

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8125
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD C. RODRIGUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-92-CR-295
- - - - -
(October 28, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

In accord with his conditional guilty plea agreement, Richard C. Rodriguez appeals the district court's denial of his motion to suppress evidence seized during the execution of a search warrant. He contends that the "conclusory" form affidavit submitted in support of the warrant application was insufficient to establish probable cause and thus to support the issuance of a warrant.

This Court reviews the district court's denial of a motion

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to suppress evidence seized pursuant to a warrant to determine (1) whether the good-faith exception to the exclusionary rule applies, see United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); and 2) whether the warrant was supported by probable cause. United States v. Satterwhite, 980 F.2d 317, 320 (5th Cir. 1992). If the good-faith exception applies, it is unnecessary to address the probable cause issue unless the case involves a "novel question of law whose resolution is necessary to guide future action by law enforcement officers and magistrates." Id. (quoting Illinois v. Gates, 462 U.S. 213, 264, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) (White, J., concurring)).

"[E]vidence obtained by officers in objectively reasonable good-faith reliance upon a search warrant is admissible, even though the affidavit on which the warrant was based was insufficient to establish probable cause." Satterwhite, 980 F.2d at 320 (citing Leon, 468 U.S. at 922-23). If the affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," it is referred to as a "bare bones" affidavit; and this rule does not apply. Id. (internal quotation and citation omitted). "`Bare bones' affidavits contain wholly conclusory statements which lack the facts and circumstances from which a magistrate can independently determine probable cause." Id. at 321. "Where a warrant is supported by more than a bare bones affidavit, an officer may rely in good faith on the warrant's validity." United States v. Pofahl, 990 F.2d 1456, 1474 (5th Cir. 1993). This court reviews

de novo the reasonableness of an officer's reliance upon a warrant issued by a magistrate. Satterwhite, 980 F.2d at 321.

We agree that, in this case, "the use of a form is a non-issue." We are not convinced that the use of a form per se subverts the Fourth Amendment. Ramirez relies on Brown v. State, 437 S.W.2d 828, 829 (Tex. Crim. App. 1968), cert. denied, 393 U.S. 1089 (1969) to support his position. However, even the court in Brown limited its condemnation of a form to the use of "one model affidavit to fit all situations." Brown, 437 S.W. 2d at 829. Further, it is not clear from Brown that the decision was a studied analysis of Fourth Amendment law or was only an application of Texas jurisprudence.

Although the affidavit was concise and could have included more information, it included "facts and circumstances" and was not merely a "bare bones" affidavit. Moreover, the veracity and basis of knowledge of the informant were established in the affidavit. See Satterwhite, 980 F.2d at 321 (quoting Gates, 462 U.S. at 242). Because there is no showing that the officer's reliance on the search warrant issued by the magistrate was not objectively reasonable, the good-faith exception to Leon's exclusionary rule applies.

Because the good-faith exception applies, the Court need not address Ramirez remaining arguments as they bear on the issue of probable cause. See Satterwhite, 980 F.2d at 320; see also Gates, 462 U.S. at 230-31.

AFFIRMED.