

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10829  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODRIGO RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Northern District of Texas  
(3:94 CR 021 H)

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June 20, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appellant-Defendant Rodrigo Rodriguez ("Rodriguez") appeals his conviction for possession with intent to distribute and to distribute marijuana in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Specifically, Rodriguez contends that the district court erred by denying Rodriguez's motion to suppress evidence

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

obtained during the search of his truck and the warehouse, and by denying Rodriguez's motion to suppress his confession. Finding no reversible error, we affirm.

#### FACTS AND PROCEDURAL HISTORY

A confidential informant notified Drug Enforcement Administration ("DEA") Agent David Moser ("Moser") that he expected a shipment of marijuana to be delivered on February 20, 1993, to Sutton Fruit and Produce Company in Dallas, Texas. According to the confidential informant, the marijuana was to be brought from the "valley of Texas" in a "cover load" of produce in a tractor-trailer truck; upon delivery to the Sutton Produce warehouse, the marijuana was to be divided into smaller amounts and transported to a local stash house by van or truck. Moser testified that he commenced surveillance of the warehouse at 6:00 a.m. on February 20th; the tractor-trailer arrived at approximately 2:00 p.m. that day; approximately fifteen minutes after the arrival of the tractor-trailer truck, a blue van drove up and parked across the street from Sutton Produce warehouse; several Hispanic men got out of the van and went inside the warehouse.

Using a transmission device from inside the warehouse, the confidential informant signalled Moser that the marijuana was being unloaded. The agents entered the warehouse and detained everyone there, including Rodriguez. Shortly thereafter, Moser left the warehouse and went to the Dallas County Sheriff's Department to draft the search warrant; before leaving the warehouse, Moser told Agent Gary Jackson ("Jackson") that he was leaving Jackson in

charge of the scene, that he would call Jackson when a warrant had been obtained, and that no search should be conducted until a warrant was signed by a judge. At approximately 5:25 p.m., Moser contacted Jackson using a cellular phone and informed him that the warrant had been signed. The agents found marijuana in pallets of produce removed from the tractor-trailer truck. Jackson testified that after the marijuana was discovered, the detainees were arrested.

Rodriguez testified that, when the agents placed him in the car to transport him to the jail, one of them told him, "You know your rights." Rodriguez further testified that he did not recall that any further warnings were made. Dallas County Deputy Sheriff George Arrieta ("Arrieta") testified that he participated in the arrest of Rodriguez; that he read Rodriguez his Miranda<sup>1</sup> rights; that Rodriguez indicated that he understood English and the warnings that had been given him; that Rodriguez signed and dated the interview card; and that Rodriguez seemed "very willing to talk." Dallas County Deputy Sheriff Nathan Wilson ("Wilson") testified that he was also part of the arrest team, that he interviewed Rodriguez at about nine o'clock the night of the arrest, that he observed Arrieta read the Miranda warnings to Rodriguez, and that he observed Rodriguez indicate that he understood his rights. Wilson asked Rodriguez if had "anything to say." Rodriguez told him that a man asked him if he would take a load of marijuana to Dallas along with his regular produce for \$

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<sup>1</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

5,000. Rodriguez then declined to write a statement and indicated that he wanted to speak with a lawyer. Wilson terminated the interview.

After a hearing, the district court denied Rodriguez's motion to suppress the evidence, determining that probable cause supported the affidavit underlying the issuance of the warrant, that the warrant was obtained before the search took place, and that the warrant's authorization to search the premises included authorization to search any vehicle located within the premises if the object of the search might be located therein. The district court also determined, after a hearing, that Rodriguez's motion to suppress his confession should be denied because the confession was made voluntarily after appropriate Miranda warnings had been given. Following Rodriguez's conviction on the above counts, the district court sentenced him to a sixty-month term of imprisonment.

#### I. The Evidence From The Search

Rodriguez contends that the search warrant was not supported by probable cause because the underlying affidavit was based on information from a confidential informant and "[t]here was no evidence presented to Magistrate Judge Hampton which demonstrated the informant's veracity." Rodriguez also argues that, in conflict with Moser's testimony at the suppression hearing, his report (made contemporaneously with the arrests) states the search of the tractor-trailer occurred at approximately 4:30 p.m.; Rodriguez asserts that the search was therefore unconstitutional because the warrant was not issued until approximately 5:21 p.m.

We review the denial of a motion to suppress evidence seized pursuant to a warrant to determine, first, whether the good-faith exception to the exclusionary rule applies and, second, whether the warrant was supported by probable cause. United States v. McCarty, 36 F.3d 1349, 1356 (5th Cir. 1994). If the good-faith exception applies, a determination of the second prong is usually unnecessary. Id. "[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." United States v. Satterwhite, 980 F.2d 317, 320 (5th Cir. 1992). If the affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," the affidavit is a "bare bones" affidavit and the good-faith exception does not apply. Id. (internal quotation marks and citations 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. Review of the reasonableness of an officer's reliance on a warrant is *de novo*. Id.

