

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12638

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JERARD KEATON DAVIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:18-cr-00195-TJC-JBT-1

Before JILL PRYOR, NEWSOM, and MARCUS, Circuit Judges.

PER CURIAM:

Jerard Davis appeals his convictions for possession of a firearm as a convicted felon and possession of cocaine base with intent to distribute. He argues that the district court erred in denying his suppression motion and request for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), because the affidavit supporting the search warrant contained material omissions and false statements made in reckless disregard of the truth. After thorough review, we affirm.

We review the district court’s denial of a motion to suppress for clear error and its application of law to those facts *de novo*. *United States v. Reid*, 69 F.3d 1109, 1113 (11th Cir. 1995). Whether an affidavit establishes probable cause is reviewed *de novo*. *United States v. Jiminez*, 224 F.3d 1243, 1248 (11th Cir. 2000). The district court’s denial of a *Franks* hearing is reviewed for abuse of discretion. *United States v. Barsoum*, 763 F.3d 1321, 1328 (11th Cir. 2014). We may affirm on any ground supported by the record. *United States v. Campbell*, 26 F.4th 860, 879 (11th Cir.) (*en banc*), *cert. denied*, 143 S. Ct. 95 (2022).

The Fourth Amendment provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” U.S. Const. amend. IV. To establish probable cause for a search warrant, the supporting affidavit must establish a “fair probability”

21-12638

Opinion of the Court

3

that evidence of a crime or contraband will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In determining probable cause, a court may consider only the information that had been presented to the issuing judge. *United States v. Lockett*, 674 F.2d 843, 845 (11th Cir. 1982). Opinions and conclusions of experienced officers about a set of facts are a factor in the probable cause equation. *United States v. Robinson*, 62 F.3d 1325, 1331 n.9 (11th Cir. 1995). Generally, if the affidavit relies on an informant, it “must also demonstrate the informant’s veracity and basis of knowledge.” *United States v. Martin*, 297 F.3d 1308, 1314 (11th Cir. 2002) (quotations omitted). However, there is no need to establish the veracity of the informant’s information if there is sufficient independent corroborating information. *Id.*

We give great deference to a determination of probable cause by the district court. *United States v. Shabazz*, 887 F.3d 1204, 1214 (11th Cir. 2018). An affidavit supporting a search warrant enjoys a presumption of validity. *Franks*, 438 U.S. at 171. Where the affidavit supporting a warrant is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,” however, evidence seized pursuant to the warrant should be suppressed. *United States v. Leon*, 468 U.S. 897, 923 (1984) (citation and quotations omitted).

To justify a *Franks* hearing, the defendant must make a “substantial preliminary showing” that an officer put in an affidavit, either intentionally or with reckless disregard for the truth, false statements that were necessary to the finding of probable cause for

a search warrant. *Franks*, 438 U.S. at 155–56. If, upon this showing, the content in the affidavit remains sufficient to support a finding of probable cause, then no hearing is required. *Id.* at 171–72.

Here, in his suppression motion and request for a *Franks* hearing, Davis argued to the district court that the affidavit used in obtaining a search warrant at his business, Supernova Clothing & Shoes, had contained false statements and material omissions. In the affidavit, Deputy Agustin Rodriguez averred that a confidential informant had bought drugs from Davis three times earlier that month -- heroin on July 3, cocaine on July 5, and crack cocaine on July 17. The first two transactions occurred at Supernova; the third at a nearby parking lot. Deputy Rodriguez added that Davis is an eight-time convicted felon, that Deputy Rodriguez had received multiple tips about Davis's constant drug dealing, that multiple sources had detailed Davis's role as a major drug distributor, and that Davis was known to distribute heroin, cocaine, and cannabis in Flagler County.

Deputy Rodriguez also explained that, on July 17, 2018, he had reviewed Davis's Facebook posts, which included two 2016 photos -- one of which was a "high-resolution" photo depicting Davis holding a handgun to his face, and the other photo was "an up-close view of the handgun and all of its features." Another Facebook post was a live-stream video, taken on July 16, 2018, depicting Davis holding a handgun and pointing it at the camera while he was walking around inside Supernova. Based on the video, Deputy Rodriguez described the handgun as small and dark in color; said

21-12638

Opinion of the Court

5

its barrel was large enough to fire a bullet-sized projectile, thus “eliminating the possibility of it being a BB gun or a pellet gun”; identified the handgun as a SCCY CPX-2 nine-millimeter firearm; and believed it to be the same handgun depicted in the 2016 photos. Deputy Rodriguez relayed that the Flagler County Sheriff’s armorer, who had reviewed images of the firearm depicted in the July 2018 video, likewise identified the firearm as a SCCY CPX-2 nine-millimeter handgun based on the firearm’s “sights, shape, color, ports in the grip,” and other characteristics. Deputy Rodriguez further detailed that, on July 25, 2018, he had spoken to a witness who had recently seen Davis with a small, dark-colored handgun in the Supernova office and who reported that the handgun “was definitely a ‘real gun’” that Davis kept in the office desk.

In challenging the statements in the affidavit, Davis argued that Deputy Rodriguez could not have definitively concluded that the firearm depicted in the July 2018 Facebook video was real because, according to Davis, the video’s resolution was insufficient to discern the firearm’s barrel or other features. Davis also claimed that the affidavit should have provided that no evidence corroborated Deputy Rodriguez’s statement that the firearm was real, or otherwise eliminated the possibility that the firearm was not a pellet or replica gun.

After carefully reviewing the record, we agree with the district court’s determination that the challenged statements and omissions were not necessary to the probable cause finding, and, thus, that Davis’s suppression motion and request for a *Franks*

hearing were properly denied. *See Franks*, 438 U.S. at 155–56. Indeed, putting aside the certainty with which Deputy Rodriguez could conclude that Davis possessed a real gun, and whether the poor video quality made it impossible to determine the size of the muzzle, the affidavit still contained Deputy Rodriguez’s opinion that the Facebook video depicted Davis holding a real firearm outside of Supernova. *See Robinson*, 62 F.3d at 1331 n.9. So, even if officers could not eliminate the possibility that the video depicted a replica firearm, the affidavit established a “fair probability” that evidence related to his illegal possession of a firearm would be discovered since the firearm in the video appeared to match photos on Davis’s Facebook page of what Deputy Rodriguez and the armorer believed to be a 9mm pistol. *See Gates*, 462 U.S. at 238. Further, even if the affidavit failed to establish the veracity of the anonymous informant, Deputy Rodriguez provided sufficient independent corroboration of the informant’s statement when he averred that Davis brandished what appeared to be a 9mm pistol outside of the same location where the informant claimed to see him with a “real gun.” *See Martin*, 297 F.3d at 1314.

To the extent Davis argues that the evidence of narcotics distribution should not have been considered in finding that probable cause supported the weapons search because 20 days had passed since the last controlled buy, we need not address that issue. The record supports a finding of probable cause as to his illegal possession of a firearm without the evidence of narcotics distribution. *See Campbell*, 26 F.4th at 879. Thus, because the unchallenged

21-12638

Opinion of the Court

7

portions of the affidavit -- coupled with the anonymous informant's tip -- provided probable cause that Davis illegally possessed a firearm at Supernova, we cannot say that a Fourth Amendment violation occurred. Accordingly, the district court properly denied his suppression motion and request for a *Franks* hearing, and we affirm. *See Franks*, 438 U.S. at 155–56.

AFFIRMED.