Case No. 09-6497

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MELVIN SKINNER,

Defendant-Appellant.

On appeal from the United States District Court
for the Eastern District of Tennessee

BRIEF OF THE UNITED STATES

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STATEMENT REGARDING ORAL ARGUMENT

The United States agrees with defendant that oral argument would significantly aid the Court's decisional process in this case. Accordingly, oral argument is requested.

STATEMENT OF THE ISSUES

1. Whether the district court erred by denying defendant's motion to suppress where the United States's acquisition of cellular telephone location data via court order did not violate defendant's reasonable expectation of privacy.

2. Whether a rational juror could have found defendant guilty of money laundering where the evidence established that defendant regularly paid off antecedent drug debts and purchased additional drugs using the proceeds of the conspiracy.

3. Whether the district court clearly erred by denying defendant's request for a mitigating role reduction under U.S.S.G. § 3B1.2 where the evidence established that he played a critical role in the conspiracy.

STATEMENT OF THE CASE

This case began on January 6, 2006 when Christopher Shearer was stopped in Flagstaff, Arizona with $362,000. Shearer was involved in a marijuana trafficking conspiracy based in the Eastern District of Tennessee and led by Mike

West. He was stopped en route to deliver the money to West's marijuana supplier, Philip Apodoca, who lived in Tucson, Arizona. Shearer agreed to cooperate with the Drug Enforcement Administration's (DEA) investigation of West's marijuana trafficking organization.

Through Shearer's cooperation—including recorded phone calls and meetings with West—agents learned that West used an over-the-road truck driver referred to at the time as "Big Foot" to obtain multi-hundred pound loads of marijuana in Arizona and deliver it to West in Tennessee. Further, agents learned that West communicated with "Big Foot"—who was later identified as defendant—via cell phone. And, they learned in July 2006 that defendant would be transporting a 1,000 pound load of marijuana from Arizona to West in Tennessee.

The evidence learned during the investigation led agents to execute an affidavit and apply for and receive authorization from the magistrate judge to obtain the location information for the cell phone possessed by defendant. The cell phone location information, in conjunction with the rest of the knowledge agents amassed in this case, ultimately led to defendant's July 16, 2006, arrest at a Tye, Texas, truck stop with 1,100 pounds of West's marijuana packed into defendant's RV.

Defendant along with his son, Samuel Skinner, Julia Newman, Sherry Farmer, and brothers Gray Jordan, and William Jordan were indicted in a three-count indictment charging conspiracy to distribute and possess with intent to distribute in excess of 1,000 kilograms of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A), conspiracy to commit money laundering, in violation 18 U.S.C. § 1956(h), and defendant and Samuel Skinner were also charged with aiding and abetting the attempt to distribute in excess of 100 kilograms of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(B), and 18 U.S.C. § 2. (R-2.3, Indictment.)[1]

Defendant filed numerous pretrial motions, however, his motion to suppress the search of his RV, and his incriminating admissions made thereafter, is the only of those motions at issue on appeal. (R-1.34, Motion to Suppress; R-1.35, Memorandum in Support of Motion to Suppress.) Defendant sought to suppress the search of his RV which yielded, among other things, the 1,100 pounds of marijuana, alleging that the magistrate judge's order authorizing the United States to obtain the geolocation information emitted from defendant's cell phone violated

[1] Due to the nature of the proceedings below, namely that defendant's case was initially brought under one case number but subsequently dismissed and consolidated under another case number, the United States will adopt defendant's record citation methodology as outlined in footnotes one and two of defendant's brief.

the Constitution. (*Id*.) The United States responded. (R-1.39, Response; R-1.44, Supplement to Response; R-1.63, Response to Defendant's Second Supplemental Motion to Suppress.) After a two-day evidentiary hearing, the magistrate judge issued a Report and Recommendation recommending the denial of defendant's motion to suppress, which the district court subsequently adopted. (R-1.67, Minute Entry; R-1.68, Minute Entry; R-1.75, Report and Recommendation; R-1.82, Memorandum and Order.)

The case then proceeded to a ten-day jury trial. On February 3, 2009, defendant, Gray Jordan, and William Jordan were convicted as charged. (R-2.183, Jury Verdict; R-2 182, Jury Verdict.) Defendant's son was acquitted. (R-2.184, Jury Verdict.) Newman and Farmer pleaded guilty prior to trial. (R-2.164, Minute Entry; R-2.161, Minute Entry.) On December 8, 2009, after thoroughly considering the 18 U.S.C. § 3553(a) factors and specifically rejecting defendant's request to receive a mitigating role adjustment, the district court sentenced defendant to 235 months' imprisonment. (R-2.259, Sentencing Transcript, 12/04/09 at 126-28; R-2.253, Judgment.) This appeal followed. (R-2.254, Notice of Appeal.)

STATEMENT OF FACTS

1. Christopher Shearer is arrested in Arizona with $362,000 and agrees to assist agents in investigating Mike West's marijuana and money laundering activities.

After being arrested on January 6, 2006, in Flagstaff, Arizona, with $362,000 of West's drug money, Christopher Shearer agreed to proactively cooperate with DEA agents in the Eastern District of Tennessee who were investigating West. (R-1.75, Report and Recommendation at 3; R-1.71, SA Lewis Suppression Testimony at 16-17; R-2.210, Shearer Trial Testimony at 37-38, 62.)

During his testimony at trial, West described Shearer as his "best friend of 25 years" who "was the one person [West] truly confided in and didn't hold anything back as far as knowledge of [West's drug activity and money laundering] and [the names] of who was involved. [Shearer] was essentially the person [West] would process with to relieve the stress for [West]. . .[Shearer] was someone [West] would speak frankly with about all [West's] business, both legitimate and illegitimate." (R-2.200, West Trial Testimony at 70-71, 175-76.) Shearer's cooperation consisted of providing background information of West's illegal activities, as well as proactively engaging West in recorded phone calls and emails, buying marijuana from West and recording face-to-face meetings with West where West discussed with Shearer the inner-workings of his marijuana

trafficking and money laundering activities. (R-1.75, Report and Recommendation at 4; R-1.71, SA Lewis Suppression Testimony at 20-21, R-2.210, Shearer Trial Testimony at 62.)

