IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60056
Summary Calendar

United States of America,

Plaintiff-Appellee,

versus

Raul Araguz-Ramirez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-B-93-113-02)

(February 22, 1995)

Before JOHNSON, GARWOOD and DAVIS, Circuit Judges.[*]

JOHNSON, Circuit Judge:

Defendant appeals contending that evidence seized pursuant to two search warrants should have been suppressed as the warrants were allegedly not supported by probable cause. In addition, Defendant appeals his sentence arguing that the four-level increase imposed under U.S.S.G. § 2K2.1(b)(5) was improper. Finding no reversible error, we AFFIRM.

I. FACTS AND PROCEDURAL HISTORY

On July 12, 1993, a confidential informant advised U.S.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Customs Agents that Raul Araguz-Ramirez ("Araguz") and co-defendant Rafael Ledezma had recently smuggled approximately 100 kilograms of marijuana into the U.S. from Mexico. According to the informant, Ledezma and Araguz, on July 15, sold approximately twenty-two pounds to an unknown third party in El Ranchito, Texas. To effect this sale, Araguz had sent his brother, co-defendant Victor Araguz, to retrieve the drugs from a "stash house" located at 104 Elda Drive in Brownsville.[1]

On July 17, at about 7:00 a.m., law enforcement officials, with a warrant based on information from the informant, searched the residence at 104 Elda Drive. As a result of this search, officers seized approximately eighty-eight pounds of marijuana, a scale, two fully loaded Intratec 9mm pistols, one 7.65 MD-74 handgun and extra ammunition. Co-defendants Victor Araguz and Esteban Narvaez were also arrested at this location.

At about the same time, and again with a warrant based on information from the informant, officers searched Ledezma's residence at 6364 North Dakota in Brownsville. At that location, officers seized a fully loaded Smith and Wesson 9mm handgun, two scales, a spoon with possible cocaine residue, and additional ammunition.

At approximately 9:30 a.m., law enforcement authorities arrived at Araguz' address at 2447 E. Harrison. After an intense search, they found Araguz hiding underneath a bed in one of the bedrooms. In Araguz's pants was $3,700 in U.S. currency. Also,

[1] This residence belonged to Araguz' parents.

officers seized Araguz' 1985 Dodge Ram Charger. In the vehicle, the agents discovered a fully loaded 9mm Baretta semi-automatic handgun and fifteen rounds of ammunition.[2]

Araguz was indicted on September 28, 1993, in a multi-count indictment along with Ledezma, Narvaez and his brother Victor. This indictment contained numerous drugs and weapons charges.

Along with several other pre-trial motions, Araguz moved to suppress the evidence of the marijuana and the firearms contending that the affidavits supporting the issuance of the warrants failed to state sufficient probable cause. The district court denied this motion, though. Thereafter, Araguz entered a conditional plea of guilty retaining only the right to appeal the ruling on the suppression of evidence.

In return for the dismissal of the other counts and the government's agreement to limit its proof to forty-eight kilograms of marijuana, Araguz pled guilty to counts two and ten of the indictment. Thus, Araguz was convicted of possession, with intent to distribute, marijuana and of being a felon in possession of a firearm.

At sentencing, the PSR included in the calculation of Araguz' offense level for the felon in possession of a firearm count a four level increase under U.S.S.G. § 2K2.1(b)(5) for possessing the firearm in connection with another felony offense.

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[2] It is not entirely clear where this vehicle was found. The PSR seems to suggest that it was found at Araguz' residence on E. Harrison. However, the search warrant for Ledezma's residence on North Dakota reflects that a Dodge Ram Charger was parked there.

Araguz objected to that increase arguing that there was an insufficient connection between the possession of the firearm and the drugs. The district court overruled that objection, however, and adopted the PSR's position as to the enhancement. Accordingly, the district court sentenced Araguz to one hundred months of incarceration for each count, the sentences to run concurrently. Araguz appeals his conviction and sentence.

II. DISCUSSION

A. The Motion to Suppress

Araguz argues that the evidence seized pursuant to the two warrants should have been suppressed because the warrants were not supported by probable cause. Specifically, he contends that the affidavits supporting the warrants failed to demonstrate the credibility and reliability of the information provided by the confidential informant. Also, because the warrants were issued by the State of Texas and executed by state officers, he argues that Texas law, rather than federal law, applies.

The district court was correct, though, in finding that federal law, and not Texas law, applies. Whether evidence seized by "state officers and used against a defendant in a federal trial was obtained by unreasonable search and seizure is to be judged as if the search and seizure had been made by federal officers." *United States v. Staller*, 616 F.2d 1284, 1889 n.7 (5th Cir.), *cert. denied*, 101 S.Ct. 207 (1980) (quoting *Preston v. United States*, 376 U.S. 364, 366, 84 S.Ct. 881, 883 (1974)). Hence, whether the officers executing the search failed to comply

with state standards does not control admissibility in federal court. *United States v. Singer*, 943 F.2d 758, 761 (7th cir. 1991). Instead, federal standards control and evidence is admissible if it is obtained in a manner consistent with the protection afforded by the U.S. Constitution and federal law.[3] *Id.*

We review a district court's denial of a motion to suppress premised on a lack of probable cause to determine 1) whether the good faith exception to the exclusionary rule applies and 2) whether the warrant was supported by probable cause. *United States v. Pofahl*, 990 F.2d 1456, 1473 (5th Cir.), *cert. denied*, 114 S.Ct. 266 (1993); *United States v. Laury*, 985 F.2d 1293, 1311 (5th cir. 1993). Generally, if the good faith exception applies, we need not reach the probable cause issue. *United States v. Mitchell*, 31 F.3d 271, 275 (5th Cir. 1994).

Under the good faith exception, we uphold a search if the officers reasonably relied on a warrant. *United States v. Fisher*, 22 F.3d 574, 578 (5th Cir.), *cert denied*, 115 S.Ct. 524 (1994). "Warrants on affidavits 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable' do not fall within this exception." *Id.* (quoting *United States v. Satterwhite*, 980 F.2d 317, 320 (5th Cir, 1992)). But, where a warrant "is supported by more than a

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[3] *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437 (1960), is not to the contrary. That case held that federal authorities may not use evidence seized by state officers in violation of *federal* standards.

bare bones affidavit, an officer may rely in good faith on the warrant's validity." *Mitchell*, 31 F.3d at 275 (quoting *Laury*, 985 F.2d at 1311). We review the reasonableness of the officers' reliance on a warrant *de novo*. *Satterwhite*, 980 F.2d at 321. In this case, we find that the warrants, and the affidavits supporting them, were sufficient to satisfy the good faith exception.

The search warrants were supported by the affidavits[4] of a narcotics officer with many years of experience. The affiant stated that he had received information from a credible and reliable confidential informant, who had provided assistance to narcotics investigators in the past. These assertions sufficiently establish the informant's veracity. *United States v. McKnight*, 953 F.2d 898, 905 (5th Cir.), *cert. denied*, 112 S.Ct. 2975 (1992).

Moreover, the affidavits stated that the informant had observed the defendant and Ledezma in possession of marijuana at both locations to be searched within twenty-four hours preceding the affidavits. This is sufficient to demonstrate the basis of the informant's knowledge. *Satterwhite*, 980 F.2d at 322. Finally, the informant described the activity taking place at each location, identified two vehicles with secret compartments used to transport the drugs and stated that the drugs were to be delivered to a location in Florida. These details show an inside

[4] With the exception of the address to be searched and the identification of the vehicles, the affidavits supporting the issuance of the warrants were the same.

knowledge of the drug operation as, indeed, this informant was working within the organization.

In light of this, we conclude that the affidavits supporting the warrants were more than "bare bones" affidavits and thus the officers could reasonably rely on the warrants. Hence, Araguz' argument fails. Moreover, as the good faith exception supports the district court's denial of the motion to suppress, there is no need for this Court to decide whether, in fact, probable cause did exist.

B. The Sentencing Enhancement

Araguz pled guilty to count ten of the indictment which charged him with being a felon in possession of a firearm. The firearm that was the subject of count ten was the 9mm Baretta found in the Dodge Ram Charger. In calculating Araguz' sentence on this count, the district court imposed a four-level enhancement pursuant to U.S.S.G. § 2K2.1(b)(5). This section provides for a four-level enhancement if the defendant "used or possessed any firearm. . . in connection with another felony offense. . . ." *Id.*

In reviewing challenges to sentences, this Court examines *de novo* the district court's application of the Guidelines, but we accept the factual findings unless they are clearly erroneous. *United States v. Fitzhugh*, 984 F.2d 143, 146 (5th Cir.), *cert. denied*, 114 S.Ct. 259 (1993). In this case, the district court found that Araguz possessed the firearm in connection with the possession of marijuana.

This finding was clearly erroneous, Araguz contends, because he was arrested, and the firearm was found, at a different time and location from the "drug offense." In specific, Araguz asserts that the "drug offense" was limited to his possession of the marijuana at the sale to the third party on July 15th in El Ranchito. His arrest, and the time when the gun was found, was not until July 17th, two days later. Further, the arrest and the seizing of the gun occurred in Brownsville, fourteen miles away. Accordingly, relying on *United States v. Vasquez*, 874 F.2d 250 (5th Cir. 1989), Araguz argues that there was not a sufficient connection between the drug offense and the possession of the weapon.

There is no merit in Araguz' contention. First, the "drug offense" in this case was not limited to the sale in El Ranchito on July 15th. Araguz pled guilty to count two of the indictment which alleged that from on or about July 15th, to on or about July 17th, Araguz and his co-defendants knowingly and intentionally possessed marijuana. This would include not only the marijuana at the sale, but also the marijuana found at his parents' house at 104 Elda Drive on July 17th.[5]

Next, Araguz' reliance on *Vasquez* is misplaced.[6] In

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[5] It was from this location that Araguz brother, at Araguz' instruction, retrieved the marijuana for the El Ranchito sale.

[6] *Vasquez* dealt with an enhancement under § 2D1.1(b). The instant case involves an enhancement under § 2K2.1(b)(5). Although similar policy concerns underlie both of these sections, they are not the same. *United States v. Condren*, 18 F.3d 1190, 1197 (5th cir. 1994). Accordingly, even if we concluded that *Vasquez* was factually similar to the instant case, it would not

Vasquez, the defendant was arrested, at the scene, when he tried to purchase drugs from an agent in a parking lot remote from his residence. *Id.* at 251. A search later that day of the defendant's apartment produced drug paraphernalia, large amounts of cash and a firearm, but no drugs. On appeal, the defendant alleged that his enhancement, under a version of U.S.S.G. § 2D1.1(b)(1) that required that the weapon be possessed during the commission of the offense, was improper. Finding that there was no showing that the drugs and the weapon were ever less than several miles apart, the *Vasquez* Court agreed and vacated the sentence. *Id.*

Here, by contrast, it is most likely that the firearm found in Araguz' Dodge Ram Charger was present with the drugs during the relevant times. The Ram Charger was one of the vehicles identified as having a secret compartment to carry the drugs. Moreover, the Ram Charger was the vehicle used to transport twenty-two pounds of marijuana to the sale at El Ranchito.[7] It seems unlikely that Araguz was careful to remove the gun from the

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necessarily be controlling.

[7] In *United States v. Otero*, 868 F.2d 1412 (5th Cir. 1989), the defendant sold cocaine to undercover agents at the defendant's hotel room. A later search of the defendant's van in the parking lot revealed a handgun and ammunition, but no drugs. *Id.* at 1413. Even though the record did not show that the defendant possessed a firearm when he was arrested with the drugs, this Court determined that the district court's factual conclusion that the defendant constructively possessed a weapon during the commission of the offense was not clearly erroneous. This was because the district court found that the defendant had used the van in which the firearm was located to transport the drugs. *Id.* at 1415. Thus, the enhancement under § 2D1.1 was proper.

Ram Charger whenever it was used for drug-related activities as the defendants were clearly not shy about having guns around the drugs. At Araguz' parents' residence on 104 Elda Drive, where eighty-eight pounds of marijuana was stored, two fully loaded Intratec 9mm pistols and one 7.65 MD-74 handgun were seized.

All that an enhancement under section 2K2.1(b)(5) requires is that the defendant possess the gun "in connection with" another felony. That phrase is to be given its ordinary and natural meaning. *Condren*, 18 F.3d at 1198. In this case, Araguz pled guilty to possessing a gun that was found in his vehicle that was used to transport, to locations where he was present, drugs that he pled guilty to possessing. Under these facts, we cannot say that the district court clearly erred in concluding that Araguz possessed the firearm in connection with the possession of marijuana. *See Id.* (upheld enhancement under § 2K2.1(b)(5) where loaded weapon found in the same location where drugs were found); *Otero*, 868 F.2d at 1415 (upheld § 2D1.1(b) enhancement where drugs found in hotel room and weapon found in van in parking lot where van was used to transport drugs). Accordingly, there was no error in imposing this enhancement.

III. CONCLUSION

For the reasons stated above, the judgment of the district court is AFFIRMED.