

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

CORY SPURLOCK,

Defendant.

Case No. 3:23-cr-00022-MMD-CLB-1

ORDER

I. SUMMARY

Defendant Cory Spurlock was indicted for a murder-for-hire conspiracy and conspiracy to distribute marijuana. (ECF No. 1.) The fifth superseding indictment charges eight counts involving three deaths (victims J.S., W.L., and Y.L.).¹ (ECF No. 363.) Before the Court are two motions to suppress evidence, specifically: (1) Spurlock’s motion to suppress tower dump data obtained in response to a warrant and the derivative use of that data (ECF No. 254);² and (2) Spurlock’s motion to suppress evidence collected during a consent search from 27 Red Rock Drive (ECF No. 257).³ The Court held an evidentiary hearing on the tower dump motion—along with another motion not addressed in this

¹The fifth superseding indictment, returned on April 10, 2025, charges Spurlock with eight counts: (1) conspiracy to possess with intent to distribute and to distribute marijuana; (2) murder while engaged in narcotics trafficking relating to the killing of J.S.; (3) murder for hire relating to the killing of W.L.; (4) tampering with a witness by killing of W.L.; (5) stalking resulting in death relating to W.L.; (6) stalking resulting in death relating to Y.L.; (7) interference with commerce by robbery; and (8) causing death through use of a firearm during and in relation to a crime of violence. (ECF No. 363.) The government also now seeks the death penalty. (*Id.*; *see also* ECF No. 365.) The motions addressed in this order were filed before the government sought the fourth and then fifth superseding indictment.

²The government responded (ECF No. 298), and Spurlock replied (ECF No. 338).

³The government responded (ECF No. 297) and Spurlock replied (ECF No. 328).

1 order—on April 9, 2025 (the “Hearing”).⁴ (ECF No. 362 (hearing minutes).) As to the
2 motion to suppress regarding the tower dump, the Court finds that a tower dump is a
3 search and the warrant law enforcement used to get it is a general warrant forbidden
4 under the Fourth Amendment. That said, because the Court appears to be the first court
5 within the Ninth Circuit to reach this conclusion and the good faith exception otherwise
6 applies, the Court will not order any evidence suppressed. The Court will deny the motion
7 regarding the search of 27 Red Rock Drive because Spurlock had objectively abandoned
8 it before the challenged search occurred.

9 **II. DISCUSSION**

10 The Court addresses both motions in the order they were filed, below, beginning
11 with the motion to suppress tower dump data.

12 **A. Motion to Suppress Tower Dump Data**

13 Spurlock moves to suppress all the evidence collected using warrant 20-SW-56,
14 along with all the evidence collected using some 90 additional warrants that referred to
15 20-SW-56 or evidence collected based on it. (ECF No. 254 at 26-29.) Spurlock argues
16 that the tower dump—further explained below, but basically records from all cell phones
17 that connected to the cell towers closest to two locations specified in the warrant during
18 a specified time period—is a search under the Fourth Amendment, warrant 20-SW-56 is
19 a general warrant categorically forbidden by the Fourth Amendment, the warrant is
20 overbroad and lacking in probable cause, and the good faith exception does not apply.
21 (*Id.* at 11-25.) The government counters with an onion of alternative arguments: there
22 was no Fourth Amendment search; the warrant was supported by probable cause; law
23 enforcement relied on the warrants in good faith; the cell tower data was obtained through
24 independently lawful means; and the relevant evidence obtained in response to the tower
25 dump warrant would have inevitably been discovered in any event. (ECF No. 298 at 1-2.)

26
27 ⁴In a minute order setting the Hearing, the Court specified it would not address the
28 motion regarding the search of 27 Red Rock Drive at the Hearing. (ECF No. 326.) The
Court otherwise directed the government to be prepared to present evidence on four
enumerated topics at the Hearing. (*Id.*) Broadly speaking, the government’s witnesses
who testified at the Hearing provided information going to the four specified topics.

1 The Court agrees with Spurlock that a tower dump is a search and warrant 20-SW-56 is
2 an impermissible general warrant, but finds the good faith exception applies and,
3 alternatively, suppression is unwarranted because the requesting law enforcement officer
4 got a warrant, and the warrant he got was not unconstitutional at the time it issued.

5 The Court first includes below its pertinent findings of fact and then provides its
6 legal analysis.

7 **1. Findings of Fact⁵**

8 On November 13, 2020, Sergeant Magdeleno Hernandez of the Mono County
9 Sheriff's Office applied for a search warrant to the Honorable Mark Magit, Mono County
10 Superior Court Judge.⁶ (ECF No. 254-2 at 2, 5, 7.) Judge Magit granted the application
11 that same day, assigning the warrant the identifier 20-SW-56. (*Id.* at 5.) According to his
12 affidavit, Sergeant Hernandez was investigating the suspected homicide of two people
13 found on the side of U.S. Highway 395 north of Bridgeport, California on the morning of
14 November 9, 2020. (*Id.* at 9.) He and unspecified other deputies who went to investigate
15 the bodies, later identified as W.L. and Y.L., found that they had been shot and stabbed.
16 (*Id.* 9-10.) They also found a cell phone near the victims that the investigating officers
17 determined belonged to one of them. (*Id.* at 9.)

18 Then, on November 10, 2020, a California Highway Patrol ("CHP") officer found
19 an abandoned vehicle on the side of Highway 395, but south of Bridgeport, California. (*Id.*
20 at 10.) A CHP officer contacted the Mono County Sheriff's Office about the car because
21 they found blood on and in the vehicle. (*Id.*) As it was unlocked, a CHP officer also found

22 _____
23 ⁵Fed. R. Crim. P. 12(d) specifies, "[w]hen factual issues are involved in deciding a
24 motion, the court must state its essential findings on the record."

25 ⁶They both testified at the Hearing. The two other witnesses who testified at the
26 Hearing were Jason Pelichowski, the investigator from the Mono County Sheriff's Office
27 who analyzed the information returned in response to warrant 20-SW-56, and Kelsey
28 Guay, Spurlock's retained expert on digital forensic evidence (ECF No. 272 (providing
notice that Spurlock intended to rely on her expert testimony in this case and detailing her
qualifications)), who also examined the warrant return materials and provided opinions
about what those records contain. The Court also explains below its finding that Sergeant
Hernandez applied for the warrant on November 13, 2020, and Judge Magit granted the
application that same day, even though Sergeant Hernandez dated his affidavit
November 20, 2020.

1 a cell phone, wallet, and keys in the vehicle. (*Id.*) Someone from the Mono County
2 Sheriff's Office ran the car through their system and discovered it was registered to the
3 male victim, W.L. (*Id.*) Someone from the Mono County Sheriff's Office then reviewed
4 surveillance video and determined that W.L.'s vehicle drove through Bridgeport at
5 approximately 8:07 p.m. on November 8, 2020. (*Id.*) Someone also involved in the
6 investigation later noted that tire tracks found near the two bodies matched the tires on
7 W.L.'s abandoned vehicle found south of Bridgeport. (*Id.*)

8 Sergeant Hernandez explained in his affidavit that all this information led him to
9 believe that the person or people who killed W.L. and Y.L. were using cell phones around
10 the time of the suspected crime. (*Id.*) He accordingly requested a warrant to get 'tower
11 dump data' from cell towers around the mile markers where the bodies and the vehicle
12 had been found (as specified by GPS coordinates) between the hours of 5 p.m. and 11
13 p.m. on the evening of November 8, 2020 (a window of time around the time he thought
14 the killings occurred). (*Id.* at 10-11.) He further explained that the rural location, the time
15 of day, and the fact that most people carry cell phones with them made it more likely that
16 this tower dump data would lead to phone numbers associated with the person or people
17 who killed W.L. and Y.L. (*Id.*)

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 The warrant specifically ordered Verizon and AT&T to produce the following
2 information to Sergeant Hernandez:⁷

3 a. Tower Dump/Download records from all cell-sites and their related sectors that cover the
4 immediate area of US Highway 395 around mile marker 84.5 and US Highway 395 around mile
5 marker 74.5 (see GPS Coordinates listed above) that would support any and all communications
6 including; voice calls, text messages, any data connections, and any available HLR (Home
7 Local Registry) or VLR (Visitor Local Registry) records showing subscriber equipment that
8 were idle but still connected to the provider's network (on but not placing a call, text, or data
9 connection but were in the same area as referenced above connecting to the network).

10 b. Records identifying the device (make and model), phone numbers associated with any
11 communications, locations, date, times, duration of all calls, text messages, and data
12 connections identified in response to item "a," above.

13 c. Records showing the addresses and/or map GPS coordinates of all cell sites identified
14 as having active connections in item "a." above and maps with markings showing the
15 location of each cell site and the theoretical wireless coverage area provided by each
16 site, commonly called an RF footprint and/or propagation map.

17 d. Any records of equipment failures, maintenance, cell site overloads, or other outages
18 that tend to show whether any of the listed cell sites were not operating normally
19 during the specified time period.

20 (*Id.* at 3.) The 'target of warrant' was listed as, "[a]ny subjects related to active homicide
21 investigation." (*Id.* at 4.) Other investigating officers subsequently used some evidence
22 received in response to warrant 20-SW-56 to obtain many other warrants ultimately
23 leading to some evidence implicating Spurlock in the crimes he has since been charged
24 with.⁸ (ECF Nos. 254 at 7-10, 298 at 5-7.)

25 Within the Mono County Sheriff's Office, Investigator Pelichowski was the person
26 who analyzed the information the Sheriff's Office got back from Verizon in response to
27 warrant 20-SW-56. He accessed a working copy of the return materials provided in an
28 Excel spreadsheet and manually examined the phone numbers listed in it, eventually
connecting several of the phone numbers he found there with people of interest through
other detective work. At the time, he did not have access to any software that would have
helped him analyze the data. He just manually looked for phone numbers of interest in

⁷Only Verizon returned records in response.

⁸The government argues, and Investigator Pelichowski testified, that he and his
colleagues were simultaneously pursuing various investigative techniques and lines of
inquiry that they also relied on to apply for other warrants they obtained in this
investigation. However, the Court does not detail these other investigations within the
overall investigation in this order because the Court does not reach the government's
independent source and inevitable discovery doctrine arguments.

1 the Excel sheet and ran those phone numbers through a third-party public records
2 database his department subscribed to.⁹ He further testified that he has since gotten more
3 familiar with the type of data they got in response to the warrant, but at the time, this was
4 all new to him. Similarly, Sergeant Hernandez testified this was the first tower dump
5 search warrant application he had written. He consulted with Investigator Pelichowski and
6 others in the Sheriff's Office, along with an investigator from the Mono County District
7 Attorney's office, before drafting the warrant application. The investigator from the Mono
8 County District Attorney's office gave him the idea to write a tower dump warrant
9 application. Said otherwise, this was an unusual type of warrant application that they were
10 not very familiar with at the time.

11 Judge Magit also testified that this tower dump warrant application was unusual.
12 He estimated that he has granted 350-450 warrants since taking the bench in 2011, but
13 as of 2020, when he granted this warrant application, had only seen four or five tower
14 dump warrant applications. He had no specific recollection of issuing warrant 20-SW-56,
15 but refreshed his recollection about it to prepare for the Hearing and answered the
16 questions posed to him about it that he felt he could. Consistently with Sergeant
17 Hernandez and Investigator Pelichowski, Judge Magit further testified Mono County is
18 very rural, with only approximately 13,000 residents spread over a very large land area—
19 and homicides are rare. Thus, all three witnesses remembered this double homicide.
20 More generally, Judge Magit testified that he would guess he denies 10%-20% of all
21 warrant applications he receives, and of those applications that were subsequently re-

22
23
24 ⁹The example Investigator Pelichowski offered involved the phone number with the
25 last four digits 1368. He testified that during the investigation leading up to obtaining the
26 tower dump data, he learned that 1368 was registered to Y.L. As he looked through the
27 tower dump data on the Excel spreadsheet around the 20:00 hour time frame, he saw a
28 call from 1368 to 1975, which he then learned was registered to B.K. He had learned
about B.K.'s relationship with the Larsens from their family. He then found on the Excel
spreadsheet that 1975 had contacted 0475, which he learned was registered to O.O.
Because the tower dump data contains phone numbers but not subscriber information,
Investigator Pelichowski used his office's separate database available to him at the time
to see who may be associated with a particular phone number.

