NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued February 28, 2023
Decided March 15, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1924

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
v.	No. 1:21CR00078-001
CHRISTOPHER COATES, *Defendant-Appellant*.	Jane Magnus-Stinson, *Judge*.

O R D E R

Christopher Coates pleaded guilty to possessing with intent to distribute 50 grams or more of methamphetamine. See 21 U.S.C. § 841(a)(1). On appeal, he challenges the denial of his motion to suppress (a) drugs that police found on him while arresting him during a traffic stop for possessing a hand-rolled cigarette and (b) guns found after they executed a search warrant (based on the drugs) of his recreational vehicle. Coates argues persuasively that the cigarette seen in his car did not justify arresting and searching him. But probable cause to stop and search the car was satisfied

for a different reason that the government relies on and the record supports: The officer knew that Coates had recently sold methamphetamine to a confidential source and was on his way to do so again. We therefore affirm the judgment.

In November 2020, the Drug Enforcement Administration began investigating Coates, who lived in the Indianapolis area, for distributing methamphetamine. Working with a confidential informant, the DEA arranged a controlled buy of methamphetamine from Coates on November 17. The buy was recorded on video.

To gain more information about the drug operation, the DEA arranged a second controlled buy a week later, on November 24. The DEA agent managing the operation met with Indianapolis police officers, including Detective Steven Brinker. With the help of the local officers, the DEA intended to stop Coates while he was driving to the planned transaction.

Later that day, DEA and the local officers monitored Coates as he drove to the location of the drug buy. A DEA officer told Brinker that he saw Coates commit a traffic violation by crossing the white and double-yellow lane dividers. As a result, Brinker stopped Coates's car. After pulling Coates over, Brinker looked into the car and saw a "brown, hand rolled, burnt cigarette" in a drink holder on the center console. Even though he "did not observe an odor of marijuana emitting from the vehicle," he "believed" it was "marijuana or a synthetic look-a-like drug" "based on [his] training and experience as a law enforcement officer, narcotics detective, and an undercover detective who has personally purchased controlled substances from drug traffickers." After Brinker asked Coates to leave the car, he arrested him, stating that marijuana was illegal in Indiana. Brinker then patted down Coates and found marijuana and methamphetamine in his pocket and in a pouch attached to his belt loop.

After Coates's arrest, a DEA officer applied for a warrant to search Coates's RV. To demonstrate probable cause, the officer's affidavit relied on the four ounces of methamphetamine found on Coates during the search incident to arrest. The affidavit explained that this amount was "consistent with mid-level dealer quantities of methamphetamine" and noted that Coates admitted that the drugs belonged to him. It also stated that DEA agents had surveilled Coates's RV on multiple dates and believed it to be his residence. After the warrant was approved, law enforcement officers searched Coates's RV and found two firearms.

Coates was indicted for possession with intent to distribute 50 grams or more of methamphetamine, 21 U.S.C. § 841(a)(1), and possession of a firearm as a convicted felon, 18 U.S.C. § 922(g)(1). Coates moved to suppress the drug evidence found on him during the traffic stop, contending that the search was illegal under *Terry v. Ohio*, 392 U.S. 1 (1968), because Brinker had no reason to believe that Coates was armed or dangerous. Coates further argued that the search of his RV was unlawful because the search warrant was procured with evidence from the traffic stop, and thus the firearm should be excluded as fruit of the poisonous tree. The government responded that the pat down was a valid search incident to arrest, obviating the need to apply *Terry*, and the arrest was valid because, based on the cigarette, Brinker had probable cause to suspect that Coates had marijuana in his car.

