

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 27, 2023

**Christopher M. Wolpert
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVONTE LARON CHANEY,

Defendant - Appellant.

No. 22-3143
(D.C. No. 2:21-CR-20059-HLT-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, BALDOCK, and McHUGH**, Circuit Judges.

Davonte Laron Chaney appeals the denial of his motion to suppress evidence. He was convicted of bank robbery, in violation of 18 U.S.C. § 2113(a), (d); and of brandishing a firearm during a bank robbery, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). He contends the district court should have suppressed evidence seized from his home and car that tied him to the robbery. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. BACKGROUND

On the morning of September 21, 2021, an armed suspect robbed the Truity Credit Union (Truity) in Lawrence, Kansas. The suspect, dressed all in black, entered the credit union through its east door, pointed a gun at the employees, and ordered them to get down on the ground. Upon his demand, the employees gave him money from their teller drawers, including six “bait bills” with recorded serial numbers. The suspect left the credit union and walked westbound.

After police arrived, the employees described the suspect as a younger black male approximately 25 to 30 years old, over six feet tall, and weighing around 200 pounds. Video surveillance footage from Truity showed the suspect was a tall black male with a large-bridged nose wearing a black face mask covering the lower portion of his face. He wore an all-black Ralph Lauren Polo hooded sweatshirt and black and gray jogging pants, and it appeared that he was wearing red shorts or pants beneath the jogging pants. He had on distinctive speckled colored tennis shoes with orange on them.

Investigators reviewed the outside video surveillance from Truity’s cameras, which showed the suspect running southbound on the west side of the credit union towards a path leading to The Reserve Apartments. To identify the suspect, Lawrence Police Department Detective Kimberly Nicholson reviewed surveillance footage from surrounding businesses and the nearby Reserve apartment complex, along with traffic camera footage from various parts of the city of Lawrence and data from automated license plate readers (LPR) in the city. Based on the footage, she

zeroed in on a dark gray Pontiac Grand Prix that had exited the Reserve at approximately 9:41 a.m. The Pontiac had distinctive features: tinted windows, 5-star spoke rims, a short spoiler on the trunk, and a sunroof.

Detective Nicholson spotted a Pontiac fitting this description near the credit union multiple times before the robbery occurred. By backtracking the Pontiac that morning before the robbery, she located it at approximately 8:27 a.m. at an intersection with an automated LPR. The LPR revealed that the Pontiac bore Kansas license plate 171NPE. That license plate was registered to Mr. Chaney at his Kansas City, Kansas address. The Pontiac was also recorded later in the day by an LPR.

FBI Task Force Officer Ryan Padilla signed search warrant affidavits for Mr. Chaney's home and car. The two affidavits were nearly identical. They cited Officer Ryan's experience with search warrants and his personal involvement in the bank robbery investigation as well as reports and information provided to him by other investigating officers, including Detective Nicholson. Each described the robbery and the witnesses' descriptions of the subject and described evidence from multiple surveillance cameras to establish that the robber had driven the Pontiac seen at the Reserve Apartments and that this Pontiac was Mr. Chaney's Pontiac that had been spotted by the LPRs. The affidavits tracked the movements of the Pontiac on the day of the robbery as revealed by the cameras and LPRs. They also detailed investigators' later observations of Mr. Chaney leaving his Kansas City residence in the Pontiac, shopping at a local business, returning to the residence in the Pontiac, and entering the residence.

A United States magistrate judge signed both search warrants and law enforcement executed them. The search of the home yielded a black Glock pistol and ammunition, United States currency (including all six of the bait bills), a pair of black sweatpants, and several pairs of red athletic shorts. The search of the Pontiac yielded four black masks and one navy blue mask.

Mr. Chaney was charged with bank robbery and brandishing a firearm during a bank robbery. He filed a motion to suppress the evidence seized from his home and car. The district court held an evidentiary hearing, at which Detectives Nicholson and Padilla testified. It received exhibits including a PowerPoint presentation that reproduced numerous surveillance videos and photos and LPR photos along with information that placed them in context. Upon review of the evidence, the district court found that that “there were no knowing or reckless misstatements or omissions [in the affidavits], that any misstatements or omissions were not material, and that the search warrants were supported by probable cause.” R., vol. I at 160. It therefore denied the motion to suppress.

After a trial, the jury returned guilty verdicts on both counts of the indictment. The district court sentenced Mr. Chaney to a total of 120 months’ imprisonment to be followed by a five-year term of supervised release.

II. DISCUSSION

When reviewing the denial of a motion to suppress, we accept the district court’s factual findings unless clearly erroneous and view the evidence in the light most favorable to the government. *United States v. Gregoire*, 425 F.3d 872, 875

(10th Cir. 2005). We review de novo whether a search was reasonable under the Fourth Amendment. *Id.*

The Fourth Amendment prohibits “unreasonable searches and seizures” by requiring probable cause to support a search warrant. U.S. Const. amend. IV (stating “no Warrants shall issue, but upon probable cause”). “Probable cause to issue a search warrant exists only when the supporting affidavit sets forth facts that would lead a prudent person to believe there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *United States v. Mora*, 989 F.3d 794, 800 (10th Cir. 2021) (internal quotation marks omitted). Probable cause for a search warrant is a “flexible, common-sense standard.” *See United States v. Bullcoming*, 22 F.4th 883, 891 (10th Cir. 2022) (internal quotation marks omitted), *cert. denied*, 142 S. Ct. 2805 (2022). But we have explained that:

A search warrant must be voided and the fruits of the search suppressed where a court (1) finds that the affiant knowingly or recklessly included false statements in or omitted material information from an affidavit in support of a search warrant and (2) concludes, after excising such false statements and considering such material omissions, that the corrected affidavit does not support a finding of probable cause.

United States v. Garcia-Zambrano, 530 F.3d 1249, 1254 (10th Cir. 2008) (citing *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)).

We review the district court’s findings concerning the truth or falsity of statements in the affidavit and the intentional or reckless character of any falsehoods for clear error. *See id.* “The credibility of witnesses, the weight to be given evidence, and the reasonable inferences drawn from the evidence fall within the

province of the district court.” *United States v. Long*, 176 F.3d 1304, 1307 (10th Cir. 1999). We review the district court’s ultimate determination of reasonableness under the Fourth Amendment de novo. *See Garcia-Zambrano*, 530 F.3d at 1254.

A. ALLEGED MISSTATEMENTS OR OMISSIONS IN THE AFFIDAVITS

Mr. Chaney argues the search warrant affidavits included knowing or reckless material misstatements or omissions that, if corrected, would have left the affidavits insufficient to support probable cause.¹

1. Detective Nicholson’s Ability to Track the Pontiac.

Relying primarily on images and videos contained in the government’s PowerPoint presentation, which we have also reviewed, Mr. Chaney argues the affidavits recklessly overstated Detective Nicholson’s ability to track the movements of the Pontiac. He contends the affidavits should have disclosed that in many of the images, it was difficult to identify the Pontiac.²

¹ In addition to the alleged misstatements and omissions he has raised in this appeal, in district court Mr. Chaney also asserted that the affidavits falsely represented that The Reserve only had one entrance, *see R.*, vol. I at 107-11, and omitted the fact that a black Chevrolet had pulled into a nearby apartment complex around the time of the robbery, *see id.* at 112-14. Because Mr. Chaney has not developed an argument concerning these specific misstatements or omissions on appeal, we do not consider them. *See, e.g., Mahdi v. Salt Lake Police Dep’t*, 54 F.4th 1232, 1240 (10th Cir. 2022) (“Issues not raised in the opening brief are deemed abandoned or waived.” (internal quotation marks omitted)).

