, the police responded to a disturbance call at the Bolivar Inn Motel in Bolivar, Tennessee on February 20, 2019. The

[1] Woods has been charged with the violation of his probation in a separate case in this District. In 2010, Woods pleaded guilty to two counts of being a felon in possession of a firearm, and the Court sentenced Woods to an 88-month term of incarceration to be followed by two years' supervised release. *See United States v. Woods*, no. 1:10-cr-100125-STA. Woods was on supervised release at the time of his arrest on February 20, 2019.

police found Briana Barnes at the motel and received her report that Woods had beaten her and that Woods kept a firearm in the glove box of his automobile. Woods now argues that the information obtained from Barnes was stale. Woods contends that a firearm is "perishable and easily transferrable" and that his car cannot be considered "a secure operational base" for any other criminal activity. The officers did not conduct any additional investigation to corroborate Barnes' report or question her further to assess the basis for her knowledge of the gun. In a related argument, Woods faults the police for not doing more to test Barnes' veracity or reliability, or at least for not including any corroborating details to make these showings in the warrant affidavit. Woods concludes then that the warrant should have never issued.

The United States has responded in opposition. First, the government argues that the information provided to police was not stale. No more than twelve hours passed between Barnes' report about the firearm and law enforcement's application for the search warrant. The police could have reasonably expected Woods to continue to have possession of the firearm based on its durability and value. Next, the government defends Barnes' reliability as a known informant, characterizing her as a citizen informant or eyewitness, as opposed to a confidential informant. The issuing magistrate could reasonably infer from the warrant affidavit that Barnes had personal knowledge of Woods' illegal activities. Finally, the United States argues that even if probable cause for the warrant was lacking, the Court should uphold the search under the *Leon* good faith exception. For all of these reasons, the Court should deny the Motion to Suppress.

STANDARD OF REVIEW

The Fourth Amendment of the United States Constitution provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S.

Const. Amend. IV. Probable cause means "only a probability or substantial chance of criminal activity, not an actual showing of such activity." *United States v. Christian*, 925 F.3d 305, 310 (6th Cir. 2019) (en banc) (quoting *United States v. Tagg*, 886 F.3d 579, 585 (6th Cir. 2018)). In other words, "[p]robable cause is not a high bar." *District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018) (quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014)). A court reviewing the sufficiency of a warrant and the government's application for the warrant must examine the warrant under the totality of the circumstances and through the "lens of common sense." *Christian*, 925 F.3d at 309 (citing *Florida v. Harris*, 568 U.S. 237, 244, 248 (2013)). There are no "magic words" required. *Id.* (quoting *United States v. Allen*, 211 F.3d 970, 975 (6th Cir. 2000) (en banc)). Rather than reweigh the facts asserted in a warrant affidavit, a reviewing court pays "great deference" to the original magistrate's probable cause determination, *Illinois v. Gates*, 462 U.S. 213, 236 (1983), and should only "ask whether the magistrate had a substantial basis for his conclusion." *Christian*, 925 F.3d at 309 (citing *United States v. Perry*, 864 F.3d 412, 415 (6th Cir. 2017)).

ANALYSIS

The Court holds that Woods has failed to show why the Court should suppress the evidence against him. As a threshold matter, the parties agreed at the motion hearing that there were no contested issues of fact for the Court to decide and that an evidentiary hearing was therefore unnecessary. "An evidentiary hearing is required only if the motion [to suppress] is sufficiently definite, specific, detailed, and non-conjectural to enable the court to conclude that contested issues of fact going to the validity of the [police conduct] are in question." *United States v. Abboud*, 438 F.3d 554, 577 (6th Cir. 2006) (citation and internal quotation marks omitted); *United States v. Lawhorn*, 467 F. App'x 493, 495 (6th Cir. 2012). An evidentiary hearing is not required where the defendant's motion to suppress raises only questions of law. *Lawhorn*, 467 F. App'x at 495; *United States v. Knowledge*, 418 F. App'x 405, 408 (6th Cir. 2011). Based on the parties' agreement that an evidentiary hearing is not required to decide the Motion to Suppress, the Court will proceed to the merits.

I. Staleness

The first issue presented is whether the search warrant lacked probable cause based on the staleness of the information received by the police. "[S]tale information cannot be used in a probable cause determination." *Christian*, 925 F.3d at 323 (J. Gilman, dissenting) (quoting *United States v. Perry*, 864 F.3d 412, 414 (6th Cir. 2017)). Courts apply a four-part test to assess whether evidence in a warrant affidavit has grown stale:

> (1) the character of the crime (chance encounter in the night or regenerating conspiracy?), (2) the criminal (nomadic or entrenched?), (3) the thing to be seized (perishable and easily transferrable or of enduring utility to its holder?), and (4) the place to be searched (mere criminal forum of convenience or secure operational base?).

United States v. Young, 847 F.3d 328, 347 (6th Cir. 2017) (quoting *United States v. Frechette*, 583 F.3d 374, 377 (6th Cir. 2009)). The Court's inquiry depends on the facts and circumstances of each case. For example, information in drug cases may have "a very brief shelf life." *United States v. Curry*, 723 F. App'x 314, 317 (6th Cir. 2018) (citing *United States v. Burney*, 778 F.3d 536, 541 (6th Cir. 2015) ("Given the mobile and quickly consumable nature of narcotics, evidence of drug sales or purchases loses its freshness extremely quickly.") (quotation omitted)). On the other hand, information about guns and firearms tends to have a longer expiration date. *United States v. Goodwin*, 552 F. App'x 541, 545 (6th Cir. 2014) ("[T]he continuous nature of the crime of illegal firearm possession affects the staleness inquiry.").

The Court holds that the information presented with the warrant application was not stale. The character of Woods' alleged crime, being a felon with no legal right to possess a gun, weighs against a finding of staleness. The Sixth Circuit has described "illegal firearm possession" as "not a one-time occurrence but rather a continuous and ongoing offense." *Id.* at 544–45 (citing *United States v. Jones,* 533 F.2d 1387, 1391 (6th Cir. 1976) ("Possession is a course of conduct, not an act; by prohibiting possession Congress intended to punish as one offense all of the acts of dominion which demonstrate a continuing possessory interest in a firearm.")). In fact, a possessory crime like a violation of section 922(g) "ceases only when the felon relinquishes possession [of the firearm]." *Id.* at 545 (quoting *United States v. Newman,* No. 96–1983, 1998 WL 30821, at *2 (6th Cir. Jan. 21, 1998)). The Sixth Circuit has further remarked that "[f]irearms are durable goods and might well be expected to remain in a criminal's possession for long periods of time." *Id.* (quoting *United States v. Pritchett*, 40 F. App'x 901, 905–06 (6th Cir. 2002); *accord United States v. Lancaster*, 145 F. App'x 508, 513 (6th Cir. 2005) (holding that the significant monetary value of a machine gun was relevant to the staleness inquiry). In sum, possessing a firearm as a convicted felon is more like a regenerating conspiracy than a chance encounter in the night, due to the possessory nature of the crime and, perhaps to a lesser extent in this case, the inherent value of a firearm. The nature of Woods' offense weighs against a finding of staleness.

Furthermore, the warrant affidavit contains a number of facts that tend to suggest the enduring usefulness of the firearm to Woods as part of a larger pattern of criminal activity. Officer Chris Burkeen of the Bolivar Police Department made out an affidavit and applied for the warrant to search Woods' vehicle for a firearm. Briana Barnes, who was presumably Woods' live-in companion at the motel, reported to Officer Burkeen that Woods sold drugs out of their motel room and that Woods kept his gun with him essentially at all times, either in their room, or when he left the room and went to work, in the glove compartment of his car.

According to the warrant affidavit, Officer Burkeen's search of the motel room (with Barnes' consent) revealed a quantity of drugs concealed in a food container stored in the freezer. Barnes also reported that Woods had physically assaulted her on multiple occasions, threatened to kill her if she ever reported his drug trafficking activities, and cryptically boasted to her that he was not afraid of the police and had used force on an officer in the past. And Officer Burkeen's investigation showed that Woods was a convicted felon. A reasonable inference from all of these facts is that Woods' alleged possession of the gun facilitated both his drug dealing at the motel and, to perhaps to a lesser extent, his ability to deter Barnes from reporting his crimes. The overall utility of the firearm then tends to show that Woods was likely to have possession of the gun at the time the warrant issued and that any information about Woods' allegedly possessing a firearm had not grown stale.