Through Shearer's conversations with West, DEA Special Agent Dave Lewis and other agents learned the identities of several co-conspirators and their roles. One of those co-conspirators was Philip Apodaca—West's Tucson-based supplier who had provided West with approximately three tons of marijuana from 2001 to 2006. (R-1.75, Report and Recommendation at 6, 18; R-1.71, SA Lewis Suppression Testimony at 21-26, 28; R-2.210, R-1.71, Apodaca Suppression Testimony at 146; Shearer Trial Testimony at 138-39.) They also learned about a truck-driver known only as "Big Foot"—ultimately identified as defendant—who on many occasions over the years delivered money to sources of supply in Arizona and returned with many multi-hundred pound loads of marijuana to West in Tennessee. (*Id.*) Defendant was introduced as "Big Foot" to West by co-defendant William "Capers" Jordan in approximately 2001, and defendant began transporting 800-1000 pound loads of marijuana in semi-trailers. (R-2.200, West Trial Testimony at 22, 33, 43, 228; R-2.210, Joanne West Trial Testimony at 230-33.) West subsequently came to know "Big Foot's" real name in the end of 2005 after defendant again agreed to start transporting money and drugs for West after

defendant's temporary cessation of illegal activity between 2002 and 2004. (R-2.200, West Trial Testimony at 45-46, 66-68; R-2.210 and 211, Joanne West Trial Testimony at 232-33.)

In a recorded face-to-face conversation in February 2006, West further disclosed to Shearer that "Big Foot" transported marijuana in a Ford F-250 with Georgia tags, and that "[Big Foot] was one of [West's] primary drug and money couriers." (R-1.75, Report and Recommendation at 5; R-1.71, SA Lewis Suppression Testimony at 26.) West's wife, Joanne, later described her knowledge of "Big Foot's" drug trafficking activities at trial. (R-2.210, Joanne West Trial Testimony, at 230-31.)

Apodaca and defendant concealed and compartmentalized their drug and money laundering communications by using disposable cell phones with fictitious subscriber information. For example, they registered the phones using either made up names or names picked at random out of a Tucson-area phone book; these phones were dubbed "super-secret" phones. (R-1.75, Report and Recommendation at 4-6, 13-17; R-1.71, SA Lewis Suppression Testimony at 21-23; R-1.71, Apodaca Suppression Testimony at 143, 151-55, 163; R-2.200, West Trial Testimony at 65-66.)

In 2005, West advanced defendant $15,000 to purchase a Ford F-250 truck so that defendant "could do the moderate size [marijuana] loads in the 400-500 range." (R-2.200, West Trial Testimony at 66-67.) In 2005 and 2006, in order to obtain and use the "super-secret" phones, defendant would routinely drive the F-250 bearing Georgia tags, which contained drug proceeds, to Arizona where he would deliver the truck to Apodaca. Apodaca, or typically his associate, co-defendant Daniel Ramsey, would remove the money from the truck and then cause the truck to be loaded with marijuana and he would provide the assigned "super-secret" phones, which defendant would then deliver to West.[2] (R-1.75, Report and Recommendation, 13-18; R-2.201, Ramsey Trial Testimony at 21-22, 30-32, 48-49.) After defendant took possession of the phones, he delivered them to West; West kept two phones (the "Jason T. Smith" and "James A. Westwood" phones) and West gave defendant the "Tim A. Johnson" phone with the instruction that defendant use the phone exclusively to talk to West. (R-2.200, West Trial Testimony at 239.) Apodaca utilized the "Ben Crawford" phone. (R-1.75, Report and Recommendation at 14-15; R-1. 71, SA Lewis Suppression Testimony at 31.)

[2] Ramsey further testified at trial that, during one of the times in early 2006 when defendant delivered the truck to be loaded with marijuana, he inspected the truck's registration and saw defendant's name on the registration. (R-2.201, Ramsey Trial Testimony at 25.)

These phones, which had the subscriber information "taped on the back, so nobody would forget" their assigned name, (R-1.71, Apodaca Suppression Testimony at 152-153), were subscribed to and used in the following fashion:

- West used the "Jason T. Smith" phone to speak only to Apodaca[3] who used the "Ben Crawford" phone;
- West also used the "James A. Westwood" phone to speak only to defendant;
- Defendant used the "Tim A. Johnson" phone to speak only to West.

(R-1.75, Report and Recommendation at 5, 11-12, 14-15.) Apodaca was unaware that these phones were equipped with GPS technology. (R-1.75, Report and Recommendation at 17.)

2. Defendant is arrested at a Texas truck stop with 1,100 pounds of marijuana.

As the investigation progressed into the summer of 2006, agents learned through the wiretap interceptions and recorded face-to-face meetings between Shearer and West that defendant had delivered money to Apodaca in late June 2006. (R-1.75, Report and Recommendation at 5; R-1.71, SA Lewis Suppression

[3] West gave Shearer the number assigned to the "Jason T. Smith" phone so that Shearer and West could have "a semi-secure conversation." (R-1.71, SA Lewis Suppression Testimony at 32; R-2.200, West Trial Testimony at 185-86.) On June 29, 2006 agents obtained wiretap authorization for the "Jason T. Smith" phone, which allowed agents to intercept communications between Apodaca and West. (R-1.71, SA Lewis Suppression Testimony at 23.)

Testimony at 27-28.) This money constituted both a payment for West's antecedent drug debt to Apodaca and a down payment for the next load of marijuana. (R-1.71, SA Lewis Suppression Testimony at 27-28.) West testified that defendant would typically transport to Arizona and distribute approximately $150,000 to $300,000 to pay off the existing drug debt and purchase additional drugs. (R-2.200, West Trial Testimony at 151-52, 183.) Although defendant would not always know the exact amount, defendant knew it was approximately $200,000 to $250,000 and that part of the money was used to pay off existing drug debts. (*Id*.)

In conjunction with delivering the drug money to Apodaca in late June 2006, agents learned that defendant, his son Samuel and other family members, planned on taking a vacation and subsequently returning to Tucson to pick up approximately 975 pounds of marijuana on July 10, 2006. (R-1.75, Report and Recommendation at 6; R-1.71, SA Lewis Suppression Testimony at 28-29 and 38-39; R-2.200, West Trial Testimony at 109.) Additionally, agents learned that defendant would be driving a "nice [RV] with a diesel engine," and defendant's son Samuel would be driving the F-250. (R-1.75, Report and Recommendation at 6; R-1.71, SA Lewis Suppression Testimony at 45-46; R-2.200, West Trial

Testimony at 167 and 308; R-2.215 and 216, Samuel Skinner Trial Testimony at 128 and 31, respectively.)

From July 8 through July 16, 2006, agents intercepted conversations between West and Apodaca. During those conversations, West described "in painstaking detail" how the F-250 would be loaded with marijuana then picked up by defendant and transported to the RV where defendant loaded the marijuana into the RV. (R-1.75, Report and Recommendation at 6; R-1.71, SA Lewis Suppression Testimony at 37-40.)

Midway through the marijuana loading process, and while continuing to monitor West's and Apodaca's constant updates regarding the process, agents decided to seek a court order to locate the phone defendant was believed to be carrying in order to seize the 975 pounds of marijuana. (R-1.75, Report and Recommendation at 7; R-1.71, SA Lewis Suppression Testimony at 40-41.) On July 12, 2006, the United States presented an application and a nineteen-page affidavit to a magistrate judge detailing the investigation—including the judicially authorized intercepts from West's phone—and seeking a court order to receive location information from the cellular phone company so that agents could locate the shipment of marijuana. (R-1.75, Report and Recommendation at 7 and Gov't Ex. 6, Location Application, Affidavit and Order granting authority to receive

location information, to the evidentiary hearing.) The magistrate judge approved the United States's request and issued a court order authorizing receipt of the location information from the phone company. (*Id.*)

Agents originally applied to locate the "James A. Westwood" phone because they mistakenly believed that was the phone defendant was carrying with him at the time his RV was being loaded with 975 pounds of marijuana in Arizona. (R-1.75, Report and Recommendation at 7.) Agents realized their mistake when the initial location information they received from the phone company showed the phone to be "in Candler, North Carolina," which they knew to be one of West's locations. (R-1.75, Report and Recommendation at 7; R-1.71, SA Lewis Suppression Testimony at 41.)

Realizing they had the wrong phone, the agents subpoenaed the tolls for the "James A. Westwood" phone and found that it had only called two numbers: the phone company's customer service number and the number for the "Tim A. Johnson" phone. (R-1.75, Report and Recommendation at 7.) After obtaining this new information, agents then applied for and received a court order from the magistrate judge to obtain the location information for the "Tim A. Johnson" phone on July 13, 2006. (*Id.*; R-1.71, SA Lewis Suppression Testimony at 41-43.) The phone company provided the agents with the location information, and the

agents confirmed that the "Tim A. Johnson" phone was, in fact, "in Arizona," particularly "the Flagstaff area." (R-1.75, Report and Recommendation at 8; R-1.71, SA Lewis Suppression Testimony at 81.) Agents also learned from the wiretap that the last load of marijuana had been transferred to the RV on July 13, 2006. (*Id.*)

Thus, by July 14, 2006, the agents knew that defendant would soon be departing Arizona in a nice RV with a diesel engine, that the RV would have approximately 975 pounds of marijuana in it, and that defendant's son would be driving the F-250 with Georgia tags as they traveled back east. (R-1.71, SA Lewis Trial Testimony at 46-48.) Subsequent location information provided by the phone company on July 15 indicated that "the phone was traveling on an interstate, I-40. . . .and moving across Texas." (R-1.75, Report and Recommendation at 8.) That same day, agents intercepted a communication between West and Apodaca where West advised Apodaca that West had just spoken to defendant and that defendant would soon be stopping to rest. (*Id.*) Agents later learned from the location information provided by the phone company that the "Tim A. Johnson" phone was stationary and was "located at a truck stop near Abilene, Texas." (*Id.* at 9; R-1.71, SA Lewis Suppression Testimony at 81-82.)

Upon learning this information, DEA agents in Texas traveled to the truck stop to look for the RV and the F-250. (*Id.* at 10.) In particular, they were looking for a father and son team driving a "fairly nice" [RV] and a "Ford F-250 [with southern state tags]." (*Id.*) DEA Special Agent Alan Westerman and other agents arrived at the truck stop and identified three separate RV's, but only one of those RV's was parked close to a pick-up truck with Georgia tags. (*Id.* at 10-11.) Through sustained surveillance, and by process of elimination, the agents dismissed the other two RV's because neither of them had a pick-up truck in close proximity, one of them was occupied by an elderly couple, and the other had tags from "out west." (*Id.* at 22.) After zeroing in on the correct RV, Agent Westerman knocked on the door of the RV and defendant answered. (*Id.* at 20.) While defendant refused consent to search the RV, defendant did identify his son who was sleeping in the F-250. (*Id.* at 20.) Agent Westerman then ran a K-9 around the outside of the RV, and it alerted to the presence of drugs. (R-1.75, Report and Recommendation at 11 and 21; R-1.71, SA Westerman Suppression Testimony at 199-200; R-2.211, SA Westerman Trial Testimony at 240, 244-46, and 261.) A subsequent search of the RV resulted in the discovery of sixty-one bales of marijuana, totaling 1,100 pounds. (*Id.*) The bales filled every nook and cranny of the RV—they were stacked along the walls, stuffed in the shower, and

placed on top of the toilet. (*Id.*) Aside from the 1,100 pounds of marijuana, the RV contained two guns and a cellular phone that had the name "Tim A. Johnson" written on a piece of paper that was taped to the back of the phone. (*Id.*) As previously mentioned, defendant and his son were arrested, indicted, and proceeded to trial.

3. The trial.

The evidence introduced at trial showed that defendant began transporting loads of money and marijuana in semi-trailers for West in 2001. (R-2.200, West Trial Testimony at 43.) During this time, defendant's marijuana loads averaged "about 850, 950 or a thousand [pounds]," and defendant transported these loads approximately eight or ten times. (*Id.* and 44.) Before taking possession of the marijuana, defendant would first deliver the money, which was approximately $200,000-$250,000 (*Id.* at 151-52, 183), to co-defendant Gray Jordan in Tucson, Arizona. (*Id.* at 44.) Once defendant arrived in Arizona with the money, West would call co-defendant Gray Jordan and confirm "that the money had arrived, the money was the proper amount, what size the load was. . .[After which] the load was transferred to [defendant]." (*Id.*)

West further testified that in late 2005, he made contact with defendant to see if defendant wanted to start driving money and marijuana loads again. (*Id.* at 66.) Defendant was "eager" to do so, but defendant told West that defendant had

lost his trucking company and was bankrupt. (*Id.* and 67.) West then "advanced [defendant] around about $15,000 to purchase a long bed Ford diesel pickup truck with a bed cover to do the moderate size loads in the four to 500 [pound] range." (*Id.*) In return for delivering the money and picking up the loads, West would pay defendant "in the neighborhood of $100 per pound [of marijuana]," and defendant was also compensated with a portion of marijuana from each load at a discounted price. (*Id.* at 68, 139.) West also testified that defendant's "participation in the marijuana smuggling activity generated a profit." (*Id.* at 311.)

