

No.

Supreme Court of the United States

EDWIN ARTIS PETTAWAY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

APPENDIX

COMES NOW PETITIONER Edwin Artis Pettaway and submits the attached appendix pursuant to Supreme Court Rules.

**Edwin Artis Pettaway
Petitioner
36222-001
P.O. Box 9000
Forrest City, AR 72336**

Date: _____

APPENDIX A
ORDER & JUDGMENT OF THE COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
DATED 1-14-21

United States v. Pettaway

United States Court of Appeals for the Eleventh Circuit

January 14, 2021, Decided; January 14, 2021, Filed

No. 20-10187 Non-Argument Calendar

Reporter

842 Fed. Appx. 406 *; 2021 U.S. App. LEXIS 1005 **; 2021 WL 129648

UNITED STATES OF AMERICA, Plaintiff - Appellee, versus EDWIN ARTIS PETTAWAY, a.k.a. Fat, Defendant - Appellant.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Rehearing denied by, Rehearing denied by, En banc United States v. Pettaway, 2021 U.S. App. LEXIS 8623 (11th Cir. Ala., Mar. 24, 2021)

Prior History: [**1] Appeal from the United States District Court for the Northern District of Alabama. D.C. Docket No. 2:18-cr-00586-ACA-JHE-1.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Melissa K. Atwood, Michael B. Billingsley, U.S. Attorney Service - Northern District of Alabama, U.S. Attorney's Office, BIRMINGHAM, AL.

For EDWIN ARTIS PETTAWAY, a.k.a. Fat, Defendant - Appellant: Michael Patrick Hanle, Jaffe Hanle Whisonant & Knight, PC, BIRMINGHAM, AL.

Judges: Before NEWSOM, BRASHER, and ANDERSON, Circuit Judges.

Opinion

[*408] PER CURIAM:

Edwin Artis Pettaway appeals his convictions for possession with intent to distribute more than 28 grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c). Pettaway makes two arguments on appeal. First, he argues that the district court erred by denying his motion to suppress evidence collected from his house and vehicle. Specifically, he argues that the affidavit supporting the search warrant contained stale and misleading or false information. He also argues that he was unable to challenge information in the affidavit provided by a confidential informant because the district court erroneously denied his motion [**2] to disclose the informant's identity. Second, Pettaway argues that the district court erred by denying his motion for judgment of acquittal and contends that the jury lacked sufficient evidence to convict him on either charge.

I. BACKGROUND

In the autumn of 2017, a confidential informant advised the Birmingham Police Department that a man known as "Fat" was distributing crack cocaine from a house in Birmingham, Alabama. The informant agreed to participate in a controlled purchase of cocaine under the supervision of a narcotics detective with the BPD. An initial purchase was completed, after which the informant presented the purchased drugs to the detective. The informant also provided a description of Fat that allowed the BPD to identify the man as Edwin Artis Pettaway. About three weeks later, the detective and informant successfully executed

another controlled purchase at the house from the man identified as Pettaway.

Within two days of the second controlled purchase, the narcotics detective applied for and received a state-court search warrant for the house. A few days later, the detective and a team of officers converged on the house to execute the search warrant. Soon after entering [**3] the house, officers saw Pettaway emerge from a bedroom near the front of the house. Pettaway was the only person seen coming from that room, and no one else was found in the room. Officers detained Pettaway and approximately eleven other people found throughout the house.

After detaining the occupants outside, officers searched the house. Two officers searched the front bedroom that Pettaway was seen exiting. They found several sizable chunks of suspected crack cocaine spread across the floor. Future testing would confirm this substance as cocaine base weighing approximately 230 grams altogether. Officers also found a digital scale and a plate. Officers further found [**409] several items piled on top of the bed, including: a new vehicle tire; a beige satchel containing a loaded 9mm pistol, a prescription bottle labeled with Pettaway's name, Pettaway's bank-issued debit card, three cellphones, and cash; a "Tupperware-type box" containing scales and small bags; two more cellphones; loose cash; and a set of car keys. Using the keys recovered from the front bedroom, officers accessed and searched an SUV parked behind the house. The vehicle was registered to Pettaway. Inside the vehicle, officers [**4] found a loaded AR-15-style rifle and Pettaway's driver's license. The license had been issued around one year prior to the search and bore the address of the house being searched.