² In addition to asserting that the Pontiac was difficult to identify, Mr. Chaney argues that it is difficult to identify *the subject* believed to be the robber in the videos and still images. *See* Aplt. Opening Br. at 43, 47-48. Although his motion to suppress briefly mentioned a “tiny image” of the subject in one of the photos, *R.*, vol. I at 104, he only adequately developed a suppression argument concerning Detective Nicholson’s ability to see *the Pontiac*, *see id.* at 111-12. And the district court

Detective Nicholson testified that she had no hesitation and no concerns that she was tracking the wrong vehicle. R., vol. I at 219. The district court found her testimony “extremely credible given her knowledge of the subject matter, her candor, and her demeanor.” *Id.* at 160 n.1. The court acknowledged that in some of the still shots it was difficult to clearly identify the Pontiac. But it stated that when the video surveillance was considered as a whole, given Detective Nicholson’s thorough and methodical review of the footage from the various surveillance cameras, it was not difficult to identify the Pontiac. The court concluded it was “able to follow the footage and path-of-travel of the vehicle” and concluded that Detective “Padilla did not knowingly or recklessly misstate [Detective] Nicholson’s ability to view and track the Pontiac’s movements.” *Id.* at 170.

Mr. Chaney fails to show these findings were clearly erroneous. Although the Pontiac is difficult to identify in a few of the images, we discern no clear error in the district court’s conclusion that Detective Nicholson was sufficiently able to view and track the Pontiac to support the affidavit’s statements describing her observations. Detective Padilla therefore did not knowingly or recklessly omit material information by failing to express doubts about some of her observations. Many if not most of the

addressed the visibility of *the Pontiac* (although it did mention the subject’s distance from the camera in a footnote, *see* R., vol. I at 161 n.2). Accordingly, Mr. Chaney has not preserved a separate argument for appeal concerning any alleged misstatements about Detective Nicholson’s ability to see *the subject* in the images, and we decline to separately consider such an argument. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130-31 (10th Cir. 2011) (declining to consider alternative theory not presented to district court in the absence of an argument for plain-error review).

sightings of the Pontiac described in the affidavits, *see id.* at 367-71, ¶¶ 17-23, are plainly visible on the PowerPoint slides that detail Detective Nicholson's observations. These include the key images that show the Pontiac in the vicinity of Truity around the time of the robbery and exiting that vicinity immediately after the robbery. And although Mr. Chaney emphasizes that it is not possible to discern the unique features of his Pontiac in some of the images, any concerns about the reliability of the images are attenuated to a great degree by the precise timing used to track the vehicle and the numerous image sources capturing its travels in the area around the time of the robbery.

Mr. Chaney also asserts that Detective Padilla and Detective Nicholson disclaimed responsibility for "overstat[ing] the surveillance sightings," each purportedly assigning responsibility to the other for any such problem. Aplt. Opening Br. at 44-45. But for the reasons we have stated, the affidavit did not knowingly or recklessly overstate the surveillance sightings. We therefore reject this argument as well.

2. Detective Padilla's Alleged Misstatement About the Suspect Seen Walking to and from the Pontiac.

In the "Conclusion" section of the search warrant affidavits Detective Padilla summed up why he believed that evidence concerning the robbery could be found inside the Pontiac and Mr. Chaney's residence. He stated, among other things, that "a subject dressed in all black clothing [is] seen walking to and from the Pontiac prior to the robbery." Suppl. R. at 12 (affidavit for residence); 31 (affidavit for

Pontiac). When asked at the evidentiary hearing whether there was evidence to support this statement, Detective Padilla testified he had based it on his understanding of the information that had been related to him. But Detective Nicholson admitted at the hearing that she had not viewed any image in which the subject or suspect was seen walking to and from the Pontiac prior to the robbery or physically entering or exiting the Pontiac around the time of the robbery. She did say, however, that the subject was in the area of the Pontiac at the same time the car was seen coming and going.