Additionally, Joanne West testified that she had seen her husband hand defendant "a big stack" of money "to either pay for marijuana out in Arizona or it was to help Big Foot get some customization done to his truck." (R-2.210, Joanne West Trial Testimony at 233.) She further testified that "if [defendant's] truck needed anything done to it so it would be up to passing, that was what would happen. If it needed any new tires, if it needed anything, [West would pay for it.]" (*Id.*)

Finally, co-defendant Ramsey testified that the money he retrieved from the inside of the F-250, which was sometimes concealed inside of a cooler in vacuum-sealed bags, was "money coming back from Mike West for marijuana that has

been shipped up there." (R-2.201, Ramsey Trial Testimony at 27, 52.) Ramsey would deliver the money to Apodaca. (*Id.* at 50.)

At the close of the government's case, defendant moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. (R-2.215, Trial Transcript at 95-96 and 102.) That motion was denied. (*Id.*) Defendant renewed the same motion at the close of all the proof, and it was again denied. (R-2.216, Trial Transcript at 264-65 and 268.) The jury convicted defendant on all counts. (R-2.183, Jury Verdict at 2.)

4. Defendant is sentenced to 235 months' imprisonment.

The presentence report (PSR) calculated defendant's base offense level to be 38 and placed him in criminal history category I, with an advisory guideline range of 235 to 293 months. In arriving at a base offense level of 38, the PSR calculated only those amounts of marijuana personally attributable to defendant, as opposed to including the amounts attributable to other members of the conspiracy. (*Id.* at ¶¶ 23-26.) Defendant lodged numerous objections to the PSR, but the only one relevant for purposes of appeal relates to Defendant's claim that he should have received a mitigating role reduction under U.S.S.G. § 3B1.2. (Def. Brief at 40-41.)

During the sentencing hearing, three witnesses testified regarding the conspiracy, its scope, and defendant's role in it. (R-2.259, Sentencing Transcript at 9-102.) After hearing those witnesses testify and entertaining argument from counsel regarding whether defendant was entitled to a mitigating role reduction, the district court refused to apply the reduction. (*Id*. at 118-27.) Specifically, the district court stated:

> [I]t is the finding of the Court by a preponderance of the evidence that Mr. Skinner was more than just a minor or a minimum player in this conspiracy. He facilitated the transportation of vast amounts of marijuana and money back and forth across the country. The conspiracy would not have been successful without the participation of the drivers and it doesn't really make any difference who made more money than someone else in the conspiracy, what is really the determining fact, as far as minor role or a minimum role in the conspiracy is concerned, is what in fact the defendant did. This defendant facilitated and allowed this conspiracy to progress. That includes the finding that the defendant at one time operated a stash house, which also was more than just driving marijuana. He also took large sums of money back and forth across the country to purchase other marijuana. That is more than just a minor or minimum player.

(*Id*. at 126-27.)

The district court then considered the 18 U.S.C. § 3553(a) factors and determined that a within-Guidelines sentence of 235 months' imprisonment was appropriate. (*Id*. at 134.)

SUMMARY OF ARGUMENT

None of defendant's arguments entitle him to relief. First, controlling precedent of this Court and the Supreme Court holds that a suspect's presence in a publicly observable place is not information subject to Fourth Amendment protection. As a result, the district court correctly denied defendant's motion to suppress regarding the court-authorized acquisition of the location information concerning the cell phone defendant used to facilitate the conspiracy. The district court also properly held that defendant had no legitimate expectation of privacy with respect to a cell phone owned by a co-conspirator, registered in a fictitious name, and used for the sole purpose of trafficking in drugs.

Second, there was sufficient evidence to sustain defendant's conviction for conspiracy to commit money laundering. The evidence at trial showed that defendant knowingly transported hundreds of thousands of dollars in drug proceeds to Arizona so that the drug supplier could be paid both antecedent drug debts and down payments for additional drugs. The evidence showed that these monetary transactions between defendant and the supplier were effectuated for the sole purpose of promoting the drug trafficking conspiracy. Furthermore, defendant's reliance on the Supreme Court's decision in *Santos* is misplaced

because this was a case involving a drug conspiracy, therefore—as this Court has recognized—*Santos* does not apply.

Third, the district court, after holding defendant responsible only for the marijuana that he himself transported, correctly refused to apply a mitigating role reduction under U.S.S.G. § 3B1.2. The evidence showed that defendant was personally responsible for trafficking at least three tons of marijuana, he distributed hundreds of thousands of dollars to the marijuana supplier, he operated a stash house in Arizona, and he recruited others, including his son, to assist him in drug trafficking. The activity of defendant was indispensable to the success of both the drug and money laundering conspiracies. Accordingly, the district court did not clearly err by refusing to apply the mitigating role reduction. This Court should affirm defendant's convictions and his sentence.

ARGUMENT

I. The district court properly denied defendant's motion to suppress because the United States's acquisition of wireless cell phone location data did not violate defendant's Fourth Amendment interests.

A. Defendant lacked a reasonable expectation of privacy in his public whereabouts.

Defendant argues that he enjoyed a reasonable expectation of privacy in his location (a) on a public highway and (b) in a public parking area. (Def. Brief at 27.) He further argues that the United States violated that reasonable expectation

of privacy by learning of his location on a public highway and in a public parking area through information provided by a cellular telephone provider pursuant to a court order. Controlling precedent from this Court and the Supreme Court, however, holds that a suspect's presence in a publicly observable place is not information subject to Fourth Amendment protection. Accordingly, defendant's motion to suppress was properly denied.

Specifically, this Court's prior decision in *United States v. Forest*, 355 F.3d 942, 948 (6th Cir. 2004), *vacated on other grounds sub nom. Garner v. United States*, 543 U.S. 1100 (2005),[4] disposes of defendant's substantive Fourth Amendment claims. In *Forest*, DEA agents silently activated the cellular telephone of a criminal suspect (Garner) on repeated occasions, causing the carrier's system to generate information about the phone's physical location. *See id.* at 947-48. Using this information, the agents were able to determine Garner's general movements. After engaging in visual surveillance, the agents eventually observed Garner's car (initially, on the public roadway, and—after losing visual contact and resorting again to cellular location surveillance—at a second location near a hotel). *Id*. at 948. Armed with this knowledge, agents arrested Garner at a gas station the following day. *Id*.

[4] The Supreme Court vacated and remanded for further consideration in light of *United States v. Booker*, 543 U.S. 220 (2005).

