U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2694

UNITED STATES OF AMERICA

v.

DWAYNE FOUNTAIN,
Appellant

Appeal from U.S. District Court, D. Del.
Judge Colm F. Connolly, No. 1:23-cr-00049-001

Before: KRAUSE, PORTER, and AMBRO, *Circuit Judges*
Submitted Sep. 22, 2026. Filed: November 20, 2026

NONPRECEDENTIAL OPINION*

KRAUSE, *Circuit Judge*. In this appeal, Appellant Dwayne Fountain challenges the District Court's denials of his motions to suppress and its imposition of two sentencing enhancements. Perceiving no error, we will AFFIRM.

I.

Fountain contends the District Court erred (1) in denying his motion to suppress evidence seized in the search of his apartment; (2) in denying his motion to suppress evidence obtained from the Government's wiretaps of the telephones used in drug-trafficking operations; and (3) in applying two-point sentencing enhancements for

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

maintaining a drug premises under U.S.S.G. § 2D1.1(b)(12) and for his leadership role in drug trafficking operations U.S.S.G. § 3B1.1(c). We address each below.

A. The Apartment Search

Fountain argues that the drug-trafficking evidence from a residence he rented and used, "Apartment 909," should have been suppressed because deliberate falsehoods in the search warrant affidavit precluded a finding of probable cause. He also argues he was entitled to a hearing, pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), to dispute the affidavit's validity. Neither argument is persuasive.

When evaluating probable cause determinations, we "review the record to ensure that the proper procedure for determining probable cause was followed," *Dempsey v. Bucknell Univ.*, 834 F.3d 457, 469 (3d Cir. 2016), and we, like the District Court, will affirm the magistrate so long as the affidavit provides a "substantial basis" for her probable-cause determination, *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983).

Here, we can add little to the District Court's detailed, thorough analysis. The Court discerned "more than a substantial basis" for the magistrate's probable cause determination, SA 62-66, and determined that Fountain had failed to make a "substantial showing of an intentional or reckless material falsehood" in the affidavit, SA 67-72. It found, for example, that "Sargeant Martinek's reported observation . . . of Fountain leaving his apartment with the Smiley Face bag in hand," together with "the markings on and shape of the wrapping . . . and the white powdery remnants" inside, established the factual nexus between Fountain's "alleged drug dealing and the apartment." SA 67. It also observed that, even if officers had not observed Fountain leaving Apartment 909, mere "conclusory

assertions" that officers lied to obtain probable cause were "insufficient to overcome the presumptive validity of the affidavit." SA 69 (citing *Franks*, 438 U.S. at 171). Additional evidence both "confirmed that Fountain lived in [A]partment 909" and undermined Fountain's assertion that "Martinek could not have observed the door to [A]partment 909 without compromising his surveillance position." SA 69-70.

Given these observations, we see no error in the District Court's denial of a *Franks* hearing, which would only have been necessary if Fountain had made a "substantial preliminary showing" that (1) the affidavit contained false statements made "knowingly and intentionally, or with reckless disregard for the truth," and that (2) "the allegedly false statement is necessary to the finding of probable cause." 438 U.S. at 155-56. The District Court reasonably concluded he had not.

B. The Wiretap Application

Fountain next argues that wiretap evidence should have been suppressed because the wiretap application for Target Telephones 1 and 3 (TT1 and TT3) did not establish either probable cause or necessity. A district judge authorizing a wiretap must ensure the application satisfies 18 U.S.C. § 2518, which requires a showing of probable cause,[1] as well as necessity, meaning that "other investigative procedures have been tried and failed or [that] they reasonably appear to be unlikely to succeed or to be too dangerous." *United*

[1] The Government must "show probable cause in three different contexts. The first is that an individual has or is about to commit one of several enumerated offenses . . . ; the second: that particular communications relating to the charged offense will be obtained through the interception; third: the premises where the interception will be made are being used in connection with the charged offense." *United States v. Armocida*, 515 F.2d 29, 35 (3d Cir. 1975); 18 U.S.C. § 2516(1)(e).

States v. Bailey, 840 F.3d 99, 114 (3d Cir. 2016) (quoting § 2518(1)(c)). We review a district court's authorization *de novo*. *United States v. McGlory*, 968 F.2d 309, 345 (3d Cir. 1992).

Here, again, the District Court exhaustively laid out how the affidavit demonstrated "more than a substantial basis to justify [the] probable cause finding," SA 47-51, and "why other methods of investigation were insufficient to accomplish the purposes of the investigation," SA 51-56.