The district court found that although Detective Padilla “could have worded it better,” taken in context he was attempting to summarize the surveillance footage that connected the robbery subject with the Pontiac, including the Pontiac’s arrival and departure from The Reserve and the subject’s path to and from The Reserve before and after the robbery. R., vol. I at 171 n.5. Thus, the district court concluded, the statement was “not a knowing or reckless misstatement or omission.” *Id.* But even if it was, the court concluded the misstatement or omission was not material.

The phrase “walking to and from the Pontiac” is ambiguous. It could mean the subject was seen adjacent to or even entering or exiting the vehicle. But it could also mean the subject was merely seen walking in the Pontiac’s general direction—an interpretation which would be consistent with the other evidence in the affidavit concerning the subject’s path to and from The Reserve. Taken in this sense, this would not represent a knowing or reckless misstatement. Given the ambiguity and the entire context of the affidavits we cannot conclude the district court clearly erred

in reaching its conclusion that Detective Padilla did not knowingly or recklessly misstate the evidence. *See United States v. Sanchez*, 725 F.3d 1243, 1247-48 (10th Cir. 2013) (negligent or inadvertent errors are insufficient grounds for suppression).

B. PROBABLE CAUSE

Mr. Chaney also contends the district court erred in finding probable cause to support the search warrants.

1. Did the Robber Drive the “Reserve Pontiac”?

As noted, the affidavit described a person clothed similarly to the robber coming and going from Truity toward The Reserve, where a Pontiac was observed prior to the robbery. The subject left Truity and headed toward The Reserve immediately after the robbery. Shortly after that the Pontiac was captured leaving The Reserve. It was not unreasonable to infer that the person leaving The Reserve in the Pontiac may have been the robber. This inference was bolstered when it was discovered that the Pontiac’s owner, Mr. Chaney, matched the robber’s description.³

Mr. Chaney argues that his resemblance to the witnesses’ description of the robber is too general to provide probable cause that it was he who robbed the credit union. But their descriptions included the robber’s race and estimated age, height, and weight, which were confirmed by the Truity video footage and which turned out

³ Contrary to Mr. Chaney’s suggestion, the district court adequately explained its reasons for adopting this inference and did not merely “assume[] [its] correctness,” Aplt. Opening Br. at 30.

to be consistent with Mr. Chaney's features and his appearance as revealed in his 2015 mugshot. *Cf. United States v. Moses*, 965 F.3d 1106, 1113 (10th Cir. 2020) (finding "very strong probable cause" for a search where, among other things, the suspect matched informants' descriptions of him as "a white, gray-haired man in his late fifties"). Given all the circumstances, the affidavit sufficiently connected the robber with the Pontiac captured in images from The Reserve.

2. Was the "Reserve Pontiac" Mr. Chaney's Pontiac?

Mr. Chaney argues the affidavit fails to establish that the Pontiac observed at The Reserve was the same car as his Pontiac, which was backtracked to be identified by the LPRs. He does not argue that the Pontiac could not have been spotted in any of the significant images or descriptions provided in the affidavit; for example, because the timing of Detective Nicholson's chronology made this patently impossible.⁴ Instead, he contends that the affidavits did not include a Lawrence map, did not describe where the named intersections were in relation to the robbery, did not describe driving times between those intersections, and did not describe "how many other similar-looking cars were driving around Lawrence that morning." Aplt. Opening Br. at 32. But he fails to show that the affidavits, which described in detail

⁴ Mr. Chaney does assert that a statement in the affidavit about the Pontiac's location within The Reserve "seems to contradict another statement in the affidavit," *see* Aplt. Opening Br. at 8 n.2, which he claims can be seen by consulting a map of the City of Lawrence, but he provides no particulars to support this assertion. He also claims that a map of Lawrence shows "[a] person cannot reach Massachusetts Street by turning east from Haskell onto 23rd Street," as the affidavit indicates, *id.* at 12 n.3, but this single detail, which describes one part of the car's trajectory after the robbery, did not strip the affidavit of probable cause.

the Pontiac's movements along with those of the subject, needed to contain those additional details to establish probable cause.

