

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT****No. 23-4346**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JARRELL RAESHON BORDEAUX,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Richard E. Myers, II, Chief District Judge. (5:20-cr-00428-M-1)

Submitted: August 22, 2024

Decided: August 26, 2024

Before WILKINSON, WYNN, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Louis H. Lang, CALLISON, TIGHE & ROBINSON, LLC, Columbia, South Carolina, for Appellant. David A. Bragdon, 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Unpublished opinions are not binding precedent in this circuit.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

a motion to dismiss an indictment for clear error, but we review its legal conclusions *de novo.*” *United States v. Perry*, 757 F.3d 166, 171 (4th Cir. 2014) (internal quotation marks omitted).

Upon review, we agree with the district court’s legal holding as it is consistent with the rationale expressed in *Black*. Notably, the conspiracy count charged Bordeaux with violating 21 U.S.C. §§ 841(a)(1), 846 by conspiring and agreeing to distribute and possess with intent to distribute certain quantities of heroin and fentanyl, in the Eastern District of North Carolina and elsewhere, from October 2019 through on or about June 30, 2020. The court’s rationale is also supported by persuasive sister circuit authority. Specifically, as the district court explained, the indictment was not legally insufficient—despite not alleging that Bordeaux “conspired with persons known and unknown”—because “the word ‘conspiracy’ incorporates within its definition an agreement with another person.” (E.R. 1842)*; *see United States v. Thomas*, 348 F.3d 78, 83-84 (5th Cir. 2003) (holding that indictment was sufficient “because the involvement of another person acting in concert with [the defendant] is implicit in the use of the words ‘combine, conspire, and confederate’” as stated in the indictment, and the evidence at trial showed that the defendant conspired with another person). We thus reject this assignment of error.

Bordeaux next questions whether sufficient evidence supports his conspiracy conviction. “We review the denial of a motion for judgment of acquittal *de novo.*” *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018). In assessing the sufficiency of the

* Citations to the “E.R.” refer to the compiled Electronic Record.

310, 317 (4th Cir. 2008), and the Government's evidence established that Bordeaux sold approximately 260 grams of heroin and fentanyl to the confidential informant over the charged period. On this record, we readily conclude that the Government satisfied its burden of proof as to the conspiracy count.

Finally, Bordeaux assigns error to the court's rejection of his motions to suppress evidence seized from his residence and a storage unit pursuant to search warrants and for reconsideration of that ruling, both of which posited that police officers made false statements in their warrant applications. In evaluating the denial of a motion to suppress, "we review that court's legal conclusions *de novo* and its factual findings for clear error, considering the evidence in the light most favorable to the government." *United States v. Kolsuz*, 890 F.3d 133, 141-42 (4th Cir. 2018).

A defendant is entitled to attack an otherwise facially valid search warrant affidavit under the "narrow exception" created in *Franks v. Delaware*, 438 U.S. 154 (1978). "To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing that the affiant made (1) a false statement (2) knowingly and intentionally, or with reckless disregard for the truth that was (3) necessary to the finding of probable cause." *United States v. White*, 850 F.3d 667, 673 (4th Cir. 2017) (internal quotation marks omitted). Upon review of the orders, we agree with the district court that nothing in either motion justified a *Franks* hearing because, at bottom, Bordeaux did not explain the basis for his multiple assertions of falsity or make a sufficient showing that the officers acting knowingly or intentionally or with a reckless disregard for the truth. We thus affirm the denial of Bordeaux's initial motion to suppress and find no abuse of discretion in the court declining

FILED: August 26, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 23-4346, US v. Jarrell Bordeaux
5:20-cr-00428-M-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: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; 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)).

Appendix A

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JUDGMENT

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/ NWAMAKA ANOWI, CLERK

Appendix A

FILED: September 24, 2024

UNITED STATES COURT OF APPEALS
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Defendant - Appellant

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Wynn, and
Judge Richardson.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix C