NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 5, 2023*
Decided April 5, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1883

KEITH J. MITAN,
Plaintiff-Appellant,

v.

GEORGE P. CLARK,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:11-cv-01260-SEB-TAB

Sarah Evans Barker,
Judge.

O R D E R

Keith Mitan appeals the entry of summary judgment in favor of a postal inspector he sued for seizing his personal property and allegedly violating his Fourth Amendment rights. *See* 42 U.S.C. § 1983. The district court determined that the postal inspector was entitled to qualified immunity because he reasonably believed that he

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

was lawfully obtaining personal items from a home with the real property owner's consent. We conclude that the seizure was not unreasonable and therefore affirm.

We recount the undisputed facts in the light most favorable to Mitan and draw reasonable inferences in his favor. *See Pierner-Lytge v. Hobbs*, 60 F.4th 1039, 1043 (7th Cir. 2023). Mitan stowed papers and other personal property at an unoccupied house in Bloomington, Indiana. Some of his family members owned the house through a corporate entity (in which he had no interest) and allowed him to leave his items there.

Mitan's father and brother ran into legal problems and defaulted on the loan secured by the Bloomington house. The lender—the Richard E. Deckard Family Limited Partnership #206—filed a foreclosure action. In 2009, an Indiana court entered a judgment of foreclosure and awarded Deckard title to the house; the order specifically assigned to Deckard ownership of the real estate and "personal property therein." Meanwhile, federal prosecutors in Pennsylvania had charged Mitan's brother and father with a fraud conspiracy, and a grand jury investigation continued.

Deckard prepared the house for sale and discovered that it contained boxes, loose papers, and other personal property belonging to Keith Mitan and his family. Because Deckard had been subpoenaed by the grand jury earlier in the federal investigation, a representative contacted the prosecutors in Pennsylvania and offered them the opportunity to pick up the property before it was disposed of. The supervising U.S. Attorney directed defendant George Clark, a postal inspector, to retrieve the property as potential evidence. Clark discussed with the prosecutor whether he needed a search warrant. The prosecutor advised Clark that a warrant was unnecessary because the homeowner consented to the seizure of the property.

When Clark arrived at the Bloomington house, a Deckard representative met him and instructed Deckard employees to load bags, crates, and boxes of documents and other items into Clark's rental truck. Clark then issued the employees a carbon copy of a form entitled "search warrant inventory" with an approximate inventory of the items, and an employee initialed it in addition to giving Clark her oral consent to remove the items. Clark struck through the words "search warrant" on the form to clarify that there was no warrant. The government took possession of the items back in Pennsylvania.

One year later, an Indiana appellate court partially reversed the order of foreclosure. It upheld the foreclosure on the house but determined that ownership of the personal property in the house should not have been transferred. The federal

prosecutors eventually released Keith Mitan's items back to him—six years after the seizure in 2015—when the prosecution of his brother and father had concluded.

By then, Mitan had brought this suit in the Southern District of Indiana. He sought the return of his property and monetary damages for the unlawful seizure. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The court granted Clark's motion to transfer the case to the Eastern District of Pennsylvania, where it was dismissed. *Mitan v. U.S. Postal Inspection Service*, No. 12-6408, 2013 WL 6153276 (E.D. Pa. Nov. 22, 2013). After the Third Circuit partially reversed and remanded to permit Mitan to amend his complaint, 656 F. App'x 610, 616 (3rd. Cir. 2016), the case was transferred back to Indiana.

Both sides then moved for summary judgment; the district court denied Mitan's motion and granted Clark's. The court determined that Clark was entitled to qualified immunity because he reasonably believed, after consulting with the prosecutor investigating Mitan's family, that the real property owners could, and did, consent to the seizure. Mitan unsuccessfully moved to alter or amend the judgment.

On appeal, Mitan argues that summary judgment was inappropriate because Clark unreasonably seized Mitan's property—which the state appellate court determined was his all along—without valid consent. Clark maintains that he reasonably believed the rightful owner of the property voluntarily turned it over to him. We review the summary-judgment decision de novo. *Pierner-Lytge*, 60 F.4th at 1043. (Mitan abandoned his separate appeal of the denial of his reconsideration motion and does not discuss it here.)

A government official enjoys qualified immunity from suits for damages unless his actions (1) violate a constitutional right (2) that was clearly established at the time. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). In many cases, the first question overlaps with the merits. The Fourth Amendment protects against unreasonable seizures, and a warrantless seizure is presumptively unreasonable unless an exception, such as obtaining consent, applies. *Tucker v. Williams*, 682 F.3d 654, 659 (7th Cir. 2012).

Mitan contends that Deckard could not provide valid consent to the seizure of his personal property because it was not the owner, as the subsequent state court ruling established. But we assess reasonableness based on what an officer knows at the time he obtains consent, not facts that come to light later. *See United States v. Alexander*, 573 F.3d 465, 474 (7th Cir. 2009). Indeed, "seizures based on mistakes of fact can be reasonable,"

such as when officers obtain consent from someone who "reasonably appears to be" the owner of a home they search. *Heien v. North Carolina*, 574 U.S. 54, 61 (2014) (citing *Illinois v. Rodriguez*, 497 U.S. 177, 183–86 (1990)). Because, under the Fourth Amendment, the consent of a person with apparent authority over property suffices, what matters here is whether Clark reasonably believed that Deckard could give valid consent. *Georgia v. Randolph*, 547 U.S. 103, 109 (2006).

Here, Clark reasonably believed that Deckard's representative had authority to consent to the seizure. He knew that the partnership owned the house and, according to the foreclosure judgment, its contents. Further, Deckard voluntarily contacted the federal prosecutor to offer the documents, and a Deckard employee orally agreed that Clark could take the property and initialed his inventory receipt. All these interactions reasonably indicated that Deckard could, and did, consent to the seizure. And because Clark had the consent of someone with apparent authority, he did not violate the Fourth Amendment when he seized the documents. *See Rodriguez*, 497 U.S. at 188. For similar reasons, Clark would be entitled to qualified immunity. *See Wonsey v. City of Chicago*, 940 F.3d 394, 400 (7th Cir. 2019).

Still, Mitan protests that, even if the law favors Clark, all the evidence of Deckard's consent to the seizure is inadmissible hearsay. But the district court did not abuse its discretion by admitting statements from Clark's deposition testimony and affidavit on this point. *See Johnson v. Myers*, 53 F.4th 1063, 1067 (7th Cir. 2022). Consent is a "verbal act," and therefore Clark's testimony is admissible even though it involves out-of-court statements. *See United States v. Moreno*, 233 F.3d 937, 940 (7th Cir. 2000).

Mitan also theorizes that Deckard did not voluntarily consent and instead was coerced by the grand jury subpoena, which had expired. But Mitan offered no evidence putting the facts about consent in dispute. *See Wonsey*, 940 F.3d at 399–400. The record establishes that the partnership voluntarily gave the property to Clark by contacting the prosecutor and offering it up, then loading it up for Clark when he arrived.

Mitan further protests that the prosecutors in Pennsylvania wrongfully retained his property after the Indiana appellate court made clear that the government had obtained it through the consent of someone incapable of providing it. But "continued retention of unlawfully seized property is not a separate Fourth Amendment wrong." *Gonzalez v. Village of West Milwaukee*, 671 F.3d 649, 660 (7th Cir. 2012). Regardless, there is no evidence in the record that Clark is personally responsible for the government's continued possession of the documents after he dropped them off—the evidence

instead suggests the U.S. Attorney's office was calling the shots. *See Fosnight v. Jones*, 41 F.4th 916, 923 (7th Cir. 2022).

AFFIRMED