

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5605
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY DONNEL SMITH,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CR-368-1
- - - - -

March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Special Agent John Risenhoover learned from a confidential informant that Larry D. Smith was selling cocaine out of apartment 15-C of the East Park Place Apartments in San Antonio, Texas. According to the confidential informant, Smith was also carrying a firearm for protection. Risenhoover took the confidential informant to the general location of the apartment building, and the informant pointed out Smith's apartment as the downstairs apartment on the right corner of building 15.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

According to the informant, that apartment was "15-C." Risenhoover, however, was unable to verify that information with absolute certainty.

Risenhoover subsequently obtained a warrant to search Smith and "4619 Dietrich Road, Apartment 15-C." Therefore, Risenhoover led the search team to the apartment pointed out to him by the confidential informant. According to the district court's findings, which are plausible in light of the record, the doors of the apartment searched, as well as the surrounding apartments, were not clearly marked. During the search, Risenhoover learned that the apartment he and his team were searching was actually 15-D. Nevertheless, Risenhoover and his team searched only the apartment they intended to search--the downstairs apartment located on the south end of building 15. Smith now argues that evidence was obtained against him in violation of the Fourth Amendment. We disagree.

Because the affiant and the executing officer were the same person, "there was no possibility the wrong premises would be searched." See United States v. Gordon, 901 F.2d 48, 50 (5th Cir.), cert. denied, 111 S. Ct. 510 (1990). In addition, the evidence reflects that Risenhoover had the objectively reasonable belief that the warrant had been properly issued and that it comported with the Fourth Amendment. See United States v. Leon, 468 U.S. 897, 920-922, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). Nothing indicates that Risenhoover acted in bad faith. The district court, therefore, properly denied Smith's motion to suppress.

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AFFIRMED.