UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2019
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARVIN BELL,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR H 92-153-1)

(September 7, 1993)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Marvin Bell appeals his conviction upon a guilty plea of unlawful firearm possession by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

On July 2, 1990, Bell, a convicted felon, shot and killed an off-duty Harris County deputy sheriff with a .380 caliber Walther PPK semi-automatic handgun in the course of an attempted robbery. Two witnesses stated that a blue pickup truck with the name "Al" on its sides left the crime scene at high speed. Charlotte Watley, Bell's former girlfriend, informed Houston police officer Wayman Allen that someone named "Stanley" had told her that Bell and an individual named "Al" were involved in the offense. Watley further stated that Bell lived either with his parents or his new girlfriend, and that several weeks earlier he had stolen a handgun -- either .380 caliber or 9 mm. A further interview with Watley led police to Stanley Buckner. At the police station, Buckner informed authorities that he was with Bell and Alton Brown on the night of the murder, and that the three had gone to the apartment of Janice Wyatt, Bell's girlfriend.

Officer Allen set up surveillance at the home of Bell's parents and observed Bell arrive and depart in a blue pickup with "ground down spots" on its sides. Concerned that Bell would learn of Buckner's arrest and noting that he had attempted to conceal his involvement in the crime by removing markings from the truck, Allen considered Bell a flight risk and arrested him. At the police station Bell twice received **Miranda** warnings. He then admitted to the killing and informed police that he had left the murder weapon at Wyatt's apartment. Police searched Wyatt's apartment after obtaining her written consent. Wyatt directed investigators to a

Walther handgun later identified as the murder weapon.

The State of Texas prosecuted Bell for capital murder. A state court found that the officers violated Texas law by arresting Bell without a warrant and by failing to bring him promptly before a magistrate. It therefore excluded Bell's confession and the murder weapon as fruits of illegal police activity, and ordered a judgment of acquittal.

A federal grand jury subsequently indicted Bell for firearm possession by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The district court, after a hearing, denied Bell's *in limine* motion to suppress the confession and murder weapon.[1] Bell then entered a conditional guilty plea, reserving the evidentiary ruling for appeal. The district court accepted Bell's guilty plea and sentenced him to ten years imprisonment, a three-year supervised release term, and the statutory assessment. Bell timely appealed.

Analysis

On appeal, Bell concedes that probable cause, as required by the fourth amendment, supported his arrest and he does not challenge the district court's conclusion that Wyatt voluntarily

[1] With regard to the gun, the district court found that the officers who searched Wyatt's apartment did so on the basis of information obtained from sources other than Bell, and that the gun thus was not fruit of his arrest. The court further concluded that Bell lacked standing to complain of the search of Wyatt's apartment and that, in any event, Wyatt voluntarily consented to the search.

consented to the search of her apartment.[2] Rather, he urges that state authorities necessarily acted "unreasonably" within the meaning of the fourth amendment by violating Texas law in the course of his arrest. Thus, he claims that the district court erred in denying his motion to suppress the confession and murder weapon as fruits of an arrest unlawful under the fourth amendment. We disagree.

In federal prosecutions, the exclusionary rule requires suppression only of evidence obtained in violation of the fourth amendment.[3] Federal rather than state law governs that inquiry. Absent a fourth amendment violation, the exclusionary rule does not apply to evidence obtained by state officials in violation of state law. Thus, we have held the exclusionary rule inapplicable to evidence obtained by state officials in the course of a warrantless arrest supported by probable cause, notwithstanding any violation of Texas law.[4] Assuming *arguendo* that both the confession and murder weapon were fruits of Bell's arrest, the district court properly denied his motion to suppress them.[5] Our resolution of

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[2] We note in passing that the record fully supports that district court finding.

[3] **United States v. Walker**, 960 F.2d 409 (5th Cir. 1992).

[4] **Id.**

[5] Bell suggests that permitting use in federal prosecutions of evidence obtained by state officials in violation of state law would undermine the state's ability to control the conduct of its officers, implicating the tenth amendment. This argument fails to persuade. Although evidence obtained in violation of state law may be used in federal prosecutions, states remain free to preclude the use of such evidence in their own courts, or to provide other sanctions and remedies designed to encourage conformity with state

that issue moots Bell's remaining contention regarding his standing to challenge the search of Wyatt's apartment.

The judgment of the district court is AFFIRMED.

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law. Thus, permitting use in federal prosecutions of evidence obtained by state officers in violation of state law does not significantly interfere with the ability of states to control the conduct of their law enforcement officers, assuming *arguendo* that such interference would violate the tenth amendment.