IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
F I L E D
June 28, 2011

Lyle W. Cayce
Clerk

No. 10-60709

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DWAYNE SMITH, also known as Turbo; DAMEIAN DARNELL SUBER,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:09-CR-147-1

Before JOLLY and HAYNES, Circuit Judges, and RODRIGUEZ,* District Judge.

PER CURIAM:**

In this interlocutory appeal brought pursuant to 18 U.S.C. § 3731,[1] we

* District Judge of the Western District of Texas, sitting by designation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

[1] In relevant part, § 3731 states:

An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in

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have considered the pertinent portions of the record, the parties' briefs, and oral argument of counsel and we conclude that the district court committed no reversible error in its determination that the evidence at issue should be suppressed. Accordingly, the appealed suppression order is AFFIRMED and the case is REMANDED to the district court for further disposition.[2]

ORDER AFFIRMED; CASE REMANDED.

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jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

[2] This interlocutory appeal was brought by the United States on the grounds that it "could not proceed to trial without this evidence." Appellant Br. at 3. Thus, it appears that the indictment and the case are still pending. We leave it to the parties and to the district court on remand to take such further action as is appropriate.