The remaining factors present a somewhat closer call but nevertheless weigh against a finding of staleness. At first glance, the fact that Woods was staying in a motel and that the place to be searched was an automobile might suggest that Woods was, in the parlance of the case law, a nomad operating in a forum of convenience. But according to Barnes, Woods sold marijuana and other illegal narcotics out of the motel room, with customers coming to the room at all hours of the night. Officer Burkeen found nine individual bags of marijuana stored in a box of breakfast food in the room's freezer as well as a small bag containing marijuana inside the dresser. These facts reasonably show that the motel was an operational base for Woods. *United States v. Moore*, 661 F.3d 309, 314 (6th Cir. 2011) (finding that a warrant referring to "storing" drugs in an apartment and other signs of trafficking found in the apartment such as transaction records and proceeds implied that the apartment was an operational base for drug dealing). And Barnes provided additional facts to show that Woods more probably than not had the gun in the car at the time the warrant issued. Barnes reported that while Woods was at work and away from his base of operation, Woods stored his gun in his car. Barnes described the gun (a black handgun) and the car (a 2004 Ford Crown Victoria) and identified Woods' employer (Henson Trucking). And Barnes specified the gun would be in the glove compartment. Taken together, these facts tend to show that Woods' car was a secure location to store his gun while he was at work and until he could return to his drug trafficking operation at the motel.

Based on the foregoing analysis, the Court concludes that the warrant did not lack probable cause for staleness. Woods does not actually contest any of these findings. Instead Woods argues that the warrant affidavit provided no temporal context for Barnes' information and that without information to show when Woods had last possessed the firearm, the police lacked probable cause to believe that a gun might be found in his car at the time the warrant issued. The Court finds Woods' argument unpersuasive. The warrant affidavit reasonably suggested that Woods' illegal possession of a gun as well as other criminal activity was ongoing and continuous, not merely sporadic or episodic, and certainly not removed in time from February 2019.

As a matter of timing, Officer Burkeen swore out the warrant affidavit on February 20, 2019. The record shows that Officer Burkeen obtained the information about Woods' possession of a gun after being called to the motel on February 20 at 7:57 a.m. and that the general sessions court judge in Hardeman County issued the warrant at 10:40 a.m. the same day. Officer Burkeen noted in his affidavit that all of the information was less than 24 hours old. Under such a short timeline, a matter of hours and not days or months, it can be reasonably inferred that Barnes was reporting "recent activity." *United States v. Hython*, 443 F.3d 480, 486 (6th Cir. 2006) (citing *United States v. Williams*, 480 F.2d 1204, 1205 (6th Cir. 1973)).

What is more, a reasonable magistrate could draw two common sense inferences from the facts in the warrant affidavit: (1) Woods and Barnes had occupied the motel room for more than just a single night; and (2) the motel room was an operational base for Woods' drug trafficking where Woods stored his inventory and buyers knew illegal drugs could be had. The Sixth Circuit has "recognized a general principle that when the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant." *United States v. Perry*, 864 F.3d 412, 415 (6th Cir. 2017) (quoting *United States v. Spikes*, 158 F.3d 913, 924 (6th Cir. 1998)). Woods' point is true, as far as it goes. The warrant affidavit did not state when the most recent drug transaction had taken place or when Barnes had last seen Woods in possession of the gun. Still, the Court's task is not to undertake *de novo* review of the probable cause issue, *Christian*, 925 F.3d at 312, but to judge the affidavit "on the adequacy of what it does contain, not on what it lacks, or on what a critic might say should have been added." *Tagg*, 886 F.3d at 586. The Court holds that the facts and circumstances of the warrant application sufficiently established a "temporal reference point" for the magistrate to make a probable cause determination. *Hython*, 443 F.3d at 486. Therefore, Woods' Motion is **DENIED** on the staleness issue.