1 submitted after denial, he denied a few but probably less than 20%. He could not
2 specifically recall if he had ever denied an application for a tower dump warrant.

3 Spurlock's expert Ms. Guay examined the same records Investigator Pelichowski
4 got in response to warrant 20-SW-56 in preparation for the Hearing and clarified a few
5 important evidentiary points for the Court. First, she demonstrated that, while Investigator
6 Pelichowski does not appear to have done this in his investigation, from the tower dump
7 records, she was able to determine roughly where the various phones listed in the data
8 were and could plot them on a map if she wanted to.¹⁰ Second, she determined that after
9 accounting for de-duplication the tower dump records contained records—again,
10 including rough location information—for 1686 unique phones. Third, she clarified that the
11 wireless company users whose phones showed up in the tower dump data did not opt in
12 to sharing their location with their wireless provider, and indeed, could not opt out from
13 appearing in the type of records received in response to warrant 20-SW-56. She
14 explained this is essentially because wireless network operators need to know roughly
15 where phones are to effectively route the calls their users make. *See also Carpenter v.*
16 *United States*, 585 U.S. 296, 300 (2018) (providing similar technical background about
17 how smartphones work, and how often they connect to cell towers without any user input).

18 **2. Legal Analysis**

19 The Court now addresses below the legal issues raised in Spurlock's motion in the
20 order he presented them.

21 **a. Fourth Amendment Search**

22 While Sergeant Hernandez got warrant 20-SW-56 asking Verizon and AT&T for
23 information about the phones that connected to cell towers near two miles markers on US
24 Highway 395 during a six-hour period on November 8, 2020 (ECF No. 254-2 at 3),
25 Spurlock nevertheless leads off in his motion by arguing that this 'tower dump' is a search
26

27 _____
28 ¹⁰Said otherwise, while Investigator Pelichowski did not use any location
information contained in the warrant return materials he analyzed, Ms. Guay
demonstrated that he could have if he had the technical ability and wanted to.

1 under the Fourth Amendment (ECF No. 254 at 11-14). The government counters it is not.
2 (ECF No. 298 at 8-11.) The Court agrees with Spurlock.

3 In *Carpenter*, 585 U.S. 296, the Supreme Court held that individuals maintain a
4 legitimate expectation of privacy in records of their physical movements as captured
5 through cell-site location information (“CSLI”), that obtaining seven days of historical CSLI
6 from a wireless provider without a warrant was a search, that accessing 127 days of
7 historical CSLI invaded the defendant’s reasonable expectation of privacy, and thus the
8 government must get a warrant supported by probable cause before obtaining CSLI from
9 a wireless carrier. See generally *id.* However, the Supreme Court in *Carpenter* did “not
10 express a view on matters not before us: real-time CSLI or ‘tower dumps’ (a download of
11 information on all the devices that connected to a particular cell site during a particular
12 interval).” *Id.* at 316.

13 According to the parties—as confirmed by the Court’s own research—neither the
14 Supreme Court nor the United States Court of Appeals for the Ninth Circuit has answered
15 the question left open by *Carpenter* and pertinent here since *Carpenter* was decided.¹¹
16 So, is a ‘tower dump,’ like Sergeant Hernandez requested, a search? In arguing that it is,
17 Spurlock points the Court towards the United States Court of Appeals for the Fifth Circuit’s
18 opinion regarding geofence warrants in *United States v. Smith*, 110 F.4th 817 (5th Cir.
19 2024) and a recent decision from a Magistrate Judge in Mississippi extending *Smith* to
20 some applications for tower dump warrants like the warrant at issue here in *In re Four*
21 *Applications for Search Warrants Seeking Info. Associated with Particular Cellular*
22 *Towers*, No. 3:25-CR-38-CWR-ASH, 2025 WL 603000 (S.D. Miss. Feb. 21, 2025) (“*Four*
23 *Applications*”). (ECF No. 254 at 11-13.) In these decisions, the Fifth Circuit found that
24 Google location history data obtained using a geofence warrant constituted a Fourth
25 Amendment search, see *Smith*, 110 F.4th at 836, and as noted, the *Four Applications*
26

27 ¹¹The Court again asked counsel for both sides at the Hearing and they both
28 confirmed they are not aware of any binding precedent on the constitutionality of tower
dump warrants.

1 court extended *Smith* to tower dump warrant applications, see generally 2025 WL
2 603000.

3 The Court finds these two cases persuasive. To start, the government does not
4 even address *Four Applications* in its response to the motion and did not attempt to
5 meaningfully distinguish *Smith*.¹² (ECF No. 298.) And in *Four Applications*, the Magistrate
6 Judge explicitly extended *Smith* from the context of a geofence warrant to applications
7 for tower dump warrants, reasoning that the applicable warrants sought essentially the
8 same type of information at issue in *Smith* and finding that a person has a reasonable
9 expectation of privacy, “as to the record of his location at particular moments in time that
10 a tower dump would reveal[.]” *Four Applications*, 2025 WL 603000, at *5. The *Four*
11 *Applications* court went on to find that the data revealed from tower dumps was sufficiently
12 intrusive to warrant Fourth Amendment protection even if it involved less data than in
13 *Carpenter*, and rejected application of the third party doctrine because, “tower-dump
14 warrant applications do not implicate the sort of opt-in procedure that split the Fourth and
15 Fifth Circuits in the geofence cases.” *Id.* at *6. Thus, *Four Applications* is factually
16 analogous, and both addresses and rejects the primary arguments the government raises
17 in response to the motion.¹³ (ECF No. 298 at 8-11.)