The district court held a suppression hearing, after which it denied the motion. Brinker testified, repeating his belief stated in his incident report that Coates's cigarette contained an illegal substance because it was "a hand-rolled, brown … joint," which appeared to contain marijuana based on "[his] experience as a narcotics detective." He also testified that he did not detect marijuana odor. In denying the motion, the district court found that if Brinker had probable cause to arrest Coates at the time of the pat down, then the standard of *Terry* did not apply. And the court accepted the government's contention that Coates's possession of the cigarette gave Brinker probable cause to arrest Coates for possessing marijuana. Thus, the court concluded, Coates was legally searched incident to his arrest, and the search of his RV was not fruit of the poisonous tree or otherwise illegal.

About two months later, Coates entered into a conditional plea agreement, which reserved his right to appeal the court's suppression determination. By the agreement's terms, Coates pleaded guilty to the drug possession count and the government agreed to dismiss the firearm count. The district court accepted Coates's plea and sentenced him to 144 months in prison and 5 years of supervised release. His term of imprisonment fell below the advisory guideline range of 168 to 210 months.

On appeal, Coates contends that his arrest violated the Fourth Amendment. An unscented cigarette that is hand-rolled, rather than factory-rolled, is an insufficient indication that its brown contents are marijuana (rather than legal tobacco), Coates argues. Therefore, Coates concludes, Brinker lacked probable cause to arrest him on that basis, and the drugs from the search incident to his arrest must be excluded. Further, Coates argues, the firearms found in his RV must be excluded because, among other

reasons, the evidence justifying the search warrant for the RV was fruit of the poisonous tree.

The government responds that Brinker had two bases to arrest Coates. First, it argues, Brinker's "experience as a narcotics detective" gave him probable cause to believe that the hand-rolled cigarette contained marijuana. It also proposes an alternate ground, litigated in but not relied on by the district court: Brinker's knowledge of Coates's participation in the two controlled drug buys. Because Brinker was a member of the local police unit working with the DEA to investigate Coates, the government argues, he knew about the controlled purchase of illegal drugs a week before Coates's arrest and the second controlled purchase that Coates was driving to complete when he was arrested. This knowledge, the government asserts, supplied probable cause for Brinker to arrest Coates, even though Brinker stated a different justification for the arrest in his incident report. Thus, according to the government, Brinker conducted a valid search incident to arrest, and the drugs from this search established probable cause to justify the search warrant and later search of Coates's RV.

We are persuaded by Coates's argument that the cigarette alone was insufficient to supply probable cause to justify his arrest. In reviewing a district court's denial of a motion to suppress, we review questions of law in rulings of probable cause de novo. *United States v. Cherry*, 920 F.3d 1126, 1132 (7th Cir. 2019). Brinker needed to show a "probability or substantial chance" that Coates had committed a crime. *United States v. Schenck*, 3 F.4th 943, 946 (7th Cir. 2021) (citation omitted). But we have held that the presence "of hand-rolled cigarettes alone [does] not create probable cause for an arrest." See *Warlick v. Cross*, 969 F.2d 303, 309 (7th Cir. 1992). "[O]ther corroborating evidence" that the cigarette contained marijuana is needed. *Id.* This may include an identifying odor, the defendant's abnormal physical condition or attempts to conceal the item, plus the arresting officer's expertise in controlled substances or marijuana. *Id.* at 309–310 (citations omitted). But Brinker does not supply such evidence. He saw only a "brown, hand rolled, burnt cigarette." And he twice stated that he did not detect a marijuana odor. True, he asserts that he has "training and experience as a law enforcement officer, narcotics detective, and an undercover detective." But he does not explain how this expertise allowed him, based on seeing only a hand-rolled cigarette with a brown substance emitting no distinctive odor, to differentiate between marijuana and legal tobacco. See *id.* Thus, under *Warlick*, the suspected marijuana possession did not establish probable cause to justify Coates's arrest.