II. The Informant's Reliability

The Court can make quick work of Woods' separate argument that the warrant affidavit failed to show why Barnes was reliable as an informant. The Sixth Circuit has found that a tip from an identified informant, as opposed to an anonymous informant, has "a high degree of reliability." *United States v. Chandler*, 437 F. App'x 420, 426 (6th Cir. 2011). With known informants, law enforcement has the opportunity to assess reputation and credibility and, perhaps more important, to see that the informant is "held responsible if her allegations turn out to be fabricated." *Fla. v. J.L.*, 529 U.S. 266, 270 (2000). In this case the warrant affidavit identified Barnes, and not simply as a known informant but as an eyewitness to Woods' illegal firearm possession. As already noted, the warrant affidavit implied that Barnes was living with Woods in the motel room for some time before February 20, 2019. The fact that Barnes and Woods shared the room suffices to establish the basis of her knowledge. *Chandler*, 437 F. App'x at 426 (finding that a defendant's roommate "had direct knowledge of [the defendant]'s drug-related activities because he was [the defendant]'s roommate and had assisted [the defendant] in a previous drug transaction"). So Barnes' report was based on her firsthand knowledge of Woods' activities in the motel room, and specifically his possession of the gun. Generally, eyewitness statements based on firsthand observations not only suggest reliability but are "entitled to a presumption of reliability and veracity." *United States v. Doyle*, 720 F. App'x 271, 276 (6th Cir. 2018) (citing *Ahlers v. Schebil*, 188 F.3d 365, 370 (6th Cir. 1999)).

And if the presumption of reliability were not enough, the warrant affidavit suggests that Barnes called the police at great risk to her personal safety. Barnes was not only passing on information; she made her complaint as the victim of an alleged domestic assault. It is true that Officer Burkeen noted in the affidavit that Barnes' bruising did not appear to be new. But the fact remains that Barnes told Officer Burkeen that Woods had beaten her more than once and threatened to kill her if she ever went to the police. Not surprisingly, Barnes told Officer Burkeen that she feared for her life, just by cooperating with authorities. Barnes also reported that she was eight weeks pregnant at the time of her complaint to the police. Officer Burkeen noted in his affidavit that Barnes had been taken to a safe house for women who were the victims of domestic violence.[2] Under the totality of the circumstances, the warrant affidavit gave the

[2] The report of the victim of a crime also carries a presumption of reliability. *United*

magistrate a reasonable basis to find that Barnes was reliable. Therefore, the Motion to Suppress is **DENIED** as to the reliability issue.

III. *Leon* Good Faith Exception

The United States argues that if the Court concludes that the warrant was not supported by probable cause, the Court should apply the good faith exception. A court need not suppress evidence obtained in violation of the Constitution if the government obtained the evidence "in the reasonable good-faith belief that a search or seizure was in accord with the Fourth Amendment." *United States v. Moorehead*, 912 F.3d 963, 967 (6th Cir. 2019) (quoting *United States v. Leon*, 468 U.S. 897, 909 (1984)). "Following *Leon*, courts presented with a motion to suppress [challenging a search] must ask whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's decision [to issue an order or approve a warrant]." *Id*. at 967–68 (quoting *United States v. White*, 874 F.3d 490, 496 (6th Cir. 2017) (alterations in brackets)). *Leon* observed that the good faith exception would apply in "most cases" but identified four circumstances where the good faith exception would not apply:

> (1) if the magistrate 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 [her] judicial role; (3) where a warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; (4) where a warrant is so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.

States v. Pasquarille, 20 F.3d 682, 689 (6th Cir. 1994). This specific presumption does not actually appear to be relevant here. Although Barnes is allegedly the victim of Woods' domestic violence, Woods is charged with illegally possessing a firearm, and the warrant affidavit was directed at searching for evidence of that crime, not domestic violence. At any rate, the Court finds that the warrant affidavit contained more than enough facts to show that Barnes was reliable and credible.

Id. at 968 (quoting *Leon*, 468 U.S. at 923) (internal brackets and ellipsis omitted). Where the good faith exception applies, suppression is not required. *Id*.

Because the Court finds no defect in the search warrant, the Court need not decided whether the *Leon* good faith exception should apply in this case and therefore declines to reach the issue.

CONCLUSION

Having concluded that Barnes' information was not stale and that Barnes was a reliable witness, Defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: August 12, 2019.