

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-3738  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIE LEE SISTRUNK,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CR 92 153 L)

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March 29, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant, Willie Lee Sistrunk, pleaded guilty to one count of possession with intent to distribute cocaine and was sentenced to a prison term of 120 months. There was no written plea agreement, but Sistrunk preserved his right to appeal the denial of his suppression motion, which he addresses in this appeal. We find no error and affirm.

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<sup>1</sup>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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

In its written reasons explaining its decision to deny Sistrunk's motion to suppress, the district court made detailed factual findings. Sgt. Glen Davis of the Jefferson Parish Sheriffs' Office received a call from a law enforcement officer in Texas alerting him to the imminent arrival at New Orleans International Airport of an airline passenger named Robert Williams who was suspected of being involved in illegal activity. The law officer provided Davis with a physical description of Williams and the clothes he was wearing. Sgt. Davis also learned that Williams made a cash purchase of a one-way ticket for the flight from Los Angeles to New Orleans shortly before departure and that he had not checked any luggage.

Davis saw a man fitting Williams's description leave the plane carrying a garment bag and a smaller shoulder bag. This man was subsequently identified as Sistrunk. Sistrunk was one of the last people to depart the plane and seemed nervous as he briskly walked down the concourse to the lobby on the second floor of the airport. In the lobby Sistrunk stopped abruptly and looked around. Sgt. Davis, who was in civilian clothes, approached Sistrunk, identified himself as a police officer, and requested permission to speak with him. Sistrunk agreed to speak with the officer and stated several times that he was from Austin, Texas, and travelling to visit relatives in Alabama. A uniformed Sheriff's officer observed the

encounter between Sistrunk and Davis from approximately ten feet away.<sup>2</sup>

Sistrunk claimed that he had no identification on him and that he had left his tickets on the plane. In response to a question from Davis and apparently unaware of any contradiction, Sistrunk told Sgt. Davis that he had lived in Los Angeles for the last several years. At the evidentiary hearing Sistrunk stated that he had no objection to talking with Davis and that he had not wanted to leave during the interview.

Sistrunk told Davis that he had three pieces of checked luggage and that his traveling companion, Mr. Adams, was in possession of the baggage claim tickets. Sistrunk voluntarily agreed to accompany Davis to the baggage claim area. Davis's partner, a female officer also dressed in plain clothes, arrived and joined them. The uniformed officer followed the group. As Sistrunk and the officers were riding down the escalator to the baggage area Davis noticed Sistrunk make eye contact with a black man. Davis asked Sistrunk if the man was Adams and Sistrunk responded that it was not, and that Adams was a white man. Later Sistrunk admitted that Adams was black.

At the baggage claim area, Sistrunk said that Adams was not there and had apparently claimed the bags and left. At this point Sgt. Davis asked Sistrunk about the two bags he was carrying. Sistrunk replied that the larger garment bag belonged to him but

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<sup>2</sup> Described by Sistrunk as four to six feet, Sgt. Davis as seven to ten feet, and the district court as ten or 15 feet.

that the smaller bag was Adams's. According to Sistrunk, during the flight Adams handed him the bag and asked him to carry it off the plane. Sistrunk said that he did not know what was in the bag and handed it to Davis without any prompting. Davis asked if he could look inside the bag. Sistrunk agreed and stated that the officer could do what he wanted with the bag since it belonged to Adams. Inside the bag Davis discovered cocaine. Davis advised Sistrunk of his **Miranda** rights and placed him under arrest.

Sistrunk offered a slightly different version of the encounter. According to Sistrunk, the uniformed police officer was standing right next to him and not in the background, and he told Sgt. Davis that he was coming from Dallas where the plane had stopped over, not that he lived in Austin or Dallas. He also testified that he felt that he was not free to leave during the initial interview because the uniformed officer told him, "I don't want no running." Sistrunk also implied that he was compelled to accompany the officers to the baggage area. Both the magistrate and the district court credited the testimony of the police officers over that of Sistrunk.

## II.

Sistrunk appears to argue that the interview and search of his bag violated his Fourth Amendment rights because his consent was coerced by a show of force and he did not freely and voluntarily agree to either speak to Sgt. Davis or allow the officer to search his bag.

This court reviews the district court's fact findings under a clear error standard. **United States v. Castaneda**, 951 F.2d 44, 47 (5th Cir. 1992). The evidence will be viewed in the light most favorable to the party prevailing below absent inconsistency or mistake. **United States v. Maldonado**, 735 F.2d 809, 814 (5th Cir. 1984). In contrast, conclusions of law are reviewed **de novo**. **United States v. Richardson**, 943 F.2d 547, 549 (5th Cir. 1991).

The Government must prove that consent was voluntary by a preponderance of the evidence. **United States v. Yeagin**, 927 F.2d 798, 800 (5th Cir. 1991). "An appellate court is in no position to weigh conflicting evidence and inferences or to determine the credibility of witnesses; that function is within the province of the finder of fact." **U.S. v. Samples**, 897 F.2d 193, 198 (5th Cir. 1990) (quoting **Strauch v. Gates Rubber Co.**, 879 F.2d 1282, 1285 (5th Cir. 1989), **cert. denied**, 110 S.Ct. 841 (1990)).

The record supports the district court's conclusions that Sistrunk accompanied the officers voluntarily to the baggage claim area and then consented to the search of his hand luggage. Sistrunk argues primarily that the district court should have accepted his version of his encounter with the police. But as we state above, credibility determinations are within the province of the district court.

Because the underlying facts as found by the district court are fully supported by the record and support the district court's legal conclusion, its denial of Sistrunk's motion to suppress is affirmed.

AFFIRMED.