Garner argued to no avail that the agents' conduct violated his Fourth Amendment rights. *Id*. As stated by this Court, the wireless location data at issue in *Forest* "was used to track [Garner's] movements only on public highways." *Id.* at 951. Invoking the Supreme Court's decision in *United States v. Knotts*, 460 U.S. 276 (1983), the *Forest* Court soundly rejected Garner's claims, holding that "the cell-site data is simply a proxy for Garner's visually observable location" and that "Garner had no legitimate expectation of privacy in his movements along public highways." *Forest*, 355 F.3d at 951.

The present appeal fits squarely within the legal framework set forth in *Forest*. Just as the agents in *Forest* learned from wireless location data that Garner "had traveled to the Cleveland area and then returned to the area of Youngstown/Warren," *id.* at 947, agents here learned that the "Tim A. Johnson" Phone was in "the Flagstaff [Arizona] area," that it thereafter "was traveling on an interstate, I-40 . . . moving across Texas," and finally that the phone—which had stopped moving—was "located at a truck stop near Abilene, Texas." Given their knowledge, based on independent evidence, that "Big Foot" had stopped to rest,[5] DEA agents in the area initiated visual surveillance. Like the agents in *Forest*,

[5] As discussed above, agents had intercepted a communication in which West advised Apodaca that West had just spoken to the drug courier and that the courier would soon be stopping to rest.

agents here were on the lookout for a vehicle meeting a very specific description—a "fairly nice" RV closely accompanied by a Ford F-250 pickup with tags from a southern state. And, they ultimately found their target in a publicly observable truck stop.

Defendant attempts unsuccessfully to distinguish this controlling authority by arguing that agents in this case "never established visual surveillance of Skinner in the first place." (Def. Brief at 28) (emphasis in original). This attempted distinction fails for two separate reasons. First, whether or not agents have previously observed a target is irrelevant; in both this case and *Forest*, agents were unaware of a suspect's location, and as a result used wireless location data to learn where to initiate physical observation. Second, as both this Court and the Supreme Court have declared, it is the very nature of a defendant's public activity—observable by *any* passerby—that vitiates any claim to Fourth Amendment protection. As the Supreme Court has explained:

> A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When Petschen travelled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was travelling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination . . . .

Knotts, 460 U.S. 276, 281-82; *see also Forest*, 355 F.3d at 951 ("Although the DEA agents were not able to maintain visual contact with Garner's car at all times,

visual observation was *possible* by any member of the public") (emphasis in original). Thus, defendant's attempt to separate his case from *Forest* fails. Since defendant fails to show a constitutional violation, suppression is not an appropriate remedy.

Defendant also cites several cases discussing the statutory grounds for issuing a court order requiring the prospective disclosure of cellular location data. Putting aside the fact that defendant's list of citations conspicuously fails to acknowledge the many cases where courts have endorsed the use of 18 U.S.C. § 2703,[6] defendant's reliance on the cases cited in his brief is simply misplaced. The question in this appeal is not whether the United States may avail itself of one procedural mechanism or another in seeking a court order for the disclosure of wireless phone location information; rather, the issue is whether defendant was entitled to the remedy of suppression. To establish such an entitlement, it is axiomatic that defendant must point to a specific basis—statutory or constitutional—for suppression.

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[6] *See, e.g., In re Application*, 632 F. Supp. 2d 202 (E.D.N.Y. 2008); *In re Application*, 2007 WL 397129 (E.D. Cal. Feb. 1, 2007); *In re Application*, 460 F. Supp. 2d 448 (S.D.N.Y. 2006); *In re Application*, 433 F. Supp. 2d 804 (S.D. Tex. 2006); *In re Application*, 411 F. Supp. 2d 678 (W.D. La. 2006); *In re Application*, 405 F. Supp. 2d 435 (S.D.N.Y. 2005).

Defendant has not shown and cannot show any such basis for the extreme remedy sought here. To the extent defendant is arguing that he is entitled to suppression for a violation of 18 U.S.C. § 2703, that claim has no merit. *See, e.g., United States v. Perrine*, 518 F.3d 1196, 1202 (10th Cir. 2008) (holding that there is no suppression remedy for alleged violations of section 2703); *United States v. Steiger*, 318 F.3d 1039, 1049 (11th Cir. 2003); *United States v. Smith*, 155 F.3d 1051, 1056 (9th Cir. 1998); *United States v. Wellman*, 2009 WL 37184 at *8 n.2 (S.D.W. Va. Jan. 7, 2009); *United States v. Qing Li*, 2008 WL 789899 at *3 (S.D. Cal. Mar. 20, 2008); *United States v. Beckett*, 544 F. Supp. 2d 1346, 1350 (S.D Fla. 2008); *United States v. Ferguson*, 508 F. Supp. 2d 7, 10 (D.D.C. 2007); *Bansal v. Russ*, 513 F. Supp. 2d 264, 282-83 (E.D. Pa. 2007); *United States v. Sherr*, 400 F. Supp. 2d 843, 848 (D. Md. 2005); *United States v. Kennedy*, 81 F. Supp. 2d 1103, 1110 (D. Kan. 2000). In the alternative, any claim that defendant is entitled to suppression for a constitutional violation, as explained above in detail, is foreclosed by this Court's decision in *Forest*, as well as the Supreme Court's decision in *Knotts*. The district court, therefore, correctly denied defendant's motion to suppress.

B. Defendant lacked a reasonable expectation of privacy in the cellular phone owned by co-conspirator Apodaca and registered under the fictitious name "Tim A. Johnson."

Defendant's Fourth Amendment argument should also be rejected for a second, independent reason: he was not the owner of the wireless phone at issue, a phone intentionally registered under a false name as part of the drug trafficking scheme in which defendant participated. Regardless of his subjective expectations, defendant had no objectively reasonable expectation of privacy in information concerning that phone. *See Minnesota v. Olson*, 495 U.S. 91, 95-96 (1990) (recognizing that the "capacity to claim the protection of the Fourth Amendment depends upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place . . . [a] subjective expectation of privacy is legitimate if it is one that society is prepared to recognize as reasonable") (internal quotations and citations omitted).

At the evidentiary hearing on defendant's motion to suppress, co-conspirator Phillip Apodaca testified that he purchased numerous disposable cell phones in furtherance of the criminal scheme, and that he registered these "super-secret phones" in false names:

> [A]t the beginning, I would make up a name and make up an address when I would call an operator for Virgin Mobile [to activate the phone]—and just make up a name and make up an address. And they would in turn, you know, hook up the phone and give you a phone

> number. Later on, I just started picking out names out of the phone book and using these particular individuals[’] names and addresses.

(R-1.71, Tr.[2/13/07] at 151-52.) Apodaca further testified that his money was used to purchase one such phone later registered under the name “Tim A. Johnson”:

> Harwell [counsel for defendant]: Now, the Tim A. Johnson of 1197 South Irvington; do you know who that is?
>
> Apodaca: I do not know him.
>
> Harwell: Do you know if there is such an individual in the world?
>
> Apodaca: No, I do not. *That was the whole purpose of that*. *It wasn’t —it wasn’t anybody that was actually using the phone*. It was just either a made-up name or a name out of the phone book.

(R-1.71, Tr.[2/13/07] at 163 (emphasis added).) It was the “Tim A. Johnson” phone for which the United States later received location information under a court order, and it was also the phone that was found in defendant’s possession at the time of his arrest.

Although there is no authority from this Court on this precise issue, at least one other court has agreed with the district court here that a suspect using a fictitiously registered wireless phone as part of a criminal enterprise has no legitimate expectation of privacy in that phone, including information concerning the phone’s location. In *United States v. Suarez-Blanca*, 2008 WL 4200156 (N.D.

Ga. Apr. 21, 2008), the court rejected a co-defendant's motion to suppress historical cell-site location records for a phone registered under the alias "Felix Baby." The *Suarez-Blanca* court explained that the defendant had no reasonable expectation of privacy in the phone because:

> The subscriber name indicates that Rodriguez either was trying to distance himself from the cell phone or had no interest in the cell phone. As such, *the use of a fictitious name or names of a third party indicates that Rodriguez does not have a privacy interest in the phones.*
>
> Rodriguez also has not provided any evidence to link himself to "Felix Baby." For instance, he has not provided evidence linking him to the address of the subscriber in Irvine, California. He has not shown that the subscriber loaned him the cell phone. As a result, he simply has failed to tie himself in any way to the subscriber, "Felix Baby." *Although the cell phone may have been found on Rodriguez, the subscriber information relating to another person or a fictitious person undercuts any claim that Rodriguez has a subjective privacy interest in the cell phone* and thus the historical cell site information from the phone.
>
> Also, the Court finds that Rodriguez does not have an objective expectation of privacy in this information because society is not prepared to recognize a privacy interest for individuals who hold cell phones that are not linked to the subscribers of those cell phones.

Id. at *7 (emphasis added); *see also United States v. Benford*, 2010 WL 1266507 at *2-*3 (N.D. Ind. Mar. 26, 2010) (citing *Suarez-Blanca* and concluding that the defendant did not have a reasonable expectation of privacy in cell site data).

This Court should follow the approach of *Suarez-Blanca* and hold that defendant did not have a reasonable expectation of the privacy in the cell phone and, therefore, cannot claim to be the victim of a Fourth Amendment violation. Defendant neither purchased nor registered the "Tim A. Johnson" phone, nor can defendant establish any connection between himself and any such person. On the contrary, Apodaca's testimony established below that "Tim A. Johnson," if he exists at all, has no connection to defendant or his criminal co-conspirators, and that this and other fictitious names were deliberately chosen as one the means to make the Apodaca phones "super secret." Accordingly, the district court properly denied defendant's motion to suppress.

II. There was sufficient evidence from which a rational juror could have convicted defendant of money laundering because the evidence showed that he knowingly paid off antecedent drug debts and purchased additional marijuana with proceeds of the conspiracy.

A. Sufficiency of the evidence.

Next, defendant claims that there was insufficient evidence to convict him of money laundering. (Def. Brief at 32.) That argument misses the mark because the evidence of defendant's knowing participation in money laundering was more than sufficient to support the jury's verdict. When reviewing the sufficiency of the evidence, this Court will affirm the jury's verdict if, "viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found

the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). Under this deferential standard of review, a defendant challenging the sufficiency of the evidence bears a "very heavy burden." *United States v. Garrido*, 467 F.3d 971, 984 (6th Cir. 2006). When a defendant raises a sufficiency of the evidence challenge, this Court will not re-weigh the evidence, evaluate the credibility of the witnesses, or substitute its judgment for that of the jury. *Id*.; *see also United States v. Lopez-Medina*, 461 F.3d 724, 750 (6th Cir. 2006).

At the outset, it should be noted that defendant misapprehends the nature of promotional money laundering. This misapprehension is seen when he says, "[t]here is no proof that Skinner received any 'profits,' as opposed to 'proceeds,' in this case. According to Mike West. . .[Skinner] transported cash in his vehicle along with marijuana, but otherwise had no involvement in laundering drug proceeds." (Def. Brief at 34.) As will be discussed below, the facts regarding defendant's money laundering, and the law in this Circuit governing what constitutes money laundering, support the jury's verdict in this case.

This Court, in *United States v. Prince*, 618 F.3d 551, 553-54 (6th Cir. 2010), articulated the standard for a proving conspiracy to commit money laundering:

> To establish a money laundering conspiracy, the government must prove (1) that two or more persons conspired to commit the crime of money laundering, and (2) that the defendant knowingly and voluntarily joined the conspiracy. *See Whitfield v. United States*, 543 U.S. 209, 212 (2005) (holding that § 1956(h) conspiracy does not require proof of an overt act). . . . The substantive counts alleged only promotional money laundering, and aiding and abetting promotional money laundering, in violation of § 1956(a)(1)(A)(i), which requires proof that the defendant: " '(1) conducted a financial transaction that involved the proceeds of unlawful activity; (2) knew the property involved was proceeds of unlawful activity; and (3) intended to promote that unlawful activity.' "

United States v. King, 169 F.3d 1035, 1039 (6th Cir.1999) (citation omitted).

Moreover, this Court has defined "financial transaction" to include the payment of antecedent drug debts. *See United States v. Reed*, 77 F.3d 139, 142 (6th Cir. 1996) (holding that transporting cash "knowing that the money [is] the proceeds of [drug] trafficking [and] inten[ding] to promote the carrying on of further drug activity" constitutes money laundering); *King*, 169 F.3d at 1039 (6th Cir. 1999) (holding that payment for prior drug deals constitute "promotion" for purposes of the money laundering statute); *United States v. Baez*, 87 F.3d 805 (6th Cir. 1996) (same).

