

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4442
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE LOYCE FORD,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:92CR147
- - - - -

(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Joe Loyce Ford argues that the district court erred in denying his motion to suppress because it was involuntary and obtained through a "fraudulent inducement that any of the statements could be used by the defendant in court." When reviewing a ruling on a suppression hearing, this Court gives credence to the credibility choices and the findings of fact made by the district court unless they are clearly erroneous. United States v. Restrepo, 994 F.2d 173, 183 (5th Cir. 1993). A finding

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been committed. United States v. Ornelas-Rodriguez, 12 F.3d 1339, 1347 (5th Cir. 1994) (internal quotation and citation omitted). The ultimate issue of voluntariness, however, is a legal question subject to a de novo review. Id.

This Court must then determine whether the confession is voluntary, "taking into consideration the totality of the circumstances, the statement [must be] the product of the accused's free and rational choice." Id. (internal quotations and citations omitted). The confession must be the result of a free and deliberate choice and must be made with an awareness of the rights being abandoned and the consequences of that decision. Id. Whether the statement was voluntary is dependent on the particular fact scenario, must be reviewed on a case-by-case basis, and may turn upon a credibility decision. Id.; see also Restrepo, 994 F.2d at 185.

An independent review of the sentencing transcript confirms that the district court's findings of fact were not clearly erroneous and were supported by the testimony of Deputy Lovell and Agent Sinclair at the suppression hearing. They established that, prior to the interview, Ford had been read his rights aloud twice, Ford understood his rights and wanted to proceed with the interview, Ford was not under the influence of drugs or alcohol, the questioning took place in a nonconfrontational atmosphere over a relatively short period after Ford's arrest, Ford was not

threatened or induced, and at no time did Ford request an attorney or that the questioning stop.

Although Ford now contends that he was tricked into cooperating, he does not articulate any specific promises and grounds his argument only on Agent Sinclair's response during cross-examination at the suppression hearing that any statements he made could be used for or against him. The district court did not err in denying Ford's motion to suppress because the Government carried its burden of showing by a preponderance of the evidence that under the totality of the circumstances, Ford's statement was voluntarily given and not the product of a misleading promise. See United States v. Menesses, 962 F.2d 420, 428 (5th Cir. 1992) (noting that a confession "induced by an assurance that there will be no prosecution is not voluntary" but refusing to suppress statement because evidence did not suggest that the defendant "was acting under what she considered to be a promise that her husband would go free if she cooperated"); see also United States v. Rojas-Martinez, 968 F.2d 415, 418 (5th Cir. 1992) (finding confession voluntary where "officers made no statements to the defendants that could be construed as a promise" and facts "d[id] not give rise to an inference that the officers were trying to make the defendants believe that they would be released if they confessed"), cert. denied, 113 S.Ct. 828 (1993).

AFFIRMED.