No. _____

In The

Supreme Court of the United States

JEREL LEON JORDAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4386

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREL LEON JORDAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Dever III, District Judge. (7:17-cr-00004-D-1)

Submitted: May 14, 2019 Decided: May 22, 2019

Before WYNN, DIAZ, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Paul K. Sun, Jr., Kelly Margolis Dagger, ELLIS & WINTERS, LLP, Raleigh, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, Kristine L. Fritz, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A

PER CURIAM:

The district court convicted Jerel Leon Jordan, after a bench trial, of possessing with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B) (2012), possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (2012), and possessing a firearm after being convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1), 924 (2012). On appeal, Jordan contends that the district court erred in denying his pretrial motions to suppress and to compel discovery. Finding no error, we affirm.

I.

Jordan argues that the district court erred in denying his motion to suppress because the search warrant was facially invalid because it did not describe the dates of the alleged criminal activity and thus could not support a finding of probable cause. While the Government argues that the warrant was valid, it also contends that we may affirm under the good-faith exception. We agree with the Government and conclude that, assuming the warrant was invalid, the good-faith exception applies.

"When reviewing a district court's ruling on a motion to suppress, we review factual findings for clear error and legal determinations de novo." *United States v. Lull*, 824 F.3d 109, 114 (4th Cir. 2016) (internal quotation marks omitted). "[W]e must construe the evidence in the light most favorable to the prevailing party and give due weight to inferences drawn from those facts by resident judges and law enforcement officers." *Id.* at 114-15 (internal quotation marks omitted). Moreover, "we particularly defer to a district court's credibility determinations, for it is the role of the district court to

observe witnesses and weigh their credibility during a pre-trial motion to suppress." *United States v. Palmer*, 820 F.3d 640, 653 (4th Cir. 2016) (brackets and internal quotation marks omitted).

When a defendant challenges both probable cause and the applicability of the good-faith exception, we may proceed directly to the good faith analysis without first deciding whether the warrant was supported by probable cause. *United States v. Leon*, 468 U.S. 897, 925 (1984). "The fact that a Fourth Amendment violation occurred . . . does not necessarily mean that the exclusionary rule applies." *Herring v. United States*, 555 U.S. 135, 140 (2009). "When police act under a warrant that is invalid for lack of probable cause, the exclusionary rule does not apply if the police acted 'in objectively reasonable reliance on the subsequently invalidated search warrant.'" *Id.* at 142 (quoting *Leon*, 468 U.S. at 922).

Here, the district court credited Officer Bateman's testimony and the magistrate's affidavit. While Jordan attacks this credibility finding on appeal, he offers nothing more than speculation that the Government and its witnesses colluded to hide a Fourth Amendment violation. Instead, the Government simply prepared its case—Jordan alerted the Government to the likelihood that he would file a motion to suppress and, recognizing a potential argument that Bateman's affidavit was insufficient to establish probable cause, the Government sought to confirm whether Bateman provided any testimony to Holland. Moreover, the extrinsic evidence supports the finding that Bateman conducted the trash pull in December shortly before submitted the warrant application. Thus, we find no basis to disturb the district court's credibility finding. *See United States v. Slager*, 912

F.3d 224, 233 (4th Cir. 2019) ("[I]f a district court's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." (internal quotation marks omitted)).

We further conclude that the district court correctly applied our decision in *United States v. McKenzie-Gude*, 671 F.3d 452 (4th Cir. 2011). There, the search warrant application and affidavit did not connect the residence law enforcement searched to the defendant. *Id.* at 458. Although the officers were aware that the defendant lived at the residence, they had neglected to include this fact in the affidavit. *Id.* at 459. We recognized that we have "consistently rejected the notion that reviewing courts may not look outside the four corners of a deficient affidavit when determining, in light of all the circumstances, whether an officer's reliance on the issuing warrant was objectively reasonable." *Id*. Thus, we considered the officers' knowledge in assessing whether they reasonably relied on the warrant. *Id.* at 460. We noted that "[r]efusing to consider such information risks the anomalous result of suppressing evidence obtained pursuant to a warrant supported by the affidavit of an officer, who, in fact, possesses probable cause, but inadvertently omits some information from his affidavit." *Id.* (internal quotation marks omitted). We further rejected the defendant's argument that our holding was inconsistent with *Leon*. *Id.* at 460-61.

Here, Bateman performed a trash pull that uncovered evidence of cocaine on the same day that he applied for the search warrant. Moreover, he had been investigating

Jordan over the course of several months, observing Jordan engage in conduct consistent with drug distribution and interviewing witnesses who confirmed that Jordan was distributing cocaine. Although his affidavit omitted the dates of these acts, we conclude he acted in good-faith reliance on the magistrate issuing the warrant. And to the extent that Jordan argues that we should overrule *McKenzie-Gude*, "one panel cannot overrule a decision issued by another panel." *United States v. Williams*, 808 F.3d 253, 261 (4th Cir. 2015) (internal quotation marks omitted). Therefore, we affirm the district court's denial of Jordan's motion to suppress.

II.

Jordan also argues that the district court erred in denying his motion to compel discovery into whether the Government engaged in interviews (and correspondingly took notes of these interviews) with its witnesses, arguing that the suppression of such evidence violated *Brady*.[*] We review the legal conclusions underlying the district court's denial of Jordan's *Brady* motion de novo and its factual findings for clear error. *United States v. Abdallah*, 911 F.3d 201, 217 (4th Cir. 2018). To succeed on his *Brady* claim, Jordan "must show that (1) the evidence is either exculpatory or impeaching, (2) the government suppressed the evidence, and (3) the evidence was material to the defense." *United States v. Catone*, 769 F.3d 866, 871 (4th Cir. 2014) (internal quotation marks omitted). "Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."

[*] *Brady v. Maryland*, 373 U.S. 83 (1963).

Abdallah, 911 F.3d at 217 (internal quotation marks omitted). When the Government asserts that the requested information is privileged or confidential, a defendant is entitled to have the district court conduct an in camera review of the information if he makes "some plausible showing that exculpatory material exists." *Id.* at 218 (internal quotation marks omitted). "To make this showing, the defendant must identify the requested confidential material with some degree of specificity." *Id.* (internal quotation marks omitted).

Here, Jordan has failed to produce exculpatory material and has likewise failed to make a plausible showing that such exculpatory material exists. The only evidence in the record is that the Government disclosed the only statements made—Bateman's supplemental statement and the magistrate's affidavit—and they were disclosed prior to the suppression hearing. Jordan's belief that the someone may have taken notes of other conversations is insufficient to warrant an in camera review. For example, in *Abdallah*, the defendant identified a specific email exchange relevant to the dispositive issue at the suppression hearing. 911 F.3d at 217-19. Jordan's argument is more like one we rejected in *United States v. Caro*, 597 F.3d 608, 619 (4th Cir. 2010), where the defendant could "only speculate as to what the requested information might reveal."

III.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 22, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4386
(7:17-cr-00004-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JEREL LEON JORDAN

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: May 22, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4386, US v. Jerel Jordan
7:17-cr-00004-D-1

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).