UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-60247
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOEL LOPEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(93-CR-199-1)

September 1, 1995

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:[1]

Lopez appeals the district court's denial of a motion to suppress evidence seized pursuant to a search warrant which he claims is insufficient to support either probable cause or the good-faith exception to the exclusionary rule. We affirm.

I.

Joel Lopez was arrested after a search warrant was executed at his business, resulting in the seizure of weapons and illegal

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

drugs. He filed a motion to suppress the evidence seized, alleging the affidavit supporting the search warrant was insufficient to support probable cause or a good-faith exception. In the affidavit, Alvarez relied upon information gathered by an unknown informant which was reported to Alvarez by a known, previously reliable, confidential informant.

The district court denied the motion to suppress. Lopez entered an agreement to plead guilty to possession with intent to distribute marijuana and to being a felon in possession of a firearm. In the plea agreement, Lopez reserved the right to appeal the denial of his motion to suppress.

Although confusion exists concerning the affidavit attached to support the motion to suppress, the record indicates the district court considered the complete and correct affidavit before denying the motion. The government had a copy of the complete affidavit and was not prejudiced by the mistake.[2] The parties do not dispute the contents of the affidavit. Thus, the sole issue on appeal is whether the information contained in the affidavit used to support the search warrant is so insufficient as to require suppression of the evidence seized during the search.

II.

We review a district court's denial of a motion to suppress evidence seized pursuant to a warrant by engaging in a two-step inquiry. United States v. Satterwhite, 980 F.2d 317, 320 (5th Cir.

[2]The government also argues the record on appeal is incomplete. A review of the supplemented record indicates a complete record, thus permitting a review of appellant's points of error.

1992) These steps are to determine (1) whether the good-faith exception to the exclusionary rule applies, see United States v. Leon, 468 U.S. 897, 922-23 (1984); and (2) whether the warrant was supported by probable cause. Satterwhite, 980 F.2d at 320. If the good-faith exception applies, however, 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 (1983) (White, J., concurring)). The issue of sufficiency to establish probable cause in an affidavit based on hearsay is not novel.[3] Thus, if the good-faith exception applies, the inquiry is ended.

"[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." Id. at 320 (citing Leon, 468 U.S. at 922-23). "The good-faith exception applies unless one of four exceptions to it is present." United States v. Foy, 28 F.3d 464, 473 & n.20 (5th Cir.) cert. denied, 115 S. Ct. 610 (1994) (quoting United States v. Webster, 960 F.2d 1301, 1307 (5th Cir.), cert. denied, 113 S. Ct. 355 (1992)). Lopez argues two exceptions: (1) "where the warrant is based on an affidavit so

[3]Lopez argues this case presents a novel legal question regarding the minimum amount of information required in a search warrant affidavit that contains double hearsay. This question is not novel. See United States v. Laury, 985 F.2d 1293, 1313 (sufficiency of search warrant affidavit when information was supplied by a confidential informant who obtained information from an unidentified friend); Satterwhite, 980 F.2d at 318-22 (similar facts but acquaintance was identified).

lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable;" and (2) when "the issuing magistrate was misled by information in an affidavit that the affiant knew was false or would have known except for reckless disregard of the truth." United States v. Foy, 28 F.3d at 473 n. 20. We consider in turn Lopez' arguments on these two exceptions.

Lopez argues first that the affidavit contains insufficient indicia of probable cause to permit a reasonable officer to rely on it.

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 the good-faith exception does not apply. Satterwhite, 980 F.2d at 320 (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.), cert. denied, 114 S. Ct. 266, 114 S. Ct. 560 (1993).

This court reviews de novo the reasonableness of an officer's reliance upon a warrant issued by a magistrate judge. Satterwhite, 980 F.2d at 321. The affidavit provided a description of a cellar constructed to stash marijuana that was located at a business named Lopez Used Truck Parts and Service. The exact location of the cellar and the means used to prevent detection of the cellar were

described. The affidavit also indicated the owner of the business informed a named third person, Javier Lopez-Falcon, of a marijuana shipment to be received within approximately three days. This information gave the magistrate judge facts, not conclusions, to consider and thus the affidavit was more than "bare bones." Cf. Gates, 462 U.S. at 239; United States v. Barrrington, 806 F.2d 529, 531 (5th Cir. 1986).

Lopez argues that the affidavit was based on unreliable hearsay provided by the known informant (S1), that S1's credibility and reliability were not adequately established, that the basis for S1's information was not established, and that Alvarez did not corroborate the information. "An affidavit may rely on hearsay . . . as long as the affidavit presents a substantial basis for crediting the hearsay." Laury, 985 F.2d at 1312 (internal quotations and citations omitted). The credibility of the informant's report is determined by examining "the informant's veracity and basis of knowledge. These factors are relevant considerations under the `totality of the circumstances' test for valuing an informant's report." Id. An informant's veracity may be demonstrated by the accuracy of previous information and the affiant's assertion that the informant has given truthful and reliable information in the past. Id. at 1312-13.

Alvarez, an officer with 22 years of experience, stated his belief that S1 was credible and stated S1 had provided information that had resulted in the seizure of other drugs and the arrest of one defendant. Alvarez's statements provided the magistrate judge with sufficient indicia of the reliability of S1's information.

See United States v. McKnight, 953 F.2d 898, 905 (5th Cir.), cert. denied, 504 U.S. 989 (1992).

Lopez contends the affidavit did not establish the basis for S1's information. "An informant's basis of knowledge can . . . be established by a particularly detailed tip." Laury, 985 F.2d at 1313 (citation and internal quotation omitted). The affidavit provided a detailed description of the cellar, gave the location and name of the business, stated the cellar had been used for the past ten months, and described the means used to hide the entrance. The affidavit also provided approximate dates for a marijuana shipment and information that the owner of Lopez Truck Parts and Service attempted to negotiate a deal with Lopez-Falcon. The affidavit further indicated employees had been directed to clean the cellar, bag the seeds, and bury the bag. Although S1 did not name his source of the information nor explain how the information was obtained, the detailed facts were sufficient for the magistrate judge to conclude that S1 had "obtained the information in a reliable manner." Laury, 985 F.2d at 1313.

Alvarez did corroborate some information obtained from S1. By checking the utility records on the business, he determined that the owner of the business was Joel Lopez. Then by matching (within one digit) the social security number and date of birth given by the utility company with those provided by the DEA, Alvarez found Lopez's criminal record and learned he had previous drug arrests. Alvarez also determined that Lopez-Falcon had a record of drug trafficking. Although this information does not corroborate the description of the cellar or the information about

the drug shipment, the information bolsters the suspicion that Lopez used his business for illegal drug activity.

Lopez also contends the affidavit was based on unreliable double hearsay from the unknown informant (S2) and the basis for S2's knowledge was not established.[4] A substantial basis for crediting information derived from a second individual must be established when an informant's report is not based on personal knowledge. Satterwhite, 980 F.2d at 322. When the affidavit itself does not establish the second source's veracity, the court may determine from the nature of the provided information that a substantial basis exists for crediting that source's statements. See Laury, 985 F.2d at 1313. "[A] deficiency in one [either veracity or basis of knowledge] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." Gates, 462 U.S. at 232.

In Laury, double hearsay from the personal friend of a confidential informant (CI) that was used in an affidavit supporting a search warrant was determined to have a sufficient basis. 985 F.2d at 1313. The information included the location and date that a robbery occurred. This information was unknown to the CI but was corroborated by the CI's knowledge that the suspect was born in the same town and frequently travelled there. Id.

[4]Although the Government argues that Lopez raised this argument for the first time on appeal, we find these points adequately addressed in one of the memoranda in support of the motion to suppress.

In Satterwhite, a CI informed a DEA agent that he had received information from his acquaintance that drug activity was being conducted in an apartment. 980 F.2d at 318. The acquaintance's identity was revealed and the CI personally observed drugs on the acquaintance following a drug purchase. Id. at 322. The affiant corroborated the information in the affidavit by checking the principal's criminal record, employment history, and utility bill. Id. Finally, because the acquaintance's statements were admissions of a crime, they were considered reliable. Id. at 323.

Although Alvarez could have obtained more information from S1 regarding S2 and could have corroborated more information, he was operating under a time restraint. S2's information indicated that a drug shipment was to arrive in the next few days. Further, Alvarez vouched for S1's reliability, the information provided by S1 and S2 was detailed, and Alvarez corroborated information that linked Lopez and Lopez-Falcon with past drug activity.

Considering the totality of the circumstances, the affidavit was not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

Lopez argues next that Alvarez, either intentionally or with reckless disregard for the truth, misled the magistrate judge by (1) failing to reveal that in eight out of ten occasions, S1 provided information that did not lead to an arrest or a seizure; and (2) failing to reveal that S1 was a paid informant. "If the issuing magistrate/judge was misled by information in an affidavit that the affiant knew was false or would have known except for

reckless disregard of the truth," the good-faith exception to the exclusionary rule does not apply. Foy, 28 F.3d at 473 & n.20.

Our review of the record reveals that Lopez did not present this argument to the district court. In the memorandum supporting the motion to suppress, Lopez made a general assertion that the magistrate judge was misled by information in the affidavit. In the hearing on the motion to suppress, Lopez argued only mistakes in the affidavit concerning the criminal record of Lopez: He has never presented the current theory of omissions to the district court. Lopez does not contend that the information in the affidavit is false, but objects to Alvarez's omissions.

For the above reasons, the district court did not err in denying the motion to suppress.[5]

AFFIRMED.

[5]Lopez also asserts the magistrate judge abandoned his judicial role by issuing the search warrant based on the affidavit in an incomplete form. This argument is meritless. There is no evidence the affidavit was presented to the magistrate judge in an incomplete form.