A federal grand jury indicted Pettaway for possession with the intent to distribute more than 28 grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B), and possession of a firearm in furtherance of a drug-trafficking crime,

in violation of 18 U.S.C. § 924(c)(1)(A)(i). Pettaway moved to suppress all evidence seized during the execution of the search warrant. He argued that the warrant was inadequate to establish probable cause, included facts that were "intentionally or recklessly misleading," and was based on information provided by an unreliable informant without sufficient independent corroboration.

The district court held a hearing on Pettaway's motion. At the close of evidence, the court orally denied the motion, concluding that the officer's affidavit established probable cause and did not contain intentionally or recklessly misleading facts. The court determined that the informant had "previously given accurate information" and that the detective had "independently verified" information provided by the informant. The court noted that Pettaway's [**5] driver's license linked him to the house, and the narcotics detective had observed Pettaway during the second controlled purchase. Moreover, the court found scant evidence showing that the house could not be entered by the front door, a key assertion that Pettaway had made in an attempt to show that the affidavit contained false information. Indeed, the court concluded that a bar supposedly barring entry through the door could be removed. Finally, the court concluded that the officer's inability to recall certain information during the hearing did not undermine those facts as presented in the affidavit.

Pettaway proceeded to trial. In addition to the evidence recovered from Pettaway's house and vehicle, the government presented testimony from a number of narcotics detectives who had participated in the search of Pettaway's house. The officers testified that the evidence recovered from Pettaway's house and vehicle fit the pattern of a high-level drug distributor. At the close of the government's evidence, Pettaway moved for a judgment of acquittal. The court denied the motion. Later, after hearing testimony from the government's case agent, Pettaway renewed his motion for a judgment [**6] of acquittal. The

motion was again denied. The jury convicted Pettaway on both counts.

The court sentenced Pettaway to 114 months in prison for possession with intent to distribute 28 grams or more of cocaine base. The court ordered that a consecutive 60-month prison term follow for possession of a firearm in furtherance of a drug-trafficking crime, followed by a 60-month term of supervised release.

II. DISCUSSION

Pettaway presents two main arguments on appeal. First, he argues that the district court committed a reversible error by denying his motion to suppress the evidence recovered from his house and vehicle, and [**410] his related motion to reveal the identity of the informant. Second, he argues that the district court committed reversible error by denying his motion for judgment of acquittal. We address both arguments in turn.

A. The District Court Properly Denied Pettaway's Motion to Suppress

Pettaway argues that the district court committed reversible error by denying his motion to suppress evidence of drugs and firearms found within the house and his vehicle. He contends that the affidavit supporting the search warrant lacked "veracity," that the informant supplying the information lacked [**7] a "basis of knowledge," and that the affidavit "lacked specificity." Additionally, Pettaway argues that the district court's denial of his motion to disclose the informant's identity prevented him from testing the veracity and basis of the information supplied by the informant at the suppression hearing. Finally, Pettaway argues that the information contained in the search warrant application was stale.

The government responds that the district court properly concluded that the supporting affidavit established probable cause and that it did not

contain intentionally or recklessly misleading information concerning either the reliability of the informant or what the officer observed during the two controlled purchases. The government argues that because Pettaway's staleness argument was not presented to the district court, it is reviewed for plain error. Furthermore, the government argues that Pettaway has abandoned the argument that the affidavit contained false facts because he has not raised it on appeal. Pettaway did not file a reply.

1. The District Court Did Not Err in Determining That the Affidavit Established Probable Cause

We apply a mixed standard of review to decisions involving [**8] motions to suppress. We review findings of fact for clear error and the application of law to those facts *de novo*. *United States v. Lewis*, 674 F.3d 1298, 1302-03 (11th Cir. 2012). We construe facts in the light most favorable to the prevailing party below, affording substantial deference to the factfinder's credibility determinations, *id.* at 1303, and "give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." *United States v. Jiminez*, 224 F.3d 1243, 1248 (11th Cir. 2000) (quoting *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)). Whether the facts so construed establish probable cause for a search warrant to issue is a legal conclusion we review *de novo*. *Jiminez*, 224 F.3d at 1248.