18 The *Four Applications* court’s point about the involuntary nature of the location
19 data obtained from a tower dump warrant also highlights why the Court finds *Smith* more
20 persuasive than *United States v. Chatrue*, 107 F.4th 319, 330 (4th Cir. 2024), the Fourth
21 Circuit case referred to in the quotation above. But before the Court elaborates, the Court
22

23 ¹²When asked at the hearing, government counsel made nothing more than the
24 obvious point that neither *Smith* nor *Four Applications* bind the Court.

25 ¹³The government otherwise argued and reiterated at the Hearing that Spurlock
26 lacks standing to challenge the tower dump warrant because many of the records
27 produced in response to it included information about other peoples’ phones (ECF No.
28 298 at 18), but also does not dispute that information about two phones associated with
Spurlock were among the records produced in response to warrant 20-SW-56. Indeed,
Spurlock confirmed that fact through Ms. Guay at the Hearing. Spurlock has standing to
challenge this warrant. See *Smith*, 110 F.4th at 831 n.6 (finding that two of the three
appellants had standing to challenge the geofence warrant because their location data
was captured by the geofence warrant they challenged).

1 must note that *Chatrie* is not currently good law because the Fourth Circuit granted
2 rehearing en banc in that case, see No. 22-4489, 2024 WL 4648102 (4th Cir. Nov. 1,
3 2024), but has not yet issued its en banc decision. *Smith* is nonetheless more persuasive
4 than *Chatrie* because in *Smith*, the Fifth Circuit rejected the application of the third party
5 doctrine (distinguishing *Chatrie*) for the commonsense reason that, “electronic opt-in
6 processes are hardly informed and, in many instances, may not even be voluntary.”
7 *Smith*, 110 F.4th at 835. The Court agrees— “[a]s anyone with a smartphone can attest[.]”
8 *Id.* And tower dump warrants are moreover distinguishable from a geofence warrant, as
9 the *Four Applications* court observed, because people whose information would be
10 revealed in a tower dump did not opt in to sharing their location with the wireless
11 companies targeted by this type of warrant in the way that the user targeted in *Smith* had
12 arguably opted in to Google location services, see 2025 WL 603000 at *6. Defense expert
13 witness Ms. Guay confirmed this at the Hearing, stating in response to questions from the
14 Court and Spurlock’s counsel that cell phone users cannot opt out of sharing their location
15 with cell towers (nor can they opt in), both generally so they have service, and specifically
16 whenever they make a call or send a text message. Cell phones are pinging nearby
17 towers whenever they are turned on, regardless of any settings their users select. Thus,
18 even if *Chatrie* was good law, its reliance on Google users’ decisions to opt-in to location
19 sharing renders it distinguishable. See *Chatrie*, 107 F.4th at 331 (“*Chatrie* voluntarily
20 exposed his location information to Google by opting in to Location History[.]”).

21 In addition, the Court also finds persuasive *Smith*’s second reason for
22 distinguishing *Chatrie*: “[w]hile it is true that geofences tend to be limited temporally, the
23 potential intrusiveness of even a snapshot of precise location data should not be
24 understated.” *Smith*, 110 F.4th at 833. Like the *Smith* court, the Court will not understate
25 the potential intrusiveness of the location data at issue here. Sergeant Hernandez and
26 Investigator Pelichowski got location data on over 1600 people who neither consented
27 nor were likely even aware that their location was being tracked as they moved through
28 the area specified in the warrant application during the time also specified in it.

1 For these same reasons, the Court rejects the government’s unpersuasive
2 argument that the records obtained using warrant 20-SW-56 do not constitute a Fourth
3 Amendment search because they are less invasive than the records at issue in *Carpenter*.
4 (ECF No. 298 at 8-11.) The Court will instead follow *Smith* as extended to tower dumps
5 in *Four Applications*. And the non-binding cases the government relies on in this section
6 of its response do not convince the Court otherwise. *United States v. Adkinson*, 916 F.3d
7 605, 610 (7th Cir. 2019) is a private party search exception case. There, someone was
8 robbing some T-Mobile stores in a similar way, so T-Mobile dumped its own towers and
9 then turned the results over to law enforcement. *See id.* at 608. Here, of course, Sergeant
10 Hernandez got a warrant asking Verizon and AT&T for this information. And *United States*
11 *v. Hammond*, 996 F.3d 374, 387-92 (7th Cir. 2021) dealt with real-time CSLI, not tower
12 dump data like the data at issue here. Moreover, the Court agrees with Spurlock (ECF
13 No. 338 at 3-4) that *Hammond* is against the weight of authority. *See, e.g., United States*
14 *v. Broderick*, No. 5:22-CR-00251-EJD-1, 2024 WL 295293, at *6 (N.D. Cal. Jan. 25, 2024)
15 (“many courts in this District and across the country have found that [*Carpenter*’s]
16 reasoning applies to real-time CSLI.”), *appeal dismissed*, No. 24-1002, 2024 WL 2559466
17 (9th Cir. Feb. 29, 2024). The Court accordingly rejects as unpersuasive the government’s
18 argument that because *Hammond* found real-time CSLI not subject to the Fourth
19 Amendment, tower dump data is not either. Finally, the government cites *Sanchez v. Los*
20 *Angeles Dep’t of Transportation*, 39 F.4th 548, 560 (9th Cir. 2022) (ECF No. 298 at 10),
21 but the pertinent section of that opinion turns on the fact that the plaintiff “knowingly and
22 voluntarily disclosed location data to the e-scooter operators[.]” *Sanchez*, 39 F.4th at 559.
23 Indeed, *Sanchez* specifically distinguished the rental e-scooters at issue there from the
24 cell phones at issue here and in *Carpenter* because a cell phone reveals “location
25 information ‘by dint of its operation, without any affirmative act on the part of the user[.]’”
26 *See id.* (citing *Carpenter*).

27 ///

28 ///

1 In sum, the Court finds that the tower dump performed in response to warrant 20-
2 SW-56 is a Fourth Amendment search. See *Smith*, 110 F.4th at 836 (“law enforcement in
3 this case *did* conduct a search when it sought Location History data from Google”).

4 **b. General Warrant**

5 As mentioned, Spurlock proceeds to argue that warrant 20-SW-56 is a
6 constitutionally forbidden general warrant or ‘writ of assistance’ because it, “seeks access
7 to a vast array of private cellular phone data of a potentially unlimited number of people
8 to identify a criminal suspect the police don’t yet know about.” (ECF No. 254 at 15.) And
9 indeed, *Smith* reached a conclusion consistent with Spurlock’s argument, holding that
10 “geofence warrants are general warrants categorically prohibited by the Fourth
11 Amendment.” 110 F.4th at 838. The government counters that warrant 20-SW-56 was not
12 a general warrant because Sergeant Hernandez’s affidavit established probable cause
13 and the warrant was sufficiently particularized. (ECF No. 298 at 14.)

14 But *Smith* also arose from an investigation where investigators obtained a warrant,
15 and the Court has similar concerns with warrant 20-SW-56 to those that the *Smith* court
16 expressed about the warrant there. Most notably, geofence warrants “*never* include a
17 specific user to be identified, only a temporal and geographic location where any given
18 user *may* turn up post-search.” *Smith*, 110 F.4th at 837 (emphasis in original). Similarly,
19 here, the subject of warrant 20-SW-56 is, “[a]ny subjects related to active homicide
20 investigation[.]” (ECF No. 254-2 at 4.) Moreover, it is uncontested that “the private data
21 of 1,686 users were captured in [the] tower dump warrant.” (ECF No. 338 at 5.) And while
22 the government argues that the “requested data was confined in date, time, and location”
23 (ECF No. 298 at 13), “[a] general warrant cannot be saved simply by arguing that, after
24 the search has been performed, the information received was narrowly tailored to the
25 crime being investigated.” *Smith*, 110 F.4th at 837.

26 Taken together, the Court agrees with Spurlock that these characteristics of
27 warrant application 20-SW-56 render it equivalent to a request for “access to an entire
28 haystack because it may contain a needle.” *Four Applications*, 2025 WL 603000, at *8.

1 The Fourth Amendment “seeks to secure ‘the privacies of life’ against ‘arbitrary power[,]”
2 and aims to “place obstacles in the way of a too permeating police surveillance.”
3 *Carpenter*, 585 U.S. at 305 (citations omitted). A warrant that authorizes the search of
4 anyone who was in a particular area during a particular time range is too permeating
5 police surveillance. In sum, “the tower-dump search warrant[at issue here is] materially
6 indistinguishable from the geofence search warrant foreclosed by *Smith*.” *Id.* Warrant 20-
7 SW-56 is a “general warrant[] categorically prohibited by the Fourth Amendment.” *Smith*,
8 110 F.4th at 838.¹⁴

9 **c. Good Faith Exception**

10 Having determined that warrant 20-SW-56 is an unconstitutional general warrant,
11 the Court “must address separately the question of whether exclusion is an appropriate
12 remedy.” *United States v. Elmore*, 917 F.3d 1068, 1076 (9th Cir. 2019). And while
13 suppression is generally unwarranted where a search warrant exists, “[t]he existence of
14 a search warrant does not automatically preclude application of the exclusionary rule[.]”
15 *Id.* In situations like this one, where Sergeant Hernandez got a warrant, the Court may
16 suppress evidence if: (1) the issuing judge was misled; (2) the issuing judge acted as
17 merely a rubber stamp; (3) the affidavit was so lacking in probable cause that it was
18 unreasonable for the issuing judge to have found it; or (4) the warrant was so facially

19
20
21 ¹⁴Spurlock’s counsel allowed at the Hearing that a tower dump warrant could
22 conceivably be constitutional in a situation where the police are investigating serial
23 robberies or acts of vandalism and the police have other evidence that the suspect had a
24 phone at each of the robbery or vandalism locations, so the police could have probable
25 cause for a tower dump warrant that would allow them to see if any of the same phones
26 were present at each of the robbery or vandalism locations at each of the times they
27 happened, and then use that information to focus in on one phone. Said otherwise, a
28 tower dump warrant might be constitutional in the sort of situation addressed in *United States v. Foster*, No. 3:21-CR-00114-SLG, 2023 WL 155442, at *1 (D. Alaska Jan. 11, 2023) (assuming without deciding, however, “that the Government conducted a Fourth Amendment search when it acquired [the defendants] cell site tower data.”). However, the context here is different. This is a warrant that resulted in the dump of a single cell tower following some crimes that were committed simultaneously, in the same spot. The Court indeed agrees with Spurlock that warrant 20-SW-56 “is equivalent to [...] allowing law enforcement to search the bags of everyone in the radius of a theft.” (ECF No. 254 at 15-16.)

1 deficient that executing officers could not have reasonably presumed it was valid. See
2 *United States v. Leon*, 468 U.S. 897, 918, 923 (1984).

3 Spurlock argues that Judge Magit acted merely as a rubber stamp and the affidavit
4 was so lacking in probable cause that it was unreasonable for Judge Magit to have found
5 it. (ECF Nos. 254 at 23-25, 298 at 16-17 (summarizing and addressing Spurlock's
6 argument).) The government counters that Judge Magit did not act as a rubber stamp
7 because the date discrepancy is easily explained as a mistake on Sergeant Hernandez's
8 part when dating his affidavit, and there was at least arguable probable cause for issuing
9 the warrant. (*Id.*) The Court agrees with the government.