The search warrant was supported by the affidavit of Dallas County Deputy Sheriff Armando Camarillo. The affidavit recites that (1) on February 19, 1993, Moser and DEA Agent Robert Hampton met with a confidential informant who advised them that he expected a shipment of marijuana to be delivered to the Sutton Produce warehouse the next day; (2) "the load of marihuana [sic] was to be

concealed in a load of vegetables and delivered in a semi-tractor trailer truck"; (3) "[t]he truck would be a blue Kenworth" bearing the name "Gonzales Trucking"; (4) the marijuana was to be hidden inside the vegetable boxes in the trailer of the truck; (5) after its delivery to the warehouse, the marijuana was to be "transloaded into vans and pickups . . . [and] transported elsewhere to be unloaded. The confidential informant also informed the agents that he had participated in unloading 14 to 15 loads of marijuana in the past 24 months in the same manner. The affidavit further recites that, on February 20th, DEA agents and Dallas County Sheriff's Department deputies conducted surveillance at the Sutton warehouse; at approximately 2:30 p.m. that afternoon, they observed a 1985 blue Kenworth tractor-trailer truck inscribed with the name "Gonzales Brothers Produce" arrive at the warehouse. "This information provided the magistrate [judge] with facts, and not mere conclusions, from which he could determine probable cause." Satterwhite, 980 F.2d at 321. Although Rodriguez is correct in pointing out that there is no evidence that the confidential informant had given accurate information in the past, the affidavit in the present case does not rely completely on information provided by the informant as the surveillance corroborated the statements. See United States v. Broussard, 987 F.2d 215, 222 (5th Cir. 1993), *abrogated on other grounds by* J.E.B. v. Alabama ex rel. T.B., 114 S. Ct. 1419 (1994); see also United States v. Fisher, 22 F.3d 574, 578-79 (5th Cir.), *cert. denied*, 115 S. Ct. 529 (1994). Moreover, Rodriguez's suggestion that the confidential informant's

information was not supported by evidence of the informant's veracity and reliability is unavailing. A confidential informant's statements made against his own penal interests, i.e., that he participated in the unloading of 14 to 15 other loads of marijuana, "amounts to substantial corroboration." United States v. McKeever, 5 F.3d 863, 865 (5th Cir. 1993). Accordingly, the district court committed no error by denying Rodriguez's motion to suppress.

Rodriguez's assertion that the search was unconstitutional because Moser's report indicates that the search took place at 4:30, and the warrant was not issued until 5:21, is similarly meritless. The district court determined that the 4:30 p.m. reference in Moser's report was a typographical error; the evidence supports the determination because Moser testified at the suppression hearing that he instructed Jackson, whom he left in charge at the warehouse, that the search should not begin until a warrant was secured, that he secured the warrant at 5:21 p.m., and that he used a cellular phone to contact Jackson and inform him that the warrant had been secured. Jackson testified that he did not begin the search of the tractor-trailer truck until he received the authorization from Moser at approximately 5:30 p.m.

## II. The Confession Evidence

Rodriguez further asserts that his confession should have been suppressed "because no Miranda warnings were given and such statements were therefore involuntary." According to Rodriguez, the district court erred by allowing the confession in view of the

Government's failure to produce the interview card demonstrating that Rodriguez was informed of his rights because "any self-serving testimony that Rodriguez was read his Miranda warnings and signed and dated the interview card should not be believed." Rodriguez notes that the Dallas County Sheriff's Department instructs its officers on the importance of maintaining the cards through the trial.

"The ultimate issue of voluntariness . . . is a legal question, subject to *de novo* review." United States v. Restrepo, 994 F.2d 173, 183 (5th Cir. 1993). The district court's findings of fact and credibility choices leading to that conclusion, however, are reviewed for clear error. Id. This standard is employed because of "the opportunity of the trial court to judge the credibility of the witnesses." United States v. Botello, 991 F.2d 189, 194 (5th Cir. 1993) (internal quotations and citations omitted), *cert. denied*, 114 S. Ct. 886 (1994).

The standard for determining whether a confession is voluntary is whether, taking into consideration the "totality of the circumstances," the statement is the product of the accused's "free and rational" choice. . . . A confession does not occur in a vacuum but is a response to a particular fact scenario. . . . Therefore, the issue of whether a confession was voluntary must be reviewed on a case-by-case basis.

United States v. Ornelas-Rodriguez, 12 F.3d 1339, 1347-48 (5th Cir.) (citations omitted), *cert. denied*, 115 S. Ct. 103 (1994). A defendant is entitled to a fair suppression hearing to determine the underlying facts. Jackson v. Denno, 378 U.S. 368, 376-77 (1964).



The district court held a hearing on Rodriguez's motion to suppress his confession. Rodriguez testified that, when the agents placed him in the car to transport him to the jail, one of them told him, "you know your rights." Rodriguez further testified that he did not recall that any further warnings were made. Arrieta testified that he participated in the arrest of Rodriguez; that he read Rodriguez his Miranda right; that Rodriguez indicated that he understood English and the warnings that had been given him; that Rodriguez signed and dated the interview card; and that Rodriguez seemed "very willing to talk." Wilson testified that he was also part of the arrest team, that he interviewed Rodriguez at about nine o'clock the night of the arrest, that he observed Arrieta read the Miranda warnings to Rodriguez, and that he observed Rodriguez indicate that he understood his rights. Wilson asked Rodriguez if he had "anything to say." Rodriguez told him that a man asked him if he would take a load of marijuana to Dallas along with his regular produce for \$ 5,000. Rodriguez then declined to write a statement and indicated that he wanted to speak with a lawyer. Wilson terminated the interview. The district court determined that the confession was made voluntarily after appropriate Miranda warnings had been given.

Rodriguez has produced nothing to show that the district court's credibility choices were clearly erroneous; based on these findings, the district court did not err in concluding that the totality of circumstances showed that Rodriguez's confession was voluntary. See United States v. Bass, 10 F.3d 256, 258-59 (5th

Cir. 1993) (district court's credibility determination in favor of deputies' testimony at suppression hearing was not clearly erroneous).

#### CONCLUSION

For the foregoing reasons, Rodriguez's conviction is AFFIRMED.