

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3095
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE RAY SPENCER,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CR 91 361 D)

(November 18, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

A criminal complaint was filed against George Ray Spencer alleging that he assaulted and robbed a U.S. Postmaster in Robert, Louisiana. The complaint was supported by the affidavit of B.W. Mason which attested to the following. Three witnesses implicated Spencer as the robber after identifying him in a photo spread. A criminal history check revealed that Spencer had prior arrests for

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

forgery and for numerous firearm violations. A grand jury charged Spencer with assaulting a U.S. postal officer with a dangerous weapon in violation of 18 U.S.C. § 2114 (Count 1), with knowingly using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. 924(c)(1) (Count II), and with being a felon in possession of ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count III).

Spencer filed a motion to sever Count III pursuant to Fed. R. Crim. P. 14, because the offense charged in that count was based on a different transaction than that set forth in the first two counts. After another suspect was identified as the robber, the Government filed a motion to dismiss Counts I and II, which the court granted.

Spencer was charged in a superseding indictment with being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Spencer filed a motion to dismiss the indictment, to dismiss prosecution, or for writ of habeas corpus, which the court denied without making findings of fact. Spencer also filed a motion to suppress all evidence. At trial, the court informed Spencer that he would not be permitted to argue to the jury that his arrest was illegal or that the evidence was illegally seized because the court had already ruled against

him on those issues.¹ The jury convicted Spencer on both counts. The court sentenced him to eighteen months of imprisonment.

I

Spencer, who proceeded pro se at trial and who is representing himself on appeal, complains that the court erred when it denied his motion to suppress. Specifically, Spencer complains that the warrants for his arrest and for the search of his residence and automobile were facially invalid because they did not state with particularity the person to be arrested or the place to be searched and because the warrants were not signed. Spencer alleges that the record on appeal has been tampered with and that B.W. Mason forged the magistrate judge's signature as part of a conspiracy.

"Generally in reviewing a district court's ruling on a motion to suppress based on testimony at a suppression hearing, the reviewing court accepts the district court's factual findings unless they are clearly erroneous or influenced by an incorrect view of the law." U.S. v. Kye Soo Lee, 962 F.2d 430, 435 n.17 (5th Cir. 1992), petition for cert. filed Oct. 19, 1992. The district court, however, did not make any factual findings regarding the determination of probable cause. If the determinative facts are undisputed, whether they establish probable cause is a question of law freely reviewable on appeal. Although the district court did not state whether it was denying Spencer's motion to suppress based

¹The record does not contain a prior order by the court denying Spencer's motion to suppress.

on the good-faith exception or a finding of probable cause, whether the good-faith exception applies and whether the search warrant was based on probable cause are legal issues which this Court must review de novo. See U.S. v. Kleinebreil, 966 F.2d 945, 949 n.8 (5th Cir. 1992).

In U.S. v. Leon, 468 U.S. 897, 922-23, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the Supreme Court held that evidence obtained by law enforcement officials acting in good-faith reliance upon a facially valid search warrant is admissible even though the affidavit on which the warrant was based was insufficient to establish probable cause. The Court noted four circumstances in which the good-faith exception would not apply: 1) where a magistrate is misled by information known to be false by the affiant or the falsity of which would have been known but for the recklessness of the affiant; 2) where the magistrate abandons his duties; 3) where the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and 4) where the warrant is so facially deficient that a presumption of its validity is unreasonable. Id. at 923; U.S. v. Webb, 950 F.2d 226, 229 (5th Cir. 1991), cert. denied, 112 S.Ct. 2316 (1992).

Review of a trial court's denial of a motion to suppress is a two-step process. The first step requires this Court to decide whether the Leon good-faith exception to the exclusionary rule

applies. If the good-faith exception applies, this Court need not reach the issue of probable cause. Kleinebreil, 966 F.2d at 949.

Spencer's argument that the warrants were facially invalid lacks a factual basis. The warrants were signed by a magistrate judge and were sufficiently particular. Additionally, Spencer has not shown that any of the exceptions set forth in Leon apply to his case. Nor does Spencer show that the officers failed to act in objectively reasonable good faith in executing the warrants. Mason's affidavit supplied enough evidence for the officers rationally to believe that Spencer was the individual who robbed the post office. Moreover, the issuance of a search warrant by a magistrate "normally suffices to establish good faith on the part of law enforcement officers who conduct a search pursuant to the warrant." U.S. v. Craig, 861 F.2d 818, 821 (5th Cir. 1988). Because the record supports that the officers acted in good faith, we need not reach whether the warrant lacked probable cause.

Spencer relatedly argues that the search and arrest warrants were invalid because they were based on the dismissed robbery charge and because the warrants were not based on the firearms offenses for which he was convicted. That the search warrant and arrest warrant were not issued specifically for the purpose of charging Spencer with the firearms violations is irrelevant. The officers executing the search warrant at Spencer's home found ammunition, and Spencer volunteered a pawn ticket for a .22 caliber rifle to authorities when they were executing the arrest warrant.

Spencer seems to make a fruit of the poisonous tree type of argument. The later dismissal of the robbery charge does not compel the conclusion that there was never probable cause to arrest Spencer for that offense or to search for evidence of that offense. The executing authorities could not be certain that the rifle and the ammunition were irrelevant to the commission of the robbery. It was known that Spencer had a record as a felon. Thus, the officers could seize the evidence of another crime that they discovered in the execution of the valid search and arrest warrants. See Crowder v. Sinyard, 884 F.2d 804, 821 (5th Cir. 1989) ("If, for example, a drawer is opened (in pursuit of an item listed in the warrant) and items appear in plain view such that their visible characteristics give the viewing officer probable cause to believe they are stolen, no additional search has occurred, and those items may be seized."), cert. denied, 496 U.S. 924 (1990); see also U.S. v. Antill, 615 F.2d 648, 649 (5th Cir.), cert. denied, 449 U.S. 866 (1980).

II

Spencer asserts that Fed. R. Crim. P. 14 was violated because Count III in the original indictment was improperly joined. This issue was rendered moot when the district court granted the Government's motion to dismiss the first two counts in the initial indictment.

III

Spencer argues that his arrest was illegal because he was arrested two hours after the officers searched his home and car and because he was arrested away from his house. Spencer was arrested pursuant to an arrest warrant, which, as discussed above, the officers executed in objective good faith. This argument is, therefore, without merit.

IV

In conclusion, we hold that none of the points raised in this appeal have any merit. The district court is therefore

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