As to the former, Fountain objects that there was little to no connection established between TT1 and him specifically. But, as the District Court observed, "wiretaps are directed, not at persons, but at phone communications for which there is probable cause to believe that evidence of crime will be revealed." SA 46 (citing *United States v. Tehfe*, 722 F.2d 1114, 1117 (3d Cir. 1983)). The Court also found the affidavit contained a substantial basis to conclude that a co-conspirator, William Warren, was engaged in drug trafficking, and that TTI was being used in connection with Warren and Fountain's drug-trafficking operation.

As to the latter, Fountain objects that the affidavit contained only "broad, generic statements that could apply to *any* drug investigation." Op. Br. 26. But, as the Court noted, the affidavit "explained how law enforcement exhausted the normal investigative techniques," and how alternatives would not succeed, with respect to the investigation of Fountain and his co-conspirators specifically. SA 52. For example, "counter-surveillance techniques" had "rendered physical surveillance challenging and unfruitful," SA 53, and

alternatives, like pole-mounted cameras and GPS trackers, had been "previously unsuccessful" or were too limited in scope, *see, e.g.*, SA 54-55.

And while Fountain argues the District Court abused its discretion in "granting the Government leave to cure a conceded deficiency," Op. Br. 24-25, that discrepancy related to the Government's *briefing*, not to the wiretap application, for which the Court found there to have been "a substantial basis to conclude . . . that there's probable cause that TT1 was being used in connection with those drug transactions, and the law enforcement had identified the individuals involved in those drug transactions," App 266.

C. The Sentencing Enhancements

Next, Fountain challenges the District Court's application of a two-level enhancement for maintaining a drug premises under U.S.S.G. § 2D1.1(b)(12), and another two-level enhancement for a leadership role under U.S.S.G. § 3B1.1(c). We review the application of the Sentencing Guidelines *de novo*, *United States v. Fountain*, 792 F.3d 310, 318 (3d Cir. 2015), and review the Court's factual findings and "whether the agreed-upon set of facts fit within the enhancement requirements" for clear error, *United States v. Fish*, 731 F.3d 277, 279 (3d Cir. 2013). In this case, neither enhancement was applied in error.

Section 2D1.1(b)(12) applies where the defendant "(1) knowingly (2) open[ed] or maintain[ed] any place (3) for the purpose of manufacturing or distributing a controlled substance." *United States v. Carter*, 834 F.3d 259, 261-62 (3d Cir. 2016) (citations omitted). Fountain does not dispute he maintained the apartment. Instead, he points to the commentary to Section 2D1.1, which states that trafficking must have been a "primary or principal use[] for the premises," not just a "incidental or collateral use[]," U.S.S.G. §

2D1.1 cmt. n.17, and he argues that the trial evidence put the apartment in the latter category.

Here, however, we have no cause to look to commentary. We accord it deference only where the Guidelines' text gives rise to "genuine ambiguity," *United States v. Rodriguez*, 40 F.4th 117, 122 n.1 (3d Cir. 2022), but we have already held that Section 2D1.1(b)(12) contains "no genuine ambiguity," *id*. at 122 n.1. Rather, it authorizes an enhancement "[i]f the defendant maintained a premises for the purpose of manufacturing or distributing controlled substances," U.S.S.G. § 2D1.1(b)(12), a phrase that we read as requiring only that the premises had a "significant purpose of drug activity," *United States v. Safehouse*, 985 F.3d 225, 237-38 (3d Cir. 2021).

That "significant purpose" threshold was easily satisfied on the record. The Court established at trial that Fountain rented and maintained Apartment 909 for over a decade, and that it contained large quantities of drugs, as well as items used to package, mix, and distribute drugs, and cash traced to controlled drug sales.

Section 3B1.1(c)'s enhancement applies where the defendant acted as an "organizer, leader, manager, or supervisor," U.S.S.G. § 3B1.1(c), meaning he "exercised some degree of control over at least one other person involved in the offense." *Fountain*, 792 F.3d at 321. Here, again, the District Court found "overwhelming evidence" that Fountain held "directive power or influence over" his co-conspirators. App 293-95; *United States v. Adair*, 38 F.4th 341, 354 (3d Cir. 2022). That evidence included the facts that Fountain oversaw the sale of controlled substances to an undercover officer, referred to co-conspirators as "my guys" whom he had to "motivate," App 169-70 (Gov. Ex. 206a), and

was referred to by co-conspirators in terms like "the OG" and "big homey," App 294. The drugs and drug-related materials recovered from Apartment 909 further support the Court's findings.

On this record, the District Court did not err in enhancing Fountain's sentence under either U.S.S.G. § 3B1.1(c) or U.S.S.G. § 2D1.1(b)(12).

II.

For the foregoing reasons, we will AFFIRM the District Court's judgment.