10 To start, the Court heard testimony from both Sergeant Hernandez and Judge
11 Magit at the Hearing, and left the Hearing convinced that the date discrepancy was a
12 simple mistake. Judge Magit testified that, while he did not specifically recall this warrant
13 until he was contacted about it by the government in connection with the Hearing, he
14 believed the correct date of the warrant was November 13, 2020 for three reasons: (1) he
15 signed and dated it on November 13, 2020; (2) the clerk of his court also date stamped
16 the order November 13, 2020, consistent with his practice of forwarding an approved
17 warrant to be filed; and (3) in the body of the warrant, it asked for production of the data
18 on November 19, 2020, which would not make sense if the warrant was not issued until
19 November 20, 2020. He otherwise stated that law enforcement may not post-date
20 warrants.¹⁵ The Court finds this testimony credible. Similarly, Sergeant Hernandez
21 testified that he wrote the wrong date by accident when he signed his affidavit. To
22 corroborate that he made a simple mistake, he stated that the clerk of court stamped the
23 warrant November 13, 2020, and he wrote a supplemental narrative explaining his
24 mistake that included the correct date. (See *a/so* ECF No. 298-1 (the supplemental
25 narrative he referred to).) The Court also found Sergeant Hernandez's testimony that he
26 simply made a mistake credible. The Court accordingly finds that the date of November

27 _____
28 ¹⁵And the Court rejects any suggestion that Judge Magit authorized the warrant
without swearing in Sergeant Hernandez or reviewing his affidavit either in person or
remotely. Indeed, Judge Magit confirmed that was not his practice.

1 20, 2020, next to Sergeant Hernandez's signature in the application was a simple
2 mistake. (ECF No. 254-2 at 12.) The correct date is November 13, 2020. (*Id.* at 2, 5, 7.)
3 And for these reasons, this date discrepancy does not indicate that Judge Magit 'rubber-
4 stamped' the warrant application.

5 The Court also heard from Judge Magit about the practices he would have followed
6 before granting warrant 20-SW-56 and is convinced he did not rubber-stamp it for the
7 reasons he provided at the Hearing as well.¹⁶ Judge Magit specifically noted the rural
8 location where the two bodies were found and the time of day in retroactively confirming
9 his conclusion that there was probable cause supporting issuance of the warrant. He
10 similarly testified that the warrant was limited both in terms of time and location, which led
11 him to find it was sufficiently particularized. Judge Magit also noted that while issuing
12 tower dump warrants was unusual at the time he granted this application (he believes he
13 had granted less than five at that time), so too was it unusual for local police to find
14 evidence of a double homicide on the side of a rural highway in the county where he sits
15 as a judge, implying that this extraordinary warrant was justified by extraordinary
16 circumstances. More generally, Judge Magit testified that he never signed a warrant
17 without an affidavit, or without first agreeing the requesting officer had established
18 probable cause. And he otherwise testified that he would guess he denies about 20% of
19 the warrant applications that come before him. Indeed, beyond not acting as a rubber
20 stamp, Judge Magit's testimony also goes to the third and fourth reasons for potential
21 application of the good faith exception: the warrant affidavit arguably contained probable
22 cause and was not so facially deficient that no reasonable officer could execute it.

23 ///

24 _____
25 ¹⁶Spurlock also argued at the Hearing that the fact Judge Magit authorized the
26 inclusion of a request for 'content' in the warrant further indicated he had rubber-stamped
27 it, but Judge Magit otherwise testified he had no specific recollection of granting this
28 warrant application. The Court is accordingly unable to determine why Judge Magit left
those references to 'content' in the warrant, much less that he included them out of
carelessness. The same goes for Judge Magit's failure to note the error in the date of
Sergeant Hernandez's signature. The Court cannot find such failure adequately supports
a finding that Judge Magit did not conduct an independent review of the warrant
application.

1 And Judge Magit's testimony is consistent with the government's argument that
2 there was at least arguable probable cause for issuing the warrant in the warrant
3 application itself, so suppression is not warranted. Specifically, the warrant application
4 noted clear indicia that a crime had been committed; dead bodies that had been shot and
5 stabbed, with shell casings nearby. (ECF No. 254-2 at 9.) Moreover, Judge Magit testified
6 that the warrant does limit how much data is collected in scope because, given the time
7 limitation and the remoteness of the area, there would likely be a relatively small amount
8 of data returned in response to it. The fact that the data returned from the warrant turned
9 out to be more voluminous than he apparently expected does not undermine the fact that
10 Judge Magit deliberated and found probable cause before issuing the warrant. Officer
11 Hernandez further noted in the affidavit that the killings appeared to have taken place at
12 night in a rural area, along with the fact that investigators found cell phones near the
13 victims and in their car found on the other side of Bridgeport, which also had blood in it.
14 (*Id.* at 9-11.) He otherwise noted that most people carry cell phones now, linking this to
15 the fact that cell phones were found near the bodies and in the abandoned vehicle using
16 the word "[a]dditionally." (*Id.*; *see also id.* at 11.) He thus (at least arguably) reasonably
17 inferred that whoever killed the deceased victims may have used cell phones, and
18 because of the time and location, finding out who was calling each other in a six hour
19 window around the time and near the location of the suspected killings would help him
20 find who may have done it. (*Id.*) The Court accordingly finds there was at least arguable
21 probable cause such that the good faith exception applies, and suppression is not
22 warranted. And as noted, the Court does not find that Judge Magit merely rubber-stamped
23 the application either.

