

NOT RECOMMENDED FOR PUBLICATION

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Nos. 22-5947/23-5055

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

Jan 28, 2025

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JEREMY SMALLWOOD,

Defendant-Appellant.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF TENNESSEE

OPINION

Before: McKEAGUE, GRIFFIN, and LARSEN, Circuit Judges.

LARSEN, Circuit Judge. A jury convicted Jeremy Smallwood of several drug and firearm offenses. Smallwood, now proceeding pro se, appeals his convictions. He challenges the denial of his pretrial suppression motions and various aspects of his trial. Seeing no error, we AFFIRM.

I.

Jeremy Smallwood was involved in a dispute and a shooting in Kingsport, Tennessee. Smallwood was shot numerous times, but police determined that he had pulled out two firearms during the encounter. Due to prior felony convictions, Smallwood could not lawfully possess a firearm. He also was on state probation for selling cocaine, which included a condition indicating that Smallwood had agreed to a search of his person, vehicle, property, or residence “at any time” without warrant. Response in Opposition, R. 92-3, PageID 470. After time in the hospital, Smallwood returned home to recover from his injuries. During this time, he received skilled nurse visits at home for about a month.

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In August 2020, state probation officer Drew March sought and obtained an arrest warrant for Smallwood for violating the conditions of his probation. Among other things, March's affidavit pointed to a statement from ATF Agent Jamie Jenkins indicating that Smallwood possessed firearms on the night of his shooting. A state judge signed the arrest warrant. Records from around this time indicated that March received a phone call from an unidentified woman who claimed to be Smallwood's "former home health nurse." Supplemental Motion to Suppress, R. 71-1, PageID 350–51. She told March that she had observed Smallwood selling drugs and possessing firearms.

Next, a state detective sought and obtained a warrant to search Smallwood's home for evidence of firearm possession and drug trafficking. The affidavit supporting the warrant contained several allegations, including that a "Concerned Citizen Informant" who had been in Smallwood's home "for reasons associated with his or her professional duties" reported that Smallwood had multiple guns in the home, used controlled substances, and sold them to others. Response in Opposition, R. 92-5, PageID 474–75, 480–81.

On August 17, 2020, an officer watched Smallwood leave his house and drive away in a blue Camaro. Officers then stopped Smallwood because he had an active arrest warrant. Officers noticed a firearm under the driver's seat of the Camaro and found a bag of suspected heroin that fell from Smallwood's person as he exited the vehicle. Then, a narcotics detection dog alerted on the vehicle, so officers searched the vehicle and found a loaded pistol (in a black zippered bag that had been on Smallwood's lap when officers first approached the car), suspected marijuana, and ammunition. Officers also seized Smallwood's iPhone. On that same day, officers executed the search warrant for his home, finding marijuana residue, digital scales, and ammunition.

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Based on the search warrant affidavit and the evidence found in the Camaro, Agent Jenkins sought and obtained a warrant to search electronic data stored on Smallwood's iPhone. Jenkins uncovered numerous photos and text messages indicating that Smallwood possessed firearms and was engaged in drug trafficking.

A federal grand jury indicted Smallwood on seven charges related to the possession of drugs and firearms. Smallwood moved to suppress the evidence and statements stemming from the stop of his vehicle on August 17, 2020. Smallwood then filed a second suppression motion, this time challenging the validity of his arrest warrant. He then filed a third suppression motion, moving to dismiss the entire case or suppress all the evidence because "the cumulative effect of the government's actions . . . deprived [him] of due process and fundamental fairness." Motion to Dismiss, R. 91, PageID 437–50. Next, Smallwood tried to file a pro se supplemental "suppression/*Franks* motion." A magistrate judge denied the pro se motion because Smallwood had counsel. The magistrate judge then recommended denying of all the remaining motions to suppress.