He cites two cases, *United States v. Martinez*, 910 F.3d 1309 (10th Cir. 2018) and *United States v. Jones*, 998 F.2d 883 (10th Cir. 1993), where we determined a law enforcement officer lacked reasonable suspicion to connect a car and/or its driver and passenger to a crime. In each of those cases, the evidence linking the car and its occupants to the crime was much more tenuous than the evidence in this case. In *Martinez*, we determined reasonable suspicion was lacking even though the officers knew the color and make of a car possibly associated with a robbery, had descriptions of the robbery suspects similar to those of the driver and passenger, and the general drive times for the car were not inconsistent with a car later stopped by officers. *See* 910 F.3d at 1313, 1317. But there was nothing like the timing and extensive video camera footage involved in this case. Similarly, in *Jones* the description of the vehicle and its occupants specified only that they were two Black men in a black Mercedes who were stopped at a time and location that was consistent with their having participated in a prior disturbance. *See* 998 F.3d at 884-85. Much more precise evidence tied Mr. Chaney and his vehicle to the robbery in this case than in *Jones*.

3. Did the Warrant Establish an Adequate Nexus to Mr. Chaney's Home?

Mr. Chaney asserts that the affidavit for the search of his home did not establish that evidence would be found there a week later, 35 miles from the robbery.

To establish probable cause, “a nexus must exist between suspected criminal activity and the place to be searched.” *Mora*, 989 F.3d at 800 (internal quotation marks omitted). In determining whether such a nexus exists to search a suspect’s home, we look to “the strength of the case-specific evidence that links suspected criminal activity and the home.” *Id.*

In this case, however, we need not decide whether the nexus requirement was sufficiently met to establish probable cause, because, as the district court alternately held, the good-faith exception clearly applies. Under the good-faith exception, “evidence obtained pursuant to the search need not be suppressed if the officer executing the warrant acted in good-faith reliance on a judge’s approval.” *United States v. Cotto*, 995 F.3d 786, 796 (10th Cir. 2021). “When the search is of a home, the good-faith exception applies if the affidavit supporting the warrant establishes a minimally sufficient nexus between the illegal activity and the place to be searched.” *Id.* (internal quotation marks omitted). “To find a minimal nexus, there need not be hard evidence or personal knowledge of illegal activity linking a Defendant’s suspected unlawful activity to his home.” *Id.* at 797 (brackets and internal quotation marks omitted).

Mr. Chaney argues broadly that the good-faith exception is inapplicable here because the magistrate judge issued the warrant on a deliberately or recklessly false affidavit, and because the warrant was so lacking in indicia of probable cause that it would be unreasonable for an officer to rely on it. But as we have already

determined, Mr. Chaney failed to show any deliberate or reckless misstatement or omission, and the warrant was supported by probable cause generally.

The affidavit also established the required minimally sufficient nexus between the crime and the location to be searched. The district court concluded that the nexus was shown because

the warrant sought personal items likely stored in a home, it sought the items a week later after officers had observed Chaney entering and leaving the residence and the Pontiac, and it included facts suggesting that Chaney did not have another home or office to store the items (e.g., tax warrant and unemployment claim).

R., vol. I at 176.

Mr. Chaney argues that the district court could not rely on the tax warrant and unemployment claim because they were offered in the affidavit only to show where he lived, not that he did not have another home or office. But the district court was free to draw the reasonable inference it did about where the evidence could be found from the facts cited in the affidavit. For the reasons the district court cited, the evidence was sufficient to establish the required minimally sufficient nexus. *See Cotto*, 995 F.3d at 797 (finding minimally sufficient nexus where red Camaro sped away from a shooting, was found outside the residence to be searched, and the suspect returned to the car a short time later; concluding that the detective who executed the warrant could reasonably infer the suspect was using the residence to store evidence of his criminal activity).

C. CONCLUSION

We affirm the district court's order denying Mr. Chaney's motion to suppress.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge