United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 16, 2021
Lyle W. Cayce
Clerk

No. 20-30604
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRIEN KEITH POWELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:18-CR-324-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges*.

PER CURIAM:*

Brien Keith Powell was convicted, pursuant to his conditional guilty plea, of possession of crack cocaine with intent to distribute (Count Two) and possession of a firearm in furtherance of a drug trafficking crime (Count Three). The district court sentenced him above the guidelines range to a 168-

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

month sentence of imprisonment on Count Two, and it imposed a within-guidelines consecutive sentence of 60 months of imprisonment on Count Three.

In denying Powell's suppression motions, the district determined, *inter alia*, that the good-faith exception to the exclusionary rule applied. *See United States v. Leon*, 468 U.S. 897 (1984). Challenging that determination, Powell asserts that there are factual misrepresentations in the affidavit and otherwise insufficient information supporting the search warrant application.

"Issuance of a warrant by a magistrate normally suffices to establish good faith on the part of law enforcement officers who conduct a search pursuant to the warrant. *United States v. Shugart*, 117 F.3d 838, 843–44 (5th Cir. 1997). The good-faith exception generally does not apply: (1) when the issuing magistrate was misled by information in an affidavit that the affiant knew or reasonably should have known was false; (2) when the issuing magistrate wholly abandoned his judicial role; (3) when the warrant affidavit is so lacking in indicia of probable cause as to render official belief in its existence unreasonable; and (4) when the warrant is so facially deficient in failing to particularize the place to be searched or the things to be seized that executing officers cannot reasonably presume it to be valid. *United States v. Woerner*, 709 F.3d 527, 534 (5th Cir. 2013). As we have stated, "[t]o impeach the warrant, [the defendant] must show that [the law enforcement officer] either deliberately or recklessly misled the magistrate and that without the falsehood there would not be sufficient matter in the affidavit to support the issuance of the warrant." *United States v. Davis*, 226 F.3d 346, 351 (5th Cir. 2000).

Here, the alleged factual misrepresentations are immaterial to the issuing judge's probable cause determination. *See id.* Furthermore, the warrant affidavit was not so lacking in indicia of probable cause as it describes

in detail a controlled narcotics transaction at the residence with a reliable paid confidential informant.[1] Thus, Powell fails to show error.

Powell also contends that the search warrant authorized only a search of the residence, and that law enforcement officers exceeded the scope of the warrant by searching his vehicle, which was parked in the driveway. "This court has consistently held that a warrant authorizing a search of 'the premises' includes vehicles parked on the premises." *United States v. Singer*, 970 F.2d 1414, 1418 (5th Cir. 1992). Here, although the warrant did not use the term "premises," but rather authorized a search of the "property," given our precedent and the fact that these words are synonymous, we conclude that the law enforcement officers acted within the scope of the warrant in searching Powell's vehicle pursuant to the warrant. *Id.*

Finally, Powell contends that the search warrant did not extend to his vehicle because he was merely a casual visitor at the residence, and that therefore separate, independent probable cause was required to support a search of his vehicle. This argument fails because the district court's factual determination that Powell was more than a casual visitor is plausible in light of the record as a whole and therefore not clearly erroneous. *See United States v. Jacquinot*, 258 F.3d 423, 427 (5th Cir. 2001); *United States v. Giwa*, 831 F.2d 538, 544 (5th Cir. 1987).

In view of the foregoing, Powell has not shown that the district court erred in denying Powell's motions to suppress.[2] Thus we AFFIRM the district court's denials of the suppression motions.

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[1] *See, e.g., United States v. Bell*, 832 F. App'x 298, 302 (5th Cir. 2020) (unpublished) (collecting cases regarding rejecting affidavits as "bare bones" when they describe observations connecting drug trafficking to a particular location).

[2] For the first time on appeal, Powell also argues that the electronic warrant program used to secure the search warrant in this case did not comply with state law. In

Finally, Powell challenges his sentence as substantively unreasonable. He argues that, because his criminal history was used to calculate his guidelines range, it should not have been considered again to increase his sentence above the guidelines range, and he asserts that a sentence that is 53 months above the guidelines range (92 to 115 months) on Count Two is unwarranted.

Review for substantive reasonableness is highly deferential. *United States v. Hernandez*, 633 F.3d 370, 375 (5th Cir. 2011). We consider the extent of any variance from the Guidelines range under the totality of the relevant factors. *United States v. Brantley*, 537 F.3d 347, 349 (5th Cir. 2008).

Powell has failed to show that the district court did not "account for a factor that should receive significant weight," that it gave "significant weight to an irrelevant or improper factor," or that it made "a clear error of judgment in balancing sentencing factors," and therefore he has not shown that his sentence is substantively unreasonable. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). Ultimately, Powell's challenge to his sentence amounts to nothing more than a disagreement with the district court's balancing of the 18 U.S.C. § 3553(a) sentencing factors, an analysis which the district court was in a better position than this court to perform. *See Hernandez*, 633 F.3d at 375. To the extent that Powell seeks to have this court reweigh the sentencing factors, we will not do so. *See United States*

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any event, Powell's reliance on Louisiana law is unavailing because "[t]he question that a federal court must ask when evidence secured by state officials is to be used as evidence against a defendant accused of a federal offense is whether the actions of the state officials in securing the evidence violated the Fourth Amendment to the United States Constitution." *United States v. Walker*, 960 F.2d 409, 415 (5th Cir. 1992). Powell does not argue how the purported violation of Louisiana's electronic warrant law violates the Fourth Amendment.

v. Douglas, 957 F.3d 602, 609-10 (5th Cir. 2020). Moreover, we have affirmed sentences reflecting larger variances in other cases. *See*, *e.g.*, *Brantley*, 537 F.3d at 348-50 (upholding an upward variance or departure to a 180-month term of imprisonment from a guidelines maximum of 51 months). The sentence is AFFIRMED.