UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4032

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN DALE MCCALLISTER,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:19-cr-00153-1)

Submitted: April 11, 2022 Decided: May 23, 2022

Before RUSHING, Circuit Judge, and KEENAN and FLOYD, Senior Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: A. Courtenay Craig, CRAIG LAW OFFICE, Huntington, West Virginia, for Appellant. Lisa G. Johnston, Acting United States Attorney, R. Gregory McVey, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

PER CURIAM:

Following a jury trial, Steven Dale McCallister was convicted of distribution of a fentanyl mixture, in violation of 21 U.S.C. § 841(a)(1), possession with intent to distribute 400 grams or more of a fentanyl mixture, in violation of 21 U.S.C. § 841(a)(1), possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The district court sentenced McCallister to concurrent 180-month terms of imprisonment on the two drug counts, a concurrent 120-month term on the § 922(g) count, and a consecutive 60-month term on the § 924(c) count, for a total sentence of 240 months' imprisonment. McCallister appeals, asserting several challenges to his convictions. We affirm.

I.

McCallister first argues that the district court erred in denying his motion to suppress the evidence seized pursuant to a search warrant. He contends that the search warrant was invalid because it was based on an affidavit describing a controlled buy that occurred after the affidavit was drafted, the officer who prepared the affidavit was not present at the controlled buy, and the magistrate acted as a rubber stamp for law enforcement when he authorized the search warrant.

"We review the factual findings underlying a motion to suppress for clear error and the district court's legal determinations de novo." *United States v. Davis*, 690 F.3d 226, 233 (4th Cir. 2012). When the district court has denied a defendant's suppression motion, we construe the evidence in the light most favorable to the Government. *United States v.*

Abdallah, 911 F.3d 201, 209 (4th Cir. 2018). "The duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." *United States v. Lull*, 824 F.3d 109, 115 (4th Cir. 2016) (cleaned up).

At the suppression hearing, the officer who prepared the search warrant and the supporting affidavit testified that he drafted them based on the manner in which the controlled buy was expected to transpire. Only after receiving word from other agents that the buy was successful did the officer sign the affidavit and meet with a magistrate who signed the search warrant. As the district court noted, when the magistrate signed the warrant, the information contained therein was an accurate description of what had transpired. We discern no defect in the warrant simply because it was drafted in advance of the controlled buy.

Furthermore, the warrant was not rendered invalid because the officer who prepared the affidavit was not present at the controlled buy. Under the collective knowledge doctrine, "when an officer acts on [information] from another officer, the act is justified if the [informing] officer had sufficient information to justify taking such action [him]self." *United States v. Massenburg*, 654 F.3d 480, 492 (4th Cir. 2011). In this situation, "the [informing] officer's knowledge is imputed to the acting officer." *Id*. Here, agents overseeing the controlled buy informed the officer who prepared the search warrant that the controlled buy had been completed. We conclude there was sufficient information, based on the agents' collective knowledge, to support the affidavit.

Finally, McCallister challenges the warrant by making a conclusory assertion that the magistrate served as a rubber stamp for the police when he authorized the search

warrant. An issuing magistrate acts as a rubber stamp for law enforcement when he approves a "bare bones" affidavit. A "bare bones" affidavit is one that contains "wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause." *United States v. Wilhelm*, 80 F.3d 116, 121 (4th Cir. 1996) (internal quotation marks omitted). An affidavit is "bare bones" when an affiant merely recites the conclusions of others without corroboration or independent investigation of the facts alleged. *See, e.g., id.* at 120. The affidavit in this case was based on law enforcement's observation and involvement in a controlled buy and, as such, was not bare bones. McCallister's claim that the magistrate acted as a rubber stamp for law enforcement is lacking in merit. We conclude that the district court did not err in denying McCallister's motion to suppress.

II.

Next, McCallister argues that the chain of custody evidence was insufficient to support the admission at trial of the laboratory results of the drugs purchased from McCallister or seized pursuant to the search warrant, citing discrepancies between the collection of the evidence and receipt of that evidence at the laboratory. Specifically, McCallister argues that, between collection and testing, the weight of some of the drugs changed.

Because McCallister did not object at trial to the chain of custody of the drug exhibits, review is for plain error. *United States v. Johnson*, 945 F.3d 174, 177 (4th Cir. 2019). "To prevail under this standard, a defendant must show that (1) there was 'error' (2) that was 'plain' and (3) 'affect[ed] substantial rights,' and that (4) 'the error seriously

affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" *Id.* at 177-78 (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)).