"Probable cause to support a search warrant exists when the totality of the circumstances allows a conclusion that there is a fair probability of finding contraband or evidence at a particular location." *United States v. Brundidge*, 170 F.3d 1350, 1352 (11th Cir. 1999) (per curiam). We give "great deference" to the determination of probable cause by a district court. *Id.* An informant's veracity, reliability, and "bases of knowledge" are relevant considerations in the totality-of-the-circumstances analysis and do not operate independently. *Id.* at 1352-53. A deficiency in one of these considerations may be compensated for by a strong showing as to the other considerations. *Id.*

Here, the district court did not clearly err when it found that the [**9] search warrant affidavit established probable cause to search the residence listed in the search warrant application. Viewed in the light most favorable to the government, the facts showed that the detective was approached by an informant who had previously [**411] given him reliable information and that the detective corroborated the informant's allegations by arranging two controlled purchases at the house. The controlled purchases confirmed the veracity and reliability of the informant's tip, and the detective also conducted independent research to supplement the information that the informant gave to him. The second controlled purchase preceded the detective's application for a search warrant by less than 48 hours. Thus, the totality of the circumstances certainly suggested a "fair probability" of finding crack cocaine at the house. *Brundidge*, 170 F.3d at 1352.

2. The District Court Did Not Err in Denying the Motion to Disclose the Informant's Identity

We review decisions to disclose the identity of confidential informants for abuse of discretion. *Flores*, 572 F.3d at 1265. Knowledge of the identity of a confidential informant is typically privileged. However, where the disclosure of an informant's identity is relevant and helpful to the [**10] defense of an accused or is essential to a fair determination of a cause, the privilege must give way. *Id.* We consider three factors when conducting this inquiry: (1) the extent of the informant's participation in the criminal activity, (2) the directness of the relationship between the defendant's asserted defense and the probable testimony of the informant, and (3) the government's interest in nondisclosure. *Id.* The government's interest may be proven by showing that disclosure might endanger the informant or other investigations. *Id.* The burden is on the defendant to show that the informant's testimony would significantly aid in establishing an asserted defense. *United States v. Gutierrez*, 931 F.2d 1482, 1491 (11th Cir. 1991). Mere conjecture about the

possible relevance of the testimony is insufficient to compel disclosure. *Id.*

The district court did not abuse its discretion when it denied Pettaway's motion to require the government to produce the informant's identity. Pettaway neither argues that the informant was involved in the criminal activity nor indicates how the informant's testimony would support his defense. He merely contends that had the district court disclosed the informant's identity, he could have been in a better position to [**11] test the veracity and basis of the information that he provided to the detective, which in turn supported the application for a search warrant. This kind of conjecture about the possible relevance of the informant's testimony is insufficient to compel disclosure. *Gutierrez*, 931 F.2d at 1491.

3. Pettaway Cannot Show, on Plain Error Review, That Facts Contained in the Search Warrant Application Were Stale

Because Pettaway did not argue before the district court that the facts supporting the search warrant application were stale, we review this assertion under the plain error standard. *United States v. Andres*, 960 F.3d 1310, 1316 (11th Cir. 2020). To prevail under this standard, Pettaway must show: "(1) an error occurred; (2) the error was plain; (3) it affected his substantial rights; and (4) it seriously affected the fairness of the judicial proceedings. An error is 'plain' if controlling precedent from the Supreme Court or the Eleventh Circuit establishes that an error has occurred." *Id.* (internal quotation marks and citations omitted).

The staleness doctrine requires that the information supporting the government's application for a search warrant show that probable cause exists at the time that the warrant issues. *United States v. Bernaldi*, 226 F.3d 1256, 1264 (11th Cir. [**412] 2000). Here, Pettaway has not shown that the district court plainly [**12] erred when it denied his motion to suppress based on the timeliness of the information contained in the application for the search warrant. The supporting affidavit and the

detective's live testimony both indicate that the application for the search warrant was submitted within 48 hours of the second controlled purchase. Thus, the evidence before the court established probable cause to believe that drugs would be found in the house as of the time that the warrant was issued.

B. The District Court Properly Denied Pettaway's Motion for Acquittal

On appeal, Pettaway also argues that the district court committed reversible error when it denied his motion for judgment of acquittal based on the sufficiency of the evidence. The government responds that, when viewed in the light most favorable to the jury's guilty verdicts, the evidence supported Pettaway's convictions on both counts.