We are also persuaded, however, by the government's second argument that Brinker's knowledge of Coates's participation in recent and impending controlled purchases of methamphetamine established probable cause for the arrest. We may affirm the district court's ruling "on any ground supported by the record, so long as that ground was adequately addressed in the district court and the nonmoving party had an opportunity to contest the issue." *Oneida Nation v. Village of Hobart*, 968 F.3d 664, 686 (7th Cir. 2020) (quotation marks omitted). Brinker was entitled to arrest Coates if the facts within his knowledge would lead a prudent officer to believe that Coates had committed a crime. *United States v. Haldorson*, 941 F.3d 284, 290–91 (7th Cir. 2019) (citation omitted). Brinker had such knowledge, as reflected by the facts in *Haldorson,* which are nearly identical to those here. In that case, we ruled that information gleaned from a controlled buy three weeks before an arrest, combined with knowledge that the arrestee was, as here, driving to a second controlled buy on the day of his arrest, supplied probable cause. *Id.* at 291–92. Coates's first controlled buy was only one week before his arrest. Such a brief time span did not render the information "stale" because police have some discretion to decide when to make an arrest. *Id.*

The government properly and implicitly relies on the collective-knowledge doctrine, which imputes the DEA's knowledge of Coates's activities to the local officer whom it directed to stop, search, or arrest him. See *United States v. Williams*, 627 F.3d 247, 252–53 (7th Cir. 2010). Brinker was on the local crime unit working with the DEA to arrest Coates, and he attended a briefing the day of Coates's arrest concerning the plan to interdict him at a traffic stop. Under the collective-knowledge doctrine, when the DEA officer directed Brinker to detain Coates, Brinker was legally imputed with the DEA's knowledge of Coates's crimes underlying the investigation (if he did not personally learn this information himself at the DEA's briefing meeting). See *id.*

Thus, because Brinker knew when he arrested Coates that Coates had participated in an illicit methamphetamine sale a week earlier and was about to do so again, he had probable cause to arrest him for this crime. See *Haldorson*, 941 F.3d at 290. Although Brinker may not have intended to arrest Coates based on this factor alone, his subjective intentions are irrelevant so long as the facts known to Brinker at the time supported probable cause—which they did. *Devenpeck v. Alford*, 543 U.S. 146, 154–55 (2004). Because Brinker had probable cause to arrest Coates, he was permitted to search him incident to the arrest. *United States v. Paige*, 870 F.3d 693, 700 (7th Cir. 2017). Thus, the district court properly refused to suppress the methamphetamine and marijuana from this search.

Coates responds that, in his view, the government did not present facts to show that a "valid controlled buy" had occurred the week before his arrest. But this argument is both waived and meritless. Coates waived it by failing to raise it until his reply brief. *White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021). In any case, the district court found that "[o]n November 17, 2020, the [confidential source] purchased two ounces of methamphetamine from Mr. Coates in a controlled purchase." This finding was based on ample evidence: testimony from a DEA officer, supported by a video recording, that the DEA surveilled a prearranged sale on November 17, 2020, of methamphetamine from a confidential source to Coates.

Because Coates's arrest posed no Fourth Amendment violation, the search warrant for his RV was also supported by probable cause. The search-warrant affidavit established probable cause because it identified facts leading to a reasonable inference that criminal evidence would likely be found in Coates's RV. See *United States v. Zamudio*, 909 F.3d 172, 175–76 (7th Cir. 2018). It pointed to the methamphetamine found on Coates during the search incident to arrest, an amount "consistent with mid-level dealer quantities." The affidavit also explained that the DEA agents' surveillance led them to believe that Coates resided in his RV, and "evidence is likely to be found where the dealers live." *Id.* at 176 (quoting *United States v. Lamon*, 930 F.2d 1183, 1188 (7th Cir. 1991)); see also *United States v. Haynes*, 882 F.3d 662, 666 (7th Cir. 2018) (affirming finding of probable cause and upholding search warrant of suspected drug dealer's residence where dealer had participated in a controlled buy). Thus, because the warrant was supported by probable cause, it was valid, and the district court correctly denied Coates's request to exclude any items discovered during the search of his RV.

AFFIRMED