Smallwood objected to the magistrate judge's recommendations, first through his attorneys, and then on his own. He then quarreled with his two retained attorneys. Smallwood petitioned the district court to remove one attorney (Dan Smith) because he wouldn't make arguments that Smallwood requested. He sought to proceed with his other attorney (Julie Canter) because he was "completely satisfied with her effort, as well as her representation." Motion to Withdraw Counsel, R. 102, PageID 575. But the next day, she moved to withdraw as Smallwood's counsel. After a hearing, the district court allowed Smith to withdraw but required Canter to represent Smallwood at trial. The court then denied all of Smallwood's motions to suppress.

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Smallwood proceeded to trial. The jury convicted him as charged. But Smallwood wasn't finished. He filed several post-trial, pro se motions, but the district court rejected those motions because Smallwood had counsel. The district court subsequently sentenced Smallwood to life in prison. Smallwood now appeals pro se.¹ Along with his merits briefs, Smallwood has filed a host of motions in this court.

II.

Smallwood's arguments can be separated into five categories. We address each in turn.

Suppression Motions. Smallwood first challenges the district court's denial of his various motions to suppress. We review the district court's legal conclusions de novo and its factual findings for clear error. *United States v. Ralston*, 110 F.4th 909, 916 (6th Cir. 2024).

The Fourth Amendment precludes a judge from issuing a warrant “unless the requesting officer demonstrates probable cause.” *United States v. Tagg*, 886 F.3d 579, 585 (6th Cir. 2018). Probable cause “is not a high bar.” *Id.* (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018)). “It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Wesby*, 583 U.S. at 57 (citation omitted).

The arguments presented in Smallwood's uncounseled briefing are scattershot. So we will briefly address each warrant in turn. We address first the arrest warrant based on Smallwood's possession of firearms on the night of his shooting. Smallwood doesn't challenge the magistrate judge's contention (adopted by the district court) that the affidavit provided “was more than sufficient to provide probable cause to believe that [Smallwood] had violated his state probation by possessing a firearm.” Report and Recommendation, R. 97, PageID 521. So any challenge to

¹ Smallwood briefly retained counsel, who helped him file one motion in this court—a motion for oral argument. The remainder of the briefs and motions were filed pro se.

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the arrest warrant fails. Second, Smallwood briefly challenges the stop of his car. He says that he didn't do anything wrong leading up to the stop, so there was no legitimate reason to stop him. But that argument misunderstands the situation—officers surveilled Smallwood on that day with the goal of arresting him on the outstanding arrest warrant. Once they knew he was in the car, they promptly and validly pulled him over. *See United States v. Pyle*, 904 F.3d 422, 424 (6th Cir. 2018) (“Once an officer discovers that a car’s owner has an outstanding arrest warrant, he needs only reasonable suspicion that the owner is in the vehicle.”). So this challenge fails. Third, Smallwood appears to challenge the opening of the zipped black bag in his car, which resulted in police finding an additional firearm. But the law is clear that once the narcotics dog alerted on the car, police could search the zipped bag. *See United States v. Winters*, 782 F.3d 289, 304 (6th Cir. 2015). This challenge fails as well.

That leaves the search of Smallwood’s home and his phone. Both of those relied, in part, on the tip of the unidentified home health nurse. Smallwood says that tip was unreliable or even worse, fraudulent, so the affidavits were insufficient to establish probable cause. But as the magistrate judge explained, “the statements of [Smallwood’s] home health nurse were sufficiently corroborated to demonstrate that they were reliable.” Report and Recommendation, R. 97, PageID 531. The judge found pertinent that the tip was from someone who had observed Smallwood’s criminal activity during the course of her employment. Other information in the affidavit corroborated the tip, including that the officers had learned through an investigation that Smallwood was “a major distributor of heroin and cocaine.” Search Warrant Affidavit, R. 92-5, PageID 474. In addition, Smallwood had prior felony convictions, including for selling cocaine, tampering with evidence and aggravated assault. *Id.* Also, his sentencing documents suggested

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that Smallwood was a gang member, which was consistent with the statement of the home health nurse.