24 **d. Whether Suppression is Otherwise Warranted**

25 The Court otherwise notes a reluctance to suppress evidence when courts declare
26 novel investigative techniques unconstitutional. *See, e.g., Smith*, 110 F.4th at 840 (“[W]e
27 cannot fault law enforcement’s actions considering the novelty of the technique and the
28 dearth of court precedent to follow.”); *Elmore*, 917 F.3d at 1078 (“This is particularly true

1 in light of the fact that in 2012, no circuit court had yet held the Fourth Amendment
2 applicable to CSLI data.”). And the Court appears to be the first court within the Ninth
3 Circuit to declare tower dump warrants unconstitutional general warrants. Even *Smith*,
4 which does not bind the Court, was not decided until 2024. See *generally* 110 F.4th 817.
5 Moreover, *Smith* is the first circuit decision finding geofence warrants unconstitutional.
6 This being the case, neither Sergeant Hernandez nor Judge Magit can reasonably have
7 been expected to refrain from seeking the warrant, or to refrain from issuing it, back in
8 2020. For this additional, alternative reason, the Court declines to suppress any evidence
9 obtained in response to warrant 20-SW-56.

10 And because the Court declines to suppress any evidence returned from warrant
11 20-SW-56, the Court also declines to suppress any evidence returned from the
12 approximately 90 (according to Spurlock) other warrants that may have relied at least in
13 part on evidence obtained in response to warrant 20-SW-56.¹⁷ In sum, the Court will deny
14 Spurlock’s motion to suppress tower dump data.

15 **B. Motion to Suppress Evidence from 27 Red Rock Drive**

16 Spurlock also moves to suppress any evidence collected from a warehouse he
17 was renting, which he identifies as 29 Red Rock Drive in his motion (ECF No. 257 at 1),
18 though the government clarifies in response that the correct address is 27 Red Rock Drive
19 (ECF No. 297 at 1 n.1).¹⁸ The Court will refer to it as 27 Red Rock Drive in this order
20 because that is the correct address.

21 Spurlock’s landlords’ daughter, H.M., who he corresponded with regarding the
22 lease and other details after moving out, gave law enforcement permission to search the
23 warehouse after she determined Spurlock had moved out. (ECF No. 257 at 3.) Spurlock
24 argues for the suppression of the evidence gathered during this search because he was

25 _____
26 ¹⁷For purposes of this order, the Court need not—and does not—make this finding.
27 But as Investigator Pelichowksi testified, the tower dump data was a starting point for he
28 and his colleagues to obtain cell data, which they then built upon to obtain more useful
information.

¹⁸Spurlock further confirms in reply that 27 Red Rock Drive is the correct address.
(ECF No. 328 at 1 n.1.)

1 living in the warehouse, so it was his residence entitled to Fourth Amendment protection,
2 and H.M. lacked both actual and apparent authority to consent to the search, rendering
3 the search unconstitutional. (*Id.* at 4-5.) The government counters that the evidence
4 shows Spurlock had already moved out, and his lease had been terminated, at the time
5 of the search, and that H.M. had both actual and apparent authority to consent to the
6 search. (ECF No. 297 at 2.) Because the Court agrees with the government that Spurlock
7 lacked a privacy interest in 27 Red Rock Drive at the time of the search—as even he
8 appeared to understand the lease had ended and he had moved out—and as further
9 explained below, the Court will deny the motion to suppress without addressing the actual
10 or apparent authority arguments.

11 3. Findings of Fact

12 On June 4, 2020, Spurlock signed a one-year lease with Hans and Velveth Marty
13 for about 3000 square feet of warehouse space at 27 Red Rock Road in Mound House,
14 Nevada. (ECF No. 297-1 at 3, 12.) The lease specifies that Spurlock was going to use
15 the warehouse for a furniture restoration business, and not anything else unless he got
16 the Marty's written consent, and the other use was lawful. (*Id.* at 3.) H.M. is the Marty's
17 daughter, and she lived with them in a house right next to the warehouse during the times
18 pertinent to this motion. (ECF No. 257 at 2, 297 at 2-3.) H.M. also corresponded with
19 Spurlock by email regarding the lease, including sending him a signed copy of the lease
20 on June 6, 2020. (ECF No. 297-2 at 2.)

21 On June 19, 2020, H.M. again corresponded with Spurlock by email to let him know
22 that they (she and her parents) could not let him keep an R.V. outside the warehouse.
23 (*Id.* at 3.)

24 H.M. also took notes about Spurlock and his associates who used the warehouse.
25 (ECF No. 297-3.) On June 23, she noted a fight between Spurlock, W.L., and others,
26 which concluded in the evening with W.L. apparently moving out. (*Id.* at 3-4.) As part of
27 that fight, she noted, “[w]e agreed to let [Spurlock] break the lease without paying for the
28 remainder of the term.” *Id.* at 3. On July 2, movers and later W.L. came back to gather

1 some more things from the warehouse. (*Id.* at 4.) On July 3, some men arrived in a semi
2 truck from Brand X and removed more things from the warehouse with a forklift. (*Id.*) They
3 left the lights on, and H.M. went into the warehouse that night to turn the lights off, finding
4 a ‘mostly empty shop.’ (*Id.*) On July 4, H.M. called W.L., and W.L confirmed he was done
5 moving out. (*Id.*)

6 This prompted H.M. to email Spurlock, telling him that W.L. moved out, but some
7 things had been left behind, and the warehouse sustained some damage she intended to
8 charge him for. (*Id.*; see also ECF No. 297-4 at 2-3.) She attached pictures of some of
9 the damage and items left behind to the email she sent Spurlock. (*Id.* at 2-6.) Spurlock
10 wrote back to her on July 5, 2020:

11 Have Hans call me as soon as possible. I'm wondering if this series of emails means you were trying to deduct the minor
12 cost of repairs out of the \$4950 (July's rent paid in advance/security deposit/last months rent) and then the remainder will
13 be returned to me? That's not what we agreed on upon our last conversation, do I'm confused. I'll speak to him seeing as
14 my contract is with him and his legal spouse.

15 (*Id.* at 7.)

16 Spurlock followed up on that email on July 11, 2020, writing:

17 Just following up with you. I have not received any response, so I'm wondering if I might need to inform my attorney that
18 this is escalating. If I am mistaken (and I sincerely hope I am), please just send me a signed copy of an AMICABLE lease
19 termination, and we can conclude our interaction. I hope to hear from Hans and/or receive said termination by Monday
20 evening. Thanks for your time.