We review a challenge to the sufficiency of the "evidence supporting a jury's guilty verdict" *de novo*, but review the trial evidence in the light most favorable to the government. *United States v. Stahlman*, 934 F.3d 1199, 1224 n.12 (11th Cir. 2019) (citing first *United States v. Keen*, 676 F.3d 981, 994 (11th Cir. 2012); and then *United States v. Henderson*, 893 F.3d 1338, 1348 (11th Cir. 2018)). We are required to draw "all reasonable factual inferences in favor of the verdict" and affirm if there is [**13] "any reasonable construction of the evidence" that would support the jury's conclusion that the defendant is guilty beyond a reasonable doubt. *Stahlman*, 934 F.3d at 1226 (internal quotation marks and citations omitted).

It is unlawful for any person to knowingly or intentionally "possess with intent to manufacture, distribute, or dispense a controlled substance." 21 U.S.C. § 841(a)(1). To convict a defendant under Section 841(a)(1) the government must prove knowledge, possession, and intent to distribute. *United States v. Poole*, 878 F.2d 1389, 1391 (11th Cir. 1989). All three elements can be proven by direct or circumstantial evidence. *Id.* at 1391-92. Constructive possession is sufficient and "can be established by showing ownership or dominion and

control over the drugs or over the premises on which the drugs are concealed." *Id.* Intent to distribute can be proven by showing the quantity of the drug and the existence of things commonly used in connection with its distribution. *Id.*

When viewed in the light most favorable to the government, the evidence sufficiently supports the verdict that Pettaway possessed over 28 grams of crack cocaine with the intent to distribute. The record indicates that Pettaway was the only one to exit the room where police found over 230 grams of crack cocaine and supplies used to re-package [**14] the drug for sale. Additionally, the jury heard testimony that the amount of crack cocaine found was consistent with a "higher-level distributor." Moreover, officers found Pettaway's bank card and prescription pill bottles with his name on them in the same room as the drugs. Thus, there was sufficient evidence to prove that Pettaway possessed over 230 grams of crack cocaine with the intent to distribute it.

Likewise, it is unlawful to use a firearm in furtherance of a drug-trafficking crime. 18 U.S.C. § 924(c). Under Section 924(c), we have required that "the prosecution establish that the firearm helped, furthered, promoted, or advanced the drug trafficking." *United States v. Timmons*, 283 F.3d 1246, 1252 (11th Cir. 2002). The mere presence of a firearm "within the defendant's dominion and control during a drug trafficking offense is not sufficient by [**413] itself to sustain a [Section] 924(c) conviction." *Id.* at 1253. The government must show a nexus between the firearm and the drug operation, which can be established by "the type of drug activity that is being conducted, accessibility of the firearm, the type of the weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the firearm is loaded, proximity to the drugs or drug profits, and the time and circumstances [**15] under which the gun is found." *Id.* A defendant's possession of a firearm can be shown by demonstrating that he actually possessed the firearm or that he constructively possessed it, which

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means he had "ownership, dominion, or control over an object itself or control over the premises in which the object is concealed." *United States v. Villarreal*, 613 F.3d 1344, 1359 (11th Cir. 2010).

When viewed in the light most favorable to the government, the evidence sufficiently supports the verdict that Pettaway knowingly possessed the firearm in furtherance of a drug trafficking crime. The record indicates that Pettaway owned the house and the vehicle parked behind it, the vehicle was registered to the address of that house, and Pettaway's driver's license listed that same address as Pettaway's residence. In addition, Pettaway was the only individual seen exiting the room in the house where the pistol was found. The pistol was found in close proximity to a large amount of crack cocaine, scales, re-packaging materials, cash, a bank card with Pettaway's name on it, and multiple pill bottles displaying Pettaway's name. Thus, there was sufficient evidence from which a reasonable jury could have found that Pettaway possessed the firearm and that the firearm was [**16] used in furtherance of a drug-trafficking crime.

III. CONCLUSION

For the foregoing reasons, the district court is **AFFIRMED**.

End of Document

APPENDIX B
JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
ENTERED 1-15-20

UNITED STATES DISTRICT COURT
Northern District of Alabama

UNITED STATES OF AMERICA

v.

Case Number 2:18-CR-586-ACA-JHE-1

EDWIN ARTIS PETTAWAY
Defendant.JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, EDWIN ARTIS PETTAWAY, was represented by Michael P Hanle.

The defendant was found guilty on counts 1 and 2 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of the following counts, involving the indicated offenses:

Title & Section	Nature of Offense	Count Numbers
21 U.S.C. § 841(a)(1)	Possession with Intent to Distribute 28 Grams or More of a Mixture and Substance Containing a Detectable Amount of Cocaine Base	1
18 U.S.C. § 924(c)(1)(A)(i)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	2

As pronounced on January 9, 2020, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$200.00, for counts 1 and 2, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

DONE and ORDERED this January 15, 2020.


