

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 31, 2012

No. 11-50979
c/w No. 12-50115
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JERMAINE LYNN AGU, also known as Bart,

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 7:11-CR-66-1

Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Jermaine Lynn Agu pleaded guilty to conspiring to distribute crack cocaine, and he was sentenced to 240 months of imprisonment and a 10-year term of supervised release. Agu now appeals the district court's denial of his motion to suppress evidence. The Government moves for summary affirmance or, in the alternative, for an extension of time to file a brief.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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We review a district court's factual findings on a motion to suppress for clear error and its conclusions about whether the Fourth Amendment was violated de novo. *United States v. Pack*, 612 F.3d 341, 347 (5th Cir.), *modified*, 622 F.3d 383 (5th Cir. 2010). We view the evidence in the light most favorable to the party that prevailed in the district court—in this case, the Government. *Id.*

Agu argues that the incriminating evidence in this case should have been suppressed because it was discovered pursuant to a traffic stop that was pretextual. As Agu concedes, under the facts of his case, the Supreme Court's holding in *Whren v. United States*, 517 U.S. 806 (1996), precludes him from obtaining relief on appeal. *See Whren*, 517 U.S. at 817-19. Although Agu's argument lacks merit, it is not so frivolous as to warrant summary disposition. *See United States v. Holy Land Found. For Relief & Dev.*, 445 F.3d 771, 781-82 (5th Cir. 2006).

Accordingly, the Government's motion for summary affirmance is DENIED, and the district court's judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED as unnecessary.