"Establishing a strict chain of custody is not an iron-clad requirement, and the fact of a missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect." *United States v. Summers*, 666 F.3d 192, 201 (4th Cir. 2011) (internal quotation marks omitted). The agents who seized the drugs, the evidence custodian, the agents who transported the drugs to the laboratories, and the chemists who tested the drugs all testified that the drugs purchased during the controlled buy or seized from McCallister's residence were the same drugs that were tested and that were admitted at trial.

Detective Wesley Daniels, the case agent in charge of the evidence seized during the execution of the search warrant, explained that, before sending the controlled substances for laboratory analysis, the agents weighed the substances to have an idea as to what the ultimate charges would be. However, the scales used by the agents were not certified and were not intended for precise measurements. Accordingly, the drugs were sent to the laboratory where a chemist would establish the certified weight. Thus, the difference in drug weight between the agents' measurements and the laboratory measurements were attributable to the inaccuracy of the investigating agents' scales, which

were not intended to give precise weights for purposes of pursuing specific charges.[*] We conclude that the district court did not plainly err in admitting the laboratory results.

III.

Although the original indictment only charged McCallister, two superseding indictments added more charges, including some against McCallister's father. The charges against McCallister's father were ultimately dismissed. McCallister contends that the Government charged his father in the superseding indictments in bad faith based on inaccurate testimony from Detective Daniels at the grand jury hearings, that the resulting indictments extended McCallister's trial date beyond the Speedy Trial Act time limits, and that the district court therefore erred in denying his motion to dismiss the indictment as a deterrent to prosecutorial misconduct.

"Defendants alleging grand jury abuse bear the burden of rebutting the presumption of regularity attached to a grand jury's proceeding." *United States v. Alvarado*, 840 F.3d 184, 189 (4th Cir. 2016) (cleaned up). "A district court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendant." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254 (1988). To establish actual prejudice for prosecutorial misconduct in grand jury proceedings, a defendant must show either "that the

[*] McCallister points out that one exhibit weighed approximately 400 grams at collection, but was identified in laboratory analysis as two 200-gram bags. We find no chain of custody concern. Not only is the aggregate weight the same, but the West Virginia State Police chemist testified that, after weighing a substance, the laboratory would repackage it in the original packaging or in its own packaging. As to any discrepancies in the weight of the methamphetamine, all charges relating to methamphetamine were dismissed before trial.

violation substantially influenced the grand jury's decision to indict, or . . . there is 'grave doubt' that the decision to indict was free from the substantial influence of such violations." *Id.* at 256.

Our review of the record convinces us that McCallister failed to show either that the mistaken testimony substantially influenced the grand juries' decisions to indict or that there is grave doubt that their decisions were free from substantial influence from the mistaken testimony. We therefore conclude that the district court properly denied McCallister's motion to dismiss the indictment.

IV.

Finally, McCallister claims that the evidence was insufficient to show that he constructively possessed the firearm seized from under the bed in his bedroom. We will uphold a verdict if there is substantial evidence, viewed in the light most favorable to the Government, to support it. *United States v. Palomino-Coronado*, 805 F.3d 127, 130 (4th Cir. 2015). Substantial evidence is "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Id.*

Possession of a firearm may be shown through actual or constructive possession. *See United States v. Al Sabahi*, 719 F.3d 305, 311 (4th Cir. 2013). "[T]he government can prove constructive possession by showing that [McCallister] intentionally exercised dominion and control over the firearm, or had the power and intention to exercise dominion and control over the firearm." *Id*. (internal quotation marks omitted). "A person may have constructive possession of contraband if he has ownership, dominion, or control over the

contraband or the premises or vehicle in which the contraband was concealed." *United States v. Herder*, 594 F.3d 352, 358 (4th Cir. 2010).

Here, agents discovered the firearm in McCallister's bedroom under his bed in close proximity to a bag of fentanyl. The prerecorded cash from the controlled buy of fentanyl was on the bed. Viewing the evidence in the light most favorable to the Government, we conclude that the evidence was sufficient to establish beyond a reasonable doubt that McCallister constructively possessed the gun.

V.

Accordingly, we affirm McCallister's convictions. 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