 ANNEMARIE CARNEY AXON
 U.S. DISTRICT JUDGE

Judgment--Page 2 of 5

Defendant: **EDWIN ARTIS PETTAWAY**
Case Number: **2:18-CR-586-ACA-JHE-1**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 114 months as to Count One, plus 60 months as to Count Two. The sentence in Count Two shall run consecutively to the sentence imposed in Count One and any other sentence; a total of 174 months.

Pursuant to USSG § 5G1.3(c), the sentence shall run concurrently with the yet-to-be imposed sentence in Jefferson County Circuit Court cases CC 2018-4159, CC 2018-4162 and CC 2018-4160.

The sentence running also concurrently with any other yet-to-be imposed sentences.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be housed in a facility as close as possible to Birmingham, AL, while taking into consideration his medical needs.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

1) While the defendant is on supervised release in the defendant judicial district where you are authorized to reside within 72 hours of the time you were sentenced (if placed on probation to a different probation officer), unless the probation officer you report to a different probation officer within 72 hours of the time you were sentenced (if placed on probation to the defendant judicial district where you are authorized to reside within 72 hours of the time you were sentenced), you must not commit any conduct that violates the conditions of your supervised release.

2) After initially reporting to the probation officer, you will receive instructions from the court or the probation officer about how and where to report to the probation officer, and you must report to the probation officer within a different time frame.

3) You must not commit any conduct that violates the conditions of your supervised release.

4) You must not own, possess, or have access to firearms, ammunition, destructive devices, or dangerous weapons (i.e., anything that was designed or was modified for the specific purpose of causing bodily injury or death to another person, such as munitionks or lasers).

5) You must not unlawfully possess a controlled substance.

6) You must not refrain from unlawfully use of a controlled substance within 15 days of release from imprisonment and at least two periods during these years, as determined by the court. You must not contribute to the cost of drug treatment unless the probation officer provides you the opportunity to do so. Based upon a court order entered during the period of supervision for good cause shown or resulting least 10 days before the court or another district, you shall be placed in the Substance Abuse Intervention Program (SAIP) (or comparable program in another district).

7) You must not knowingly leave the defendant judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

8) You must follow the instructions of the probation officer related to the conditions of supervision.

9) You must answer truthfully the questions asked by the probation officer.

10) You must live at a place approved by the probation officer if you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change.

11) You must not engage in a drug trafficking offense, the probation officer at least 10 days in advance of a change or expected change. (If you have been convicted of a crime or a crime of opportunity, you must not engage in employment, you must not engage in criminal activity, if you know someone has been convicted of a felony, you must not communicate or interact with that person without first getting the permission of the probation officer at least 10 days in advance of a change or expected change.

12) You must work full time (at least 30 hours per week) in a lawful type of employment, unless the probation officer excuses you from doing so, if you plan to change where you work to find another job during so, you must notify the probation officer at least 10 days in advance of a change or expected change.

13) You must not be aware of a change or expected change.

14) You are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours of the probation officer.

15) You must not act or make any agreement with another person (including an organization), the probation officer within 72 hours of without first getting the permission of the court.

16) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may contact the person and confirm that you have notified the person about the risk, and you must comply with that instruction. The probation officer may contact the person and request you to notify the person about the risk (including an organization), the probation officer related to the conditions of supervision.

17) You must fully and truthfully disclose financial information as requested by the probation officer related to the conditions of income tax returns, financial documents in which the defendant has a business involvement or financial interests, debts, obligations, and/or agreements in which the defendant has a business and expenses, and other financial information regarding personal or business assets.

18) You must support all dependents.

STANDARD CONDITIONS OF SUPERVISED RELEASE

conditions of supervised release.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

SUPERVISED RELEASE

Case Number: 2:18-CR-586-ACA-JHE-1

Defendant: EDWIN ARTIS PETTAWAY

Judgment-Page 3 of 5

AO 245 S (Rev. 1/98)(N.D.Ala. rev.) Sheet 3 - Supervised Release

19) You must comply with the problem officer's Policies and Procedures Concerning Criminal Court-Ordered Financial Obligations to satisfy the balance of any monetary obligation resulting from the sentence imposed in the case. Further, you must notify the problem officer of any change in your economic circumstances that might affect your ability to pay a fine, restitution, or assessment fee. If you become more than 60 days delinquent in payments of financial obligations, you may be: (a) required to attend a financial education or employment preparation program under the administrative supervisor of the problem officer; (b) placed on home detention or subject to location monitoring for a maximum period of 60 days under the administrative supervisor of the problem officer (and you must pay in a community corrections center for up to 180 days under the problem officer determines you do not have the ability to do so); and/or (c) placed the cost of substance unless the problem officer determines you do not have the ability to do so).

CONTINUATION OF STANDARD CONDITIONS OF SUPERVISED RELEASE

Case Number: 2:18-CR-586-ACA-JHE-1
Defendant: EDWIN ARTIS PETTAWAY

Judgment-Page 4 of 5

AO 245 S (Rev. 1/98)(N.D.Ala. rev.) Sheet 3 - Continuation of Standard Conditions of Supervised Release

Case 2:18-cr-00586-ACA-JHE Document 69 Filed 01/15/20 Page 4 of 5

Defendant: **EDWIN ARTIS PETTAWAY**
Case Number: **2:18-CR-586-ACA-JHE-1**

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

- 1) You must cooperate in the collection of DNA under the administrative supervision of the probation officer.
- 2) You must not use or possess alcohol.
- 3) You must participate in the Substance Abuse Intervention Program (SAIP) (or comparable program in the district of supervision) under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. This program includes the following components: (a) testing by the probation officer or an approved vendor to detect prohibited drug or alcohol use; (b) substance abuse education; (c) outpatient substance abuse treatment, which may include individual or group counseling, provided by the probation office or an approved vendor, and/or residential treatment; (d) placement in a community corrections center (halfway house) for up to 270 days; and/or (e) home confinement, subject to electronic monitoring for up to 180 days. You must contribute to the costs of participation unless the probation officer determines you do not have the ability to do so.
- 4) You must participate in a cognitive behavioral treatment program designed to promote responsible thinking and to increase problem solving and social skills under the administrative supervision of the probation officer, and you must comply with the requirements and rules of the program. You must contribute to the cost of treatment unless the probation officer determines you do not have the ability to do so.
- 5) You must participate in an educational services program under the administrative supervision of the probation officer, and follow the requirements and rules of the program. Such programs may include high school equivalency preparations, English as a Second Language classes, and other classes designed to improve your proficiency in skills such as reading, writing, mathematics, or computer use. You must contribute to the cost unless the probation officer determines you do not have the ability to do so.

APPENDIX C
ORDER OF THE COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
DATED 3-24-21

United States v. Pettaway

United States Court of Appeals for the Eleventh Circuit

March 24, 2021, Filed

No. 20-10187-BB

Reporter

2021 U.S. App. LEXIS 8623 *

UNITED STATES OF AMERICA, Plaintiff -
Appellee, versus **EDWIN ARTIS PETTAWAY**,
a.k.a. Fat, Defendant - Appellant.

End of Document

Prior History: [*1] Appeal from the United States
District Court for the Northern District of Alabama.

United States v. Pettaway, 2021 U.S. App. LEXIS
1005, 2021 WL 129648 (11th Cir. Ala., Jan. 14,
2021)

Counsel: For **UNITED STATES OF AMERICA**,
Plaintiff - Appellee: McIissa K. Atwood, Michael
B. Billingsley, U.S. Attorney Service - Northern
District of Alabama, U.S. Attorney's Office,
BIRMINGHAM, AL.

For **EDWIN ARTIS PETTAWAY**, a.k.a. Fat,
Defendant - Appellant: Michael Patrick Hanle,
Jaffe Hanle Whisonant & Knight, PC,
BIRMINGHAM, AL.

Judges: BEFORE: NEWSOM, BRASHER, and
ANDERSON, Circuit Judges.

Opinion

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no
judge in regular active service on the Court having
requested that the Court be polled on rehearing en
banc. (FRAP 35) The Petition for Panel Rehearing
is also denied. (FRAP 40)

APPENDIX D
USDC ORDER DENYING MOTION TO SUPPRESS
ENTERED 3-20-19

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Government

v.