In this case, there was ample evidence that defendant knowingly and routinely transported drug proceeds to Arizona so that antecedent debts of the drug trafficking conspiracy of which he was a part could be paid off and so that he

could obtain additional marijuana to further the conspiracy. In accordance with *Reed*, it is irrelevant whether defendant personally "profited from the drug conspiracy" or whether he made "investments or purchases with payments he received for transporting marijuana." (Def. Brief at 34.) What is critical is whether defendant knew he was paying Apodaca with West's drug money so that he (defendant) could obtain more drugs to transport to Tennessee. The evidence at trial showed that defendant knew he was transporting drug money and that he did it with an intent to promote the marijuana conspiracy.

In describing the drug money he provided to defendant, West stated: "Usually depending on where I was, whether I was completely finished, I would pay off the remainder of what I owed which might be in the neighborhood of 150 to 200,000 and then I would send a deposit on the next load that I was to receive sending out around a quarter of a million dollars, sometimes $300,000." (R-2. 200, West Trial Testimony at 151.) West also testified about what he would tell defendant regarding the money, "[defendant] knew [the money] was the down payment on what was owed. I would tell him in the neighborhood of what he had. This is 200 or 250 [thousand] for Mr. Apodaca." (*Id.* at 152.)

Thus, there was sufficient evidence from which a rational juror could conclude that defendant participated in a conspiracy to commit money laundering

when he knowingly distributed West's drug money to Apodaca, and the proof showed that he did so with the intent to promote the continuation of the marijuana trafficking conspiracy. The jury's verdict, therefore, should not be disturbed.

B. *Santos* does not impact Defendant's money laundering conviction.

Defendant's argument regarding the Supreme Court's decision in *United States v. Santos*, 553 U.S. 507 (2008) is similarly without merit. In *Santos*, a four-justice plurality held that, under the rule of lenity, the term "proceeds" in the money-laundering statute means profits, rather than gross receipts. *Santos*, 553 U.S. at 513. Four other justices defined the term "proceeds" as "the total amount brought in"—*i.e.*, the gross receipts of the underlying offense. *Id*. at 2044 (Alito, J., dissenting). Justice Stevens provided the tie-breaking vote, holding that "proceeds" may mean profits for some "specified unlawful activities" and gross receipts for others. *Id*. at 522-28 (Stevens, J., concurring). Notably for purposes of the current case, five members of the *Santos* Court agreed that "the term 'proceeds' includes gross revenues from the sale of contraband and the operation of organized crime syndicates involving such sales." *Id*. at 531 n.1 (Alito, J., dissenting).

This Court has interpreted the *Santos* decision to mean that "proceeds" includes gross revenues that result from certain specified unlawful activities. In

United States v. Kratt, 579 F.3d 558 (6th Cir. 2009), this Court relied on Justice Stevens's decisive concurrence in *Santos* to create a two-part test for determining whether "proceeds" means "profits" for a specific unlawful activity. "Proceeds" means "profits" only when "the § 1956 predicate offense creates a merger problem that leads to a radical increase in the statutory maximum sentence" and "nothing in the legislative history suggests that Congress intended such an increase." *Id.* at 562. Otherwise, "proceeds" means "gross receipts."

In *United States v. Smith*, 601 F.3d 530, 544 (6th Cir. 2010), the Court, applying *Kratt* and again relying on Justice Stevens' concurrence, held that "proceeds" means "gross receipts" in the context of "sales of contraband and the operation of organized criminal syndicates." *Id.* (quoting *Santos,* 128 S. Ct. at 2032) (Stevens, J., concurring). Furthermore, three other circuits have adopted the post-*Santos per se* rule that "proceeds" means "gross receipts" in the drug context. *See United States v. Spencer,* 592 F.3d 866, 879 (8th Cir. 2010); *United States v. Howard*, 309 F. App'x 760, 771 (4th Cir. 2009); *United States v. Fleming*, 287 F. App'x 150, 155 (3d Cir. 2008). Accordingly, *Santos* is of no benefit to defendant because this was a case involving a drug trafficking conspiracy.

III. The district court did not commit clear error when it denied defendant a mitigating role reduction because the evidence established that defendant played a critical role in the conspiracy.

The district court correctly withheld a mitigating role reduction from defendant's sentence. (R-2. 259, Sentencing Transcript at 126-27.) Additionally, the district court attributed a total of 12,611 pounds of marijuana to defendant, which consisted of marijuana delivered solely by defendant and no other co-conspirators.[7] Defendant argues that he was the "least culpable" of those who went to trial, that his "role in the [conspiracies] was really that of a courier or mule," and thus he qualified for a mitigating role. (Defendant's brief at 40-42.) That argument is meritless.

Under U.S.S.G. § 3B1.2, a four level reduction should be applied if "the defendant was a minimal participant," and a two level reduction should be applied "if the defendant was a minor participant" in the criminal activity. The defendant has the burden of proving by a preponderance of the evidence that he had a minor or minimal role in the conspiracies and thus was entitled to a decrease in his offense level. *See United States v. Salgado,* 250 F.3d 438, 458 (6th Cir. 2001)

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[7] At sentencing, the United States argued that the total amount of marijuana delivered by all co-conspirators from 2001-2006 should have been attributed to defendant. (R-2. 259, Sentencing Transcript at 107-112.) However, the district court declined to attribute the conspiracy's entire amount to defendant, and instead attributed the marijuana amounts defendant personally delivered. (*Id.* at 127.)

(defendant has burden of proof on mitigating role reduction). The determination of whether a defendant qualifies for a mitigating role reduction is "heavily dependent on the facts of the particular case." U.S.S.G. § 3B1.2, cmt. n.3(C); *see also United States v. Campbell*, 279 F.3d 392, 396 (6th Cir. 2002) (stating that "[t]he salient issue is the role the defendant played in relation to the activity for which the court held him or her accountable"). A district court decision regarding whether to apply a mitigating role reduction is reviewed for clear error. *Campbell*, 279 F.3d at 396.

Further, "defendants may be minimal or minor participants in relation to the scope of the conspiracy as a whole, but they are not entitled to a mitigating role reduction if they are held accountable only for the quantities of drugs attributable to them." *Id.* Thus, in *Campbell* the Court affirmed the denial of a mitigating role reduction because defendant's base offense level was determined solely on the amount of drugs attributable to him, not the total amount attributable to the entire conspiracy. *Id*.

Finally, a participant who is indispensable to the conspiracy is not entitled to a mitigating role reduction. *United States v. Samuels*, 308 F.3d 662, 672 (6th Cir. 2003). In *Samuel*s the Court agreed with the United States that the district court clearly erred in granting a role reduction where the defendant played a key

role in "brokering the drug transaction" and was indispensable to the success of the object of the conspiracy. *Id.*

Applying this analytical framework to the instant case demonstrates that the district court did not clearly err in denying defendant's request for a mitigating role reduction. First, defendant offers no support for his assertion that the district court's culpability determination is superficially limited only to those members of a conspiracy who actually go to trial, as opposed to comparing defendant's culpability against all members in the conspiracy. Defendant was one of many non-supplier participants in this case, and many of those non-supplier participants elected to plead guilty. However, of the non-supplier participants, defendant transported the most marijuana. Indeed, West testified that defendant used a semi-trailer and was the only one to use an RV to transport marijuana, whereas many of the other drivers used only the trunk of a rental car to transport marijuana. (R-2. 200, West Trial Testimony at 28-29.)

Second, as stated above, the district court held defendant only accountable for the marijuana he personally delivered. Thus, on that basis alone according to *Campbell*, defendant was not entitled to any mitigating role reduction.

Third, defendant's high-volume, continuous money and marijuana transportation was crucial to the success the conspiracies. Defendant's role of

transporting the money to Arizona and returning with the marijuana, in addition to operating a stash house in Arizona, was an indispensable element of both the drug and money laundering conspiracies. Therefore, because defendant's activities were intricately intertwined with the success of the conspiracies, as defined in *Samuels*, he was not entitled to a mitigating role reduction. Additionally, the district court made specific findings expressly rejecting defendant's arguments regarding his alleged mitigating role in these offenses. (*See* R-2. 259, Sentencing Transcript at 126-27.)

This Court addressed, and rejected, analogous arguments in *United States v. Sheafe*, 69 F. App'x 268 (6th Cir. 2003). In that case, the district court held defendant accountable, just as the district court did here, only for those drugs that he personally delivered. *Id.* at 270. The Court then dispensed with Sheafe's remaining arguments:

> [Defendant's] protestations that he was a lowly courier likewise fail; it is immaterial that Sheafe was not the owner of the cocaine or the leader or organizer of the drug transaction. A defendant does not qualify for a mitigating role reduction merely because someone else planned the scheme and made all the arrangements. Sheafe was the driver for three trips and well understood that he was transporting drugs. On at least one occasion, Sheafe gave orders to another courier. He also arranged to temporarily store 43 kilograms of cocaine at his girlfriend's apartment. Sheafe's argument that the conspiracy would have gone on without him misses the mark. A defendant

> has more than a minor or minimal role not because he personally is irreplaceable, but because his role was indispensable to the success of the conspiracy.

Id. (internal citations omitted).

Defendant makes the same meritless arguments in the instant case as the defendant in *Sheafe*. The district court in this case rejected defendant's "mule" argument when it found that, in addition to knowingly operating a stash house, similar to the defendant in *Sheafe*, he knowingly transported "large sums of money" and "vast amounts" of marijuana "across the country." Additionally, the evidence at the trial and at sentencing showed that defendant, like the defendant in *Sheafe*, "gave orders" to other people. For example, defendant recruited his son, Samuel, to drive the F-250 while defendant drove the marijuana-laden RV, and defendant also provided trucks for Johnny Guffey to use in the transportation of the marijuana. Finally, the district court stated, "the conspiracy would not have been successful without the participation of the drivers[.]" (R-2. 259, Sentencing Transcript at 126.) This finding by the district court, and its subsequent rejection of defendant's mitigating role reduction is consistent with this Court's finding in *Sheafe*, namely that defendant's role as money and marijuana transporter was "indispensable to the success of the conspiracy." *Sheafe*, 69 F. App'x at 270.

Defendant's high-volume, continuous transportation of hundreds of thousands of dollars to Arizona, and his subsequent importation of *tons* of marijuana back to Tennessee, was the life-blood of this conspiracy. Consequently, the district court did not clearly err by declining to apply a mitigating role reduction.

CONCLUSION

For the reasons stated above, the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2010, this Sixth Circuit Brief was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Opposing counsel may access this filing through the Court's electronic filing system.

s/ David P. Lewen, Jr.
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation provided in the Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief contains 8,834 words in Times New Roman (fourteen point) proportional type. The word processing software used to prepare this brief was WordPerfect X4 for Windows XP.

s/ David P. Lewen, Jr.
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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 09-6497
DESIGNATION OF RELEVANT DISTRICT COURT FILINGS
PURSUANT TO SIXTH CIRCUIT RULE 30(b)

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	
	)	ON APPEAL from the United
v.	)	States District Court for the
	)	Eastern District of Tennessee
MELVIN SKINNER, Defendant-Appellant.	)	No. 3:06-cr-100 No. 3:07-cr-89

Appellee, pursuant to Sixth Circuit Rule 30(b), designates the following filings in the district court record—all of which are available electronically—as items relevant to the determination of the issue(s) on appeal.

Entry No.	Description of Entry	Date
	EASTERN DISTRICT OF TENNESSEE Docket No. 3:06CR100	
N/A	Docket Sheet	N/A
R. 34	Motion to Suppress	9/29/2006
R. 35	Memorandum in Support of Motion to Suppress	9/29/2006
R. 39	USA Response to Motion to Suppress	10/19/2006
R. 44	Supplement to USA Response	10/19/2006
R. 63	USA Response to Defendant's Second Supplemental Motion to Suppress Evidence	1/22/2007
R. 67	Minute Entry	2/13/2007
R. 68	Minute Entry	2/14/2007

Entry No.	Description of Entry	Date
R. 71	Transcript of Suppression Hearing	3/09/2007
R.75	Report and Recommendation	4/26/2007
	EASTERN DISTRICT OF TENNESSEE Docket No. 3:07CR89	
N/A	Docket Sheet	N/A
R. 3	Indictment	7/18/2007
R. 161	Minute Entry	1/16/2009
R. 164	Minute Entry	1/21/2009
R. 182	Jury Verdict Form	2/03/2009
R. 183	Jury Verdict Form	2/03/2009
R. 184	Jury Verdict Form	2/03/2009
R. 200	Transcript of Trial Testimony	3/18/2009
R. 201	Transcript of Trial Testimony	3/18/2009
R. 210	Transcript of Trial Testimony	4/30/2009
R. 211	Transcript of Trial Testimony	4/30/2009
R. 215	Transcript of Trial Testimony	4/30/2009
R. 216	Transcript of Trial Testimony	4/30/2009
R. 253	Judgment	12/08/2009
R. 254	Notice of Appeal	12/10/2009
R. 259	Transcript of Sentencing Hearing	2/04/2010

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