Smallwood now tries to show that the alleged tip from the home health nurse was fraudulent. He tried to do the same before the district court, but the court determined that Smallwood failed to timely present evidence to that effect, as he sought to do so only after the magistrate judge issued her report. The district court was within its discretion to reject the untimely evidence then, and we won't overturn that decision now. *Cf. Moore v. U.S. Dep't of Ag.*, 2018 WL 1612299, *2 (6th Cir. Jan. 31, 2018) (order). The district court properly denied Smallwood's motions to suppress.

Evidentiary Rulings. Smallwood challenges the district court's decision to allow Detective Chris Farmer to testify regarding the meaning of text messages referencing drug trafficking. We review the district court's evidentiary rulings for an abuse of discretion. *United States v. Morales*, 687 F.3d 697, 701 (6th Cir. 2012).

The district court allowed Detective Farmer to testify as to the meaning of various drug-related texts between Smallwood and his associates. Farmer testified that he was "familiar with common terms and code or slang that drug dealers typically use in conducting drug transactions through text message." Trial Transcript, R. 191, PageID 2645. He explained the various weights and names for those weights to the jury. Among other things, he told the jury that "It's all fire" meant that "it will get you high." *Id.* at 2650. He explained that when Smallwood texted, "In need to buy a G of that white," it meant that he was asking for a "gram" and "when it's just asking straight white, it's usually fentanyl." *Id.* at 2652–53. Farmer gave similar explanations throughout his testimony.

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The district court didn’t abuse its discretion by allowing Farmer to explain the meaning of the slang used in the text messages between Smallwood and his associates. “[L]aw enforcement officers may testify concerning the methods and techniques employed in an area of criminal activity and to establish ‘modus operandi’ of particular crimes.” *United States v. Combs*, 369 F.3d 925, 940 (6th Cir. 2004) (citation omitted). That is because “[k]nowledge of such activity is generally beyond the understanding of the average layman.” *Id.* (citation omitted). And, “[c]ourts often permit officers to testify as expert witnesses . . . to interpret conversations concerning drug trafficking that use ‘slang, street language, and the jargon of the illegal drug trade.’” *United States v. Hall*, 20 F.4th 1085, 1100 (6th Cir. 2022) (citation omitted). That is exactly what the district court did here. There was no error.

Witnesses. Smallwood next appears to argue that he was harmed by the government’s failure to call three witnesses: Probation Officer March, Agent Jenkins, and the unidentified home health nurse. *See* Appellant Br. at 12. But it is unclear how he believes he was harmed. He does not contend that the absence of these witnesses rendered the evidence in this case insufficient for “any rational trier of fact” to “have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Nor does he claim that any of these witnesses would have offered material, exculpatory evidence in his favor. *See United States v. Jones*, 399 F.3d 640, 647 (6th Cir. 2005). Nor does Smallwood explain how the government’s failure to call the three witnesses rendered the trial so fundamentally unfair as to violate his due process rights, *see United States v. Pierce*, 62 F.3d 818, 834 (6th Cir. 1995), or deprive him of the opportunity to present a complete defense, *see Crane v. Kentucky*, 476 U.S. 683, 690 (1986). March and Jenkins were known to Smallwood—after all, they were on the government’s witness list. Smallwood doesn’t say what precluded him from calling either March or Jenkins to the stand

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if he thought their testimony would have helped him. And “when the government opts to disclose a witness list, it is not required to call all witnesses on the list.” *United States v. Saine*, 2024 WL 3508691, at *6 (6th Cir. July 23, 2024) (citation omitted). “[T]he prosecution’s ‘decision not to call a witness known to the defense does not constitute evidence suppression.’” *Id.* (quoting *United States v. Odum*, 878 F.3d 508, 522 (6th Cir. 2017)). Smallwood offers no caselaw to the contrary. And, as for the unidentified home health nurse, the government made no mention of the nurse in its case in chief, and the government has constantly maintained that the nurse’s identity was never established. Accordingly, Smallwood has failed to establish error by the government for failing to call the three witnesses.

Brady Violation. Smallwood argues that the government failed to disclose a host of evidence, including grand jury testimony, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The government violates its duties under *Brady* and *Giglio* when it fails to disclose evidence in its possession that is both material and exculpatory. *Jones*, 399 F.3d at 647. Because Smallwood didn’t raise these objections below, we review for plain error. *United States v. Blood*, 435 F.3d 612, 627 (6th Cir. 2006).

“Evidence is ‘material’ for *Brady* purposes when, in view of all relevant evidence, its absence deprives the defendant of a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Thomas v. Westbrooks*, 849 F.3d 659, 663 (6th Cir. 2017) (citation omitted). “Satisfying that standard requires more than a mere ‘possibility’ but less than proof ‘by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant’s acquittal.’” *Id.* (citation omitted). Smallwood makes no attempt to show how the disclosure of the allegedly withheld evidence would have swayed the jury in his favor or affected

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his substantial rights. And given the ample evidence of his crimes presented at trial, it's unlikely that he could do so. Smallwood's *Brady* violation argument therefore fails.

Ineffective Assistance of Counsel. Finally, Smallwood challenges his counsel's effectiveness for various reasons. As a general rule, however, we "do not address ineffective assistance of counsel claims on direct appeal, especially when a defendant raises those claims 'for the first time' in this Court, as the record typically is not developed sufficiently to address such a claim." *United States v. Jackson*, 995 F.3d 476, 484 (6th Cir. 2021) (citation omitted). We see no reason to depart from that general rule here.

III.

Smallwood has filed numerous motions in this court. A panel of this court has already denied some of them, including a motion to correct or supplement the record with various facts that Smallwood asserted would "prove that the evidence against him was fabricated." *See* Appellate R. 44. The panel then denied reconsideration of that order and denied a motion for release pending appeal and a second motion to supplement the record. *See* Appellate R. 108.

We deny the remainder of Smallwood's motions. Smallwood has filed two motions requesting oral argument. We deny those motions as moot. Smallwood also filed a second motion for release pending appeal. A panel of this court has already denied such a motion; Smallwood is not entitled to a second bite at the apple. We also deny Smallwood's three motions to take judicial notice. The first and third such motions reiterate the claims made in his merits brief that that government violated *Brady/Giglio* or fabricated evidence. Smallwood has not received permission to file an additional brief, no matter how he labels those motions now. The second judicial notice motion asks us to take judicial notice of his mistreatment while incarcerated and asks us to use that information to grant him release pending appeal. These allegations are not the sort of facts for

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which judicial notice is proper, *see* Fed. R. Evid. 201(b); and as stated previously, a panel has already denied his motion for release pending appeal. The remaining six motions—five for miscellaneous relief and one to remand to the district court—seek to have this court allow Smallwood to introduce new evidence, either by requiring disclosure of grand jury testimony (or the in camera inspection of it) or of a phone call between Smallwood and his attorney. These motions largely relitigate arguments already presented in Smallwood’s briefs. Regardless, “[w]hile Federal Rule of Appellate Procedure 10(e)(2) allows for the correction of omissions from or misstatements in the record, it does not allow parties to introduce new evidence in the court of appeals.” *Abu-Joudeh v. Schneider*, 954 F.3d 842, 848 (6th Cir. 2020) (citation omitted). Smallwood’s motions go well beyond that. In any event, he could have tried (and often did try) to have this “new evidence” made available in the district court. Yet, he was unsuccessful. And equitable “principles do not excuse [the] failure to put the actual documents before the district court and on the record, prior to judgment.” *Id.* (citation omitted). Accordingly, Smallwood’s motions are denied.

* * *

We AFFIRM.