CASE NO. 2:18-cr-586-ACA-JHE

EDWIN ARTIS PETTAWAY

Defendant

TRANSCRIPT OF SUPPRESSION HEARING

BEFORE HONORABLE ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

March 20, 2019
Birmingham, Alabama

APPEARANCES:

REPRESENTING THE GOVERNMENT: William Gott Simpson, Esquire
U.S. Attorney's Office
1801 4th Avenue North
Birmingham, AL 35203

REPRESENTING THE DEFENDANT: Sammie D. Shaw, Esquire
Sammie D. Shaw Attorney at Law
2107 5th Avenue North, Suite 301
Birmingham, AL 35203

ALSO PRESENT: Edwin Artis Pettaway, Defendant

COURT REPORTER: Margaret Wasmund, RDR, CRR, CRC
1729 5th Avenue North, Suite 104
Birmingham, AL 35203
601-329-6113
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DANIEL WALLS

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WITNESSES FOR THE DEFENDANT:

LAMAR PETTAWAY

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1 A. He never lived there.
2 Q. Where was he living during the November 2017?
3 A. I think he was living in Center Point.
4 Q. Who did he live with?
5 A. He lived with his girlfriend.
6 Q. And who else?
7 A. His children.
8 Q. Okay. Did his girlfriend or children ever live at
9 6627 1st Avenue South?
10 A. No.
11 Q. Mr. Pettaway, does Mr. Pettaway own 6627 1st Avenue South?
12 A. Yeah, he do.
13 Q. Do you know the purpose of him owning that house?
14 A. I think it was a boarding house or something like that, he
15 was saying.
16 MR. SHAW: That's all I have. Thank you.
17 MR. SIMPSON: Nothing further, Your Honor.
18 THE WITNESS: I'm done?
19 THE COURT: Mr. Pettaway, you are finished now.
20 Thank you.
21 MR. SHAW: Mr. Pettaway rests, Your Honor.
22 THE COURT: Thank you. Just a minute.
23 (Pause.)
24 THE COURT: I'm going to deny the motion. I think
25 your motion, when you filed it, said that the affidavit failed

1 to support probable cause, and I don't agree with that. And
2 then you also said that the facts were intentionally or
3 recklessly misleading, and I do not find that.

4 I think that, as a preliminary matter, the -- Detective
5 Walls has shown that the confidential informant that was used
6 to do the controlled buys, and upon which the information was
7 based for the search warrant, had previously given accurate
8 information.

9 They had a history of working together, so it is not like
10 it's an unverified person off the street that he based this
11 information on. Also, too, he independently verified that
12 information the confidential informant gave him. Moreover,
13 according to the detective's testimony today, there had been
14 previous complaints about this particular home and some
15 suggestion that there were drug sales previously conducted at
16 the home.

17 I will say -- so I think that the affidavit does establish
18 a link between the defendant and the house, as does the
19 driver's license. And I believe that Mr. Walls's -- Detective
20 Walls's -- forgive me -- testimony is credible when he says
21 that he observed him at the residence on the second controlled
22 buy -- on the date of the second controlled buy. I do not find
23 that the affidavit is contradictory to his testimony today.

24 And there is no evidence of what the door looked like on
25 the date the search warrant was executed. I appreciate

1 Mr. Pettaway's testimony that this is what it looked like a few
2 days ago or a couple weeks ago, but that's not what it looked
3 like -- there's no evidence that that's what it looked like
4 then, other than the fact that he testified that he had done it
5 a while back or a long time ago. And, as I see in the picture
6 that you've provided, it is clear that those things can -- that
7 that bar can be taken down.

8 So I'm going to deny your motion. And let me make sure I
9 didn't leave anything out. Oh, I will also note that, although
10 there was a question about whether or not Mr. Pettaway, the
11 defendant Mr. Pettaway, was at the house on the occasion of the
12 first search warrant, the affidavit does identify that he was,
13 in fact, there. Although Detective Walls could not
14 independently recall that fact today, it is in his affidavit,
15 which I would assume -- I have no evidence to the contrary that
16 he did not review that search warrant and any file on that
17 search warrant in preparation for that affidavit. So the
18 motion is denied, and we'll allow the evidence in. Thank you.

19 MR. SHAW: Thank you, Your Honor.

20 MR. SIMPSON: Thank you, Your Honor.

21 (Proceedings concluded at 11:48 a.m.)

22

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APPENDIX E
USDC ORDER DENYING DISCLOSURE OF NAME OF CI
ENTERED 3-7-19

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 v,) 2:18-cr-00586-ACA-JHE
EDWIN ARTIS PETTAWAY,)
)
 Defendant)

ORDER

On February 18, 2019, Defendant Edwin Artis Pettaway ("Defendant" or "Pettaway") moved for an order compelling the disclosure of the identity of a confidential informant ("CI") who allegedly provided information supporting a search warrant at issue in this case, alleging the CI's identity is necessary for his defense. (Doc. 22). The government opposes Pettaway's motion. (Doc. 28).

The government has a privilege to withhold the identity of a CI, but that privilege is qualified. *Roviaro v. United States*, 353 U.S. 53, 59-60 (1957). "Where the disclosure of an informant's identity, or the contents of his communication, is relevant and helpful to the defense of an accused or is essential to a fair determination of a cause, the privilege must give way." *Id.* at 60-61. The court must balance "the public interest in protecting the flow of information against the individual's right to prepare his defense." *Id.* at 62. The court principally considers three factors: "(1) the extent of the informant's participation in the criminal activity; (2) the directness of the relationship between the defendant's asserted defense and the probable testimony of the informant; and (3) the government's interest in nondisclosure." *United States v. Flores*, 572 F.3d 1254, 1265 (11th Cir. 2009) (citation and internal quotation marks omitted).

Although Pettaway supplies little in the way of his version of the factual background of this case, his first justification for disclosure of the CI's identity is that he believes the informant played a prominent role in the criminal activity alleged, (doc. 22 at 3), an argument directed towards the first factor in the *Flores* analysis. Pettaway states he believes the CI was present at the search location when the search warrant was executed, caused Pettaway's own presence at the search location, and that the CI possessed the cocaine that was found during the search. *Id.* The government flatly denies the CI was present at the search location and that he or she took part in the charged criminal activity. (Doc. 28 at 3-4).

At a hearing on Pettaway's motion for bond, (doc. 23), Pettaway's counsel disclosed that a list of persons present at the search location produced in discovery in a state criminal case did not align with the list produced in this case, leading him to believe that the person missing from the discovery in this case could be the CI. Subsequently, the undersigned directed the parties to confer to determine whether that information should be considered by the court in ruling on the motion to compel. (Doc. 30). The undersigned set a March 4, 2019 deadline for the parties to supplement their pleadings. (*Id.*). Only the government responded, indicating the person present at the scene but inadvertently omitted from discovery provided to Pettaway in this case is not the CI. (Doc. 32). Consequently, Pettaway's belief appears to be unfounded. Further, neither party has provided the affidavit supporting the search warrant, but the government represents (and Pettaway does not deny) that the information provided to law enforcement by the CI is that he or she knew Pettaway to be a cocaine dealer, had recently been at the search location, and had seen cocaine being kept, concealed, and distributed. (*Id.* at 2). None of this implicates the CI in criminal activity, and the first *Flores* factor cuts against disclosure.

Pettaway's second argument is that the CI's identity is relevant to his defense, (doc. 22 at 3), which relates to the second factor. Pettaway does not specifically explain how the CI's testimony would support his defense, nor what he expects that testimony to be. Pettaway's argument the CI's testimony would aid in his defense springs from his belief that the CI was present at the search location, as Pettaway simply states the CI's testimony "would be directly related and essential to Pettaway's claim of innocence" due to "the informant's role in the criminal activity." (Doc. 22 at 3). The absence of a reason to conclude the CI was at the search location sweeps the foundation from under Pettaway's argument. Further, it is Pettaway's burden "to show that the informant's testimony would significantly aid in establishing an asserted defense." *United States v. Gutierrez*, 931 F.2d 1482, 1491 (11th Cir. 1991) (citation omitted). Pettaway may not meet that burden and compel disclosure simply by speculating as to the possible relevance of the CI's testimony, as he has done here. *See id.* The second factor weighs against disclosure.

Pettaway does not address the third factor, but the government offers a general contention it has a legitimate interest in protecting the safety of any CI. Regardless of whether this is enough to support the government's interest in nondisclosure (that "disclosure might endanger the informant or other investigations," *Flores*, 572 F.3d at 1265), it does nothing to tip the scales given Pettaway's failure to support the first two factors with a basis for disclosure. Nor is there any other factor supporting disclosure. Therefore, Pettaway's motion, (doc. 22), is **DENIED**.

DONE this 6th day of March, 2019.



JOHN H. ENGLAND, III
UNITED STATES MAGISTRATE JUDGE

