

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Angelos

433 F.3d 738 (10th Cir. 2006) · No. 04-4282 · Decided January 9, 2006

SUMMARY

The Tenth Circuit reviewed Weldon Angelos’s convictions and 55-year-and-one-day sentence for drug, firearms, and money-laundering offenses. The court addressed the scope and execution of a search warrant, the plain-smell exception, harmless error, and constitutional challenges to mandatory minimum sentences under 18 U.S.C. § 924(c).

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Mary Beck Briscoe; George M. Anderson, Jr.; David M. O'Brien
JURISDICTION	Federal
DECIDED	January 9, 2006
DOCKET	04-4282
DISPOSITION	affirmed
PROCEDURAL POSTURE	Angelos appealed his convictions and 55-year-and-one-day sentence after a federal jury convicted him of multiple drug, firearms, and money-laundering offenses. He challenged the denial of his motion to suppress, the exclusion of contemporaneous police reports, the constitutionality of his sentence under the Eighth and Fourteenth Amendments, and the construction of 18 U.S.C. § 924(c).
STANDARD OF REVIEW	The court reviewed suppression factual findings for clear error and the ultimate Fourth Amendment reasonableness determination de novo; evidentiary rulings for abuse of discretion; constitutional sentencing challenges de novo; and statutory construction de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Weldon Angelos v. United States of America

TOPICS

- criminal procedure
- search and seizure
- suppression of evidence
- sentencing
- cruel and unusual punishment

PRACTICE AREAS

criminal procedure

constitutional law

sentencing

search and seizure

evidence

QUESTIONS PRESENTED

1. Whether law-enforcement officers exceeded the scope of a search warrant by searching the entire Fort Union residence and seizing items not specifically described in the warrant.
2. Whether the plain-view or plain-smell doctrine justified seizure of duffle bags emitting a strong odor of raw marijuana.
3. Whether admission of evidence improperly seized from the residence was harmless beyond a reasonable doubt.
4. Whether the district court abused its discretion by refusing to admit contemporaneous police reports concerning the first two controlled purchases.
5. Whether the mandatory consecutive fifty-five-year sentence required by 18 U.S.C. § 924(c) was grossly disproportionate and therefore violated the Eighth Amendment.
6. Whether § 924(c)'s mandatory-minimum sentencing scheme violated equal protection.
7. Whether § 924(c) could be construed to treat the three firearm offenses as a single grouping of related acts subject to only one five-year minimum sentence.

HOLDINGS

1. The search warrant authorized seizure only of the specified marijuana and narcotics indicia in the BMW's trunk and the specified safe in the basement; it could not be practically construed to authorize a search of the entire residence.
2. The Leon good-faith exception did not save the officers' execution of the warrant because the constitutional problem arose from exceeding the warrant's clear scope, not from reliance on a facially defective warrant.
3. Only evidence seized beyond the warrant's scope and not covered by the plain-smell or plain-view exception should have been suppressed, rather than all evidence seized during the search.
4. The seizure of the duffle bags was reasonable under the plain-smell doctrine because the officers were lawfully present, had lawful access during a protective sweep, immediately detected a strong odor of raw marijuana, and observed marijuana residue on bags in plain view.
5. Any error in admitting evidence improperly seized from the Fort Union house was harmless beyond a reasonable doubt.
6. The district court did not abuse its discretion by refusing to admit the contemporaneous police reports because their contents would have been cumulative of Sergeant Mazuran's testimony.
7. The mandatory fifty-five-year consecutive sentence imposed under § 924(c) was not grossly disproportionate to Angelos's drug-trafficking and firearm offenses and therefore did not violate the Eighth Amendment.

8. Section 924(c)'s mandatory-minimum sentencing scheme survives rational-basis review and does not violate equal protection.
9. Section 924(c) required separate consecutive sentences for Angelos's three convictions because each conviction arose from a separate violation occurring on a different date and connected to a separate drug-trafficking crime.

KEY QUOTATIONS

“The Leon good faith exception will not save an improperly executed warrant.” (opinion p. 12)

“The ‘plain smell’ doctrine,” in turn, “is simply a logical extension of the ‘plain view’ doctrine.” (opinion p. 14)

“If there is no gross disproportionality, that is the end of the analysis; only if gross disproportionality is found must a court ‘proceed to the comparative analyses’ of the second and third factors.” (opinion p. 26)

FACTUAL BACKGROUND

With the assistance of a confidential informant, the government conducted three controlled purchases of marijuana from Angelos, during two of which the informant observed him with a Glock pistol. Searches of Angelos's apartment and a rental house produced marijuana, firearms, cash, drug-related materials, and marijuana residue. A jury convicted Angelos of sixteen drug, firearms, and money-laundering offenses, including three separate § 924(c) firearm offenses, resulting in a mandatory consecutive sentence of fifty-five years plus one day.

PROCEDURAL HISTORY

A federal grand jury returned an original indictment in November 2002, followed by superseding indictments in June and October 2003. After a December 2003 jury trial, Angelos was convicted of sixteen counts, including three § 924(c) counts. The district court denied suppression and evidentiary motions, rejected his Eighth Amendment and equal-protection challenges, and imposed a sentence of fifty-five years and one day. The Tenth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Katoa, 379 F.3d 1203, 1205, 1207-08 (10th Cir. 2004)
- United States v. Ortega-Jiminez, 232 F.3d 1325, 1328-29 (10th Cir. 2000)
- United States v. Leon, 468 U.S. 897, 918 n.19, 920-21 (1984)
- United States v. Rowland, 145 F.3d 1194, 1208 n.10 (10th Cir. 1998)
- United States v. Harris, 313 F.3d 1228, 1233 (10th Cir. 2002)
- United States v. Thomas, 372 F.3d 1173, 1178 (10th Cir. 2004)

- Horton v. California, 496 U.S. 128, 136-37 (1990)
- United States v. Rhiger, 315 F.3d 1283, 1290 (10th Cir. 2003)
- United States v. Clayton, 210 F.3d 841, 845 (8th Cir. 2000)
- United States v. Haley, 669 F.2d 201, 203 (4th Cir. 1982)
- United States v. King, 222 F.3d 1280, 1283 (10th Cir. 2000)
- Chapman v. California, 386 U.S. 18, 24 (1967)
- United States v. Fellers, 397 F.3d 1090, 1098-99 (8th Cir. 2005)
- United States v. Montague, 421 F.3d 1099, 1101-02 (10th Cir. 2005)
- United States v. Fernandez, 388 F.3d 1199, 1258 (9th Cir. 2004)
- United States v. Myers, 280 F.3d 407, 416 (4th Cir. 2002)
- Ewing v. California, 538 U.S. 11, 20, 23-31 (2003)
- Harmelin v. Michigan, 501 U.S. 957, 996-1005 (1991)
- Davis v. United States, 217 U.S. 349, 367 (1910)
- Solem v. Helm, 463 U.S. 277 (1983)
- Rummel v. Estelle, 445 U.S. 263, 285 (1980)
- Hutto v. Davis, 454 U.S. 370, 375 (1982)
- Lockyer v. Andrade, 538 U.S. 63, 76-77 (2003)
- Muscarello v. United States, 524 U.S. 125, 126 (1998)
- Smith v. United States, 508 U.S. 223, 239-40 (1993)
- United States v. Couch, 291 F.3d 251, 255 (3d Cir. 2002)
- Treasury Employees v. Von Raab, 489 U.S. 656, 668 (1989)
- Hawkins v. Hargett, 200 F.3d 1279, 1282 (10th Cir. 1999)
- United States v. Beverly, 369 F.3d 516, 537 (6th Cir. 2004)
- United States v. Eaton, 260 F.3d 1232, 1236 (10th Cir. 2001)
- Western & Southern Life Insurance Co. v. State Board of Equalization, 451 U.S. 648, 668 (1981)
- Chapman v. United States, 500 U.S. 453, 467 (1991)