21 (*Id.*)

22 The government otherwise alleges that Spurlock told W.L. over Signal in late June
23 or early July 2020:

24 I would go get those tubs full of your shit from the truck if I were you. They're
25 outside and there are a lot of fucking crackheads. Those people have the
26 keys to the shop and you can talk to them about getting all your tools down.
27 I terminated the lease. It's done. Don't ever fucking contact me again.

28 (ECF No. 302 at 4.)

On July 14, 2020, H.M. sent an email to Carson City Detective Sam Hatley inviting
him to come search the warehouse and collect any evidence from it before she and her
parents moved forward with leasing it to someone else. (ECF Nos. 297 at 3, 297-5 at 2.)

1 She mentioned in that email that a private investigator had come to visit her the day before
2 about a missing person, that she had noticed strange things happening while Spurlock
3 had leased the warehouse, and concluded the email by offering to assist law enforcement
4 in their investigation. (*Id.*) This is the email that led to the consent search Spurlock objects
5 to in his motion to suppress. (ECF No. 297 at 3.)

6 **4. Legal Analysis**

7 “[T]he demonstration of a legitimate expectation of privacy ‘is a threshold standing
8 requirement, and analysis cannot proceed further without its establishment.’” *United*
9 *States v. Singleton*, 987 F.2d 1444, 1449 (9th Cir. 1993) (quoting *United States v. Cruz-*
10 *Jimenez*, 894 F.2d 1, 5 (1st Cir. 1990)). “Where a defendant depends on a ‘reasonable
11 expectation of privacy,’ two elements must be met: (1) that he had ‘an actual (subjective)
12 expectation of privacy,’ and (2) that his subjective expectation is ‘objectively
13 reasonable’—i.e., that it is an expectation ‘that society is prepared to recognize as
14 ‘reasonable.’” *United States v. Fisher*, 56 F.4th 673, 686 (9th Cir. 2022) (citation omitted).
15 People who voluntarily abandon property lack standing to complain of its search or
16 seizure, and whether they have abandoned property presents a factual question focusing
17 on the person’s words, acts, or other objective indications that the person has
18 relinquished a reasonable expectation of privacy in the property at the time of the search
19 or seizure. *See id.* at 686.

20 Spurlock had voluntarily abandoned the warehouse at 27 Red Rock Road by the
21 time H.M. gave police permission to search it. After witnessing an argument between
22 Spurlock and W.L. (and others), H.M. had the impression from Spurlock and W.L. that
23 they were moving out, and she and her parents even told Spurlock he could break the
24 lease without penalty. (ECF No. 297-3.) W.L. confirmed to H.M. that he had moved out
25 by July 4, 2020. (*Id.* at 4.) H.M. emailed Spurlock that same day, and he emailed her back
26 on July 5, 2020, objecting that she was going to deduct money from an amount he had
27 paid that he himself characterized as “last months [sic] rent.” (ECF No. 297-4 at 7.)
28 Spurlock sent H.M. another email on July 11, 2020, following up on his apparent request

1 to get his whole security deposit back, requesting an ‘amicable’ lease termination. (*Id.*)
2 There is no evidence that H.M saw Spurlock on the property after June 23, 2020. And the
3 government otherwise alleges that Spurlock told W.L. on Signal sometime in late June or
4 early July that he had “terminated the lease.” (ECF No. 302 at 4.)

5 Taken together, this evidence establishes that Spurlock both subjectively believed
6 that he had terminated the lease on 27 Red Rock Road sometime before July 14, 2020,
7 and that he had objectively abandoned 27 Red Rock Road as well.¹⁹ Because he had
8 abandoned the property before H.M. even invited law enforcement officers to come
9 search the premises, Spurlock lacks standing to challenge the search that eventually
10 occurred. *See Fisher*, 56 F.4th at 685-88 (affirming denial of motion to suppress because
11 the defendants had voluntarily abandoned some digital devices containing unlawful
12 content in an attic crawl space when they sold the house that the police later discovered
13 the digital devices in after the purchaser of the house gave them permission to search it).
14 The Court will accordingly deny Spurlock’s motion to suppress evidence collected from
15 27 Red Rock Drive.

16 **III. CONCLUSION**

17 The Court notes that the parties made several arguments and cited to several
18 cases not discussed above. The Court has reviewed these arguments and cases and
19 determines that they do not warrant discussion as they do not affect the outcome of the
20 motions before the Court.

21
22 ¹⁹Spurlock argues in reply that he had not surrendered his rights under the lease
23 because the lease provided that a surrender would only be effective if the landlords sent
24 him a written acceptance of his surrender, but they never did. (ECF No. 328 at 2-5.)
25 However, the Court finds this argument unpersuasive because it is overly formalistic and
26 presents only one indicium factoring into an objective assessment of whether Spurlock
27 had objectively abandoned the property outweighed by the other indicia described herein
28 leading the Court to conclude that Spurlock had abandoned the property by the time H.M.
consented to a search. Indeed, Spurlock relies on *United States v. Sledge*, 650 F.2d 1075,
1080 (9th Cir. 1981) for the proposition that, “[i]f one who has abandoned property from
all outward appearances in fact has retained a subjective expectation of privacy, then a
search of the property is nevertheless valid if that expectation is intrinsically unreasonable
or not otherwise entitled to protection.” *Id.* (See also ECF No. 328 at 3.) But here, Spurlock
had subjectively abandoned the property as well. (ECF No. 302 at 4 (“I terminated the
lease.”).) *Sledge* is accordingly inapplicable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It is further ordered that Spurlock's motion to suppress tower dump data (ECF No. 254) is denied.

It is further ordered that Spurlock's motion to suppress evidence from 27 Red Rock Drive (ECF No. 257) is denied.

DATED THIS 11th Day of April 2025.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE