

United States Court of Appeals
For the Eighth Circuit

No. 25-1516

United States of America,

Plaintiff - Appellee,

v.

Cameron Monte Smith,

Defendant - Appellant.

No. 25-1517

United States of America,

Plaintiff - Appellee,

v.

Cameron Monte Smith,

Defendant - Appellant.

Appeals from United States District Court
for the District of North Dakota - Western

Submitted: March 18, 2026
Filed: August 31, 2026

Before COLLOTON, Chief Judge, GRUENDER and KOBES, Circuit Judges.

COLLOTON, Chief Judge.

Cameron Smith entered a conditional guilty plea to two counts of destruction of an energy facility, reserving the right to appeal the denial of his motion to suppress evidence. The district court sentenced Smith to 150 months' imprisonment on each count, to be served consecutively, for a total term of 300 months. On Smith's appeal, we affirm the denial of the motion to suppress and conclude that Smith waived his right to appeal the district court's restitution order. We conclude, however, that there was procedural error at sentencing in determining the advisory guideline range, so we vacate the sentence and remand for further proceedings.

I.

During the morning hours of May 13, 2023, officers in North Dakota responded to a report of shots fired into electrical equipment at an electrical substation owned by Basin Electric Power Cooperative and Mountrail Williams Electric Cooperative. The officers, acting without a warrant, searched a car located near the substation. They found a gun case and medication labeled with the name of Cameron Smith.

When officers contacted a tow company to remove the vehicle, an employee named Richard recognized the car and its location from the officer's description.

Richard had taken the driver to a nearby hotel after the vehicle became stuck in mud. Richard said that the driver had a backpack, some duffel bags, a cart, and nice equipment with him. He identified the person as Cam Smith.

The officers continued their investigation at the hotel. A hotel employee informed them that Cam Smith had checked in that morning using a Canadian passport. Officers detained Smith. Soon thereafter, they executed a warrant to search Smith's hotel room.

The officers also reviewed surveillance footage from the hotel and businesses near the hotel. The footage showed Smith towing a cart with bags, pausing near a dumpster, and then towing an empty cart. The officers retrieved two duffel bags from the dumpster. The bags contained firearms and ammunition consistent with shell casings found at the substation. The officers obtained warrants to test the bags for Smith's DNA, to search Smith's residence and electronic devices, and to retrieve cellular tower data from the area surrounding the substation. Officers seized relevant evidence pursuant to the warrants.

A grand jury charged Smith with destruction of an energy facility, in violation of 18 U.S.C. § 1366(a). Investigators later connected Smith to a similar shooting at a substation in South Dakota during the previous year. A separate grand jury in South Dakota charged Smith with violating § 1366(a) in 2022. Smith moved to suppress all evidence in the North Dakota case. The government conceded that officers searched the vehicle and hotel room unreasonably, and that the search warrant application for the DNA evidence included false statements. But the government maintained that evidence seized under the warrants should not be suppressed.

After a hearing, the district court denied Smith's motion to suppress. Smith consented to transfer the South Dakota case to the District of North Dakota and entered a conditional plea of guilty to both counts. *See* Fed. R. Crim. P. 11(a)(2), 20.

Smith's plea agreement stipulated that the government would recommend a 12-level upward departure pursuant to USSG § 3A1.4 Application Note 4, and that Smith would argue against it. *See* USSG § 3A1.4, comment. (n.4) (Nov. 2024). The district court applied the departure and arrived at an advisory sentencing guideline range of 151 to 188 months' imprisonment. The court then sentenced Smith to 150 months on each count, to run consecutively, for a total of 25 years' imprisonment. The court also ordered Smith to pay total restitution of \$2,124,974.38 in the two cases.

II.

Smith first challenges the district court's denial of his motion to suppress DNA evidence that was found in or on the duffel bags that were retrieved from the dumpster. In response to Smith's motion to suppress, the government acknowledged that the affidavit in support of the warrant application included false statements. The government produced an amended affidavit that excised the inaccuracies. The revised affidavit included the affiant's representations that (1) a tow truck employee transported a male from his inoperative vehicle near the substation to a hotel, (2) surveillance footage near the hotel captured Smith carrying duffel bags, (3) officers located duffel bags in a dumpster, and (4) the duffel bags contained firearms and ammunition consistent with shell casings found near the substation.

Deliberately false statements render a warrant invalid if the statements are necessary to a determination of probable cause. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). But a district court may find probable cause based solely on unchallenged statements, and the court need not first assess whether the challenged statements were *deliberate* falsehoods. *See United States v. Shockley*, 816 F.3d 1058, 1061 (8th Cir. 2016). Probable cause exists where there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

Smith argues that removing false statements describing the vehicle's location constitutes "reformation by substituting omitted or accurate statements." This court has said that the government may not supplement an affidavit with correct or omitted information. *United States v. Reinholz*, 245 F.3d 765, 774-75 (8th Cir. 2001). Smith does not contend, however, that the government supplemented the revised affidavit; he argues that the revised affidavit omits that Smith's car was on public property. That omission does not enhance the showing of probable cause, because the vehicle's location is relevant only insofar as it was near the substation. Whether the car was stopped on public land or private property is immaterial to whether the affidavit established probable cause to search the duffel bags for DNA evidence.

Smith also argues that the revised affidavit fails to connect him to the duffel bags because it does not explain how officers obtained his name. This court assesses probable cause under the totality of the circumstances and may draw reasonable inferences from the information provided in the affidavit. *Gates*, 462 U.S. at 230, 240. It is reasonable to infer that officers identified Smith as a suspect after they learned that the driver of the abandoned vehicle was at the hotel and before obtaining the roster of hotel guests. The affiant's failure to specify precisely when the tow truck driver gave Smith's name to law enforcement does not eliminate probable cause or invalidate the warrant. The affidavit, as modified, establishes probable cause to believe that testing the seized duffel bags for DNA would yield evidence of a crime. The district court properly rejected the motion to suppress evidence seized under this warrant.

III.

Smith next argues that evidence must be suppressed because it is the fruit of an unlawful search of his vehicle. *See Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963). The district court accepted the government's concession that the vehicle search was unreasonable, but concluded that the officers inevitably would

have discovered the disputed evidence from the hotel and dumpster, and that suppression of evidence was therefore not justified.

The inevitable discovery doctrine creates an exception to the exclusionary rule. In this circuit, the doctrine applies where the government proves by a preponderance of the evidence that (1) there is a reasonable probability that the evidence would have been discovered by lawful means absent the constitutional violation, and (2) the government was actively pursuing a substantial, alternative line of investigation at the time of the constitutional violation. *United States v. Smith*, 21 F.4th 510, 517 (8th Cir. 2021).

Smith argues that an unlawful search of his vehicle led the officers to contact the tow truck driver, Richard. He further contends that without Richard's information, there was no evidence linking Smith to both the vehicle and the hotel. The district court found, however, that the officers would have contacted Richard even if they had not searched the car. The record supports this determination.

Upon arriving at the substation, an officer noticed a tow truck nearby. The officer testified that a diesel-fueled semi-truck "seemed out of place" on the rural road, especially when weather-related county restrictions prohibited vehicles weighing more than 20,000 pounds. The officer took a picture of the truck and, in the moment, identified the truck as a "lead." The officer also testified that he would have contacted the tow truck company even if officers had not found Smith's vehicle. He later identified the company based on the truck's distinctive orange and white markings.

The district court's finding that officers were pursuing a substantial, alternative line of investigation that reasonably would have led them to Richard is not clearly erroneous. The district court's credibility determinations are virtually unreviewable, and Smith points to nothing extraordinary that would preclude the court from

crediting the officer's testimony. On this record, therefore, the district court properly applied the inevitable discovery exception to the exclusionary rule. Although officers obtained Smith's name from the medication bottle found in the vehicle, Richard also provided the officers with Smith's name before they entered the hotel. With this information, the officers would have retrieved the duffel bags whether or not they had searched Smith's car.

IV.

A.

Smith argues that the government breached his plea agreement by making certain statements in connection with sentencing. A breach of the plea agreement may violate the due process rights of the defendant and entitle the defendant to appropriate relief. *See Santobello v. New York*, 404 U.S. 257, 262-63 (1971); *United States v. Fowler*, 445 F.3d 1035, 1038 (8th Cir. 2006). We review the interpretation and enforcement of a plea agreement *de novo*. *United States v. Collins*, 25 F.4th 1097, 1100 (8th Cir. 2022).

The sentencing proceeding required consideration of USSG § 3A1.4, a provision regarding "terrorism" offenses. The guideline provides that if Smith's offense "involved, or was intended to promote, a federal crime of terrorism," then the court should increase the offense level by 12 levels and apply criminal history Category VI regardless of the defendant's criminal history score. USSG § 3A1.4. The guideline commentary in effect at the time of sentencing provided, however, that the adjustment "applies only to federal crimes of terrorism." *Id.*, comment. (n.4) (Nov. 2024). If the offense instead "involved, or was intended to promote" a violation of § 1366(a) (relating to destruction of an energy facility), "but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against

government conduct,” then an upward departure of up to 12 levels may be appropriate. *Id.* But in the case of a departure under application note 4, the defendant’s criminal history category would not increase to Category VI and would be computed according to criminal history points—for Smith, Category I.

In the plea agreement, the parties agreed that the government would recommend a 12-level departure pursuant to application note 4. The court applied the 12-level departure, which resulted in an advisory guideline range of 151 to 188 months. But then, contrary to the government’s recommendation of concurrent sentences, the court imposed a sentence of 150 months on each count to run consecutively, for a total term of 300 months’ imprisonment.

Smith contends that the government, despite agreeing to recommend the departure under application note 4, encouraged the court to apply the adjustment under § 3A1.4. As noted, that adjustment would apply a 12-level increase and place the defendant in criminal history Category VI, rather than Category I. The advisory guideline range under that alternative calculation would have been 262 to 327 months. Smith suggests that the court’s arrival at a sentence of 300 months by a different path is “no mere coincidence,” but a result of the government breaching the plea agreement and suggesting that the court apply a 12-level increase and Category VI under § 3A1.4.

To support his assertion of a breach, Smith cites a colloquy at the evidentiary hearing in anticipation of sentencing. The district court asked why the government recommended a departure under application note 4 rather than the adjustment under § 3A1.4. The prosecutor responded that “the Court has a point about the fact that obviously some of this conduct could be addressed to maybe action or inaction of government entities and that they should do something different; and if you don’t, you know, here’s what’s going to end up resulting. So I understand the Court’s point on that.” The prosecutor continued, however, that “based on the facts and the

circumstances and our negotiations in this case and what we have in our plea agreement, it is our position that we're ultimately asking the Court to apply application Note 4 and not the full departure [sic], if you will, under [§] 3A1.4." The court then observed that the electrical system is "regulated by the government but it's privately owned." The prosecutor responded that "I think the Court has a valid point that there's almost a hybrid aspect to this. But, again, we viewed it as these particular victims in the case were private companies."

Smith argues that the government also "blatantly suggested" in its sentencing memorandum that the court should apply the enhancement under § 3A1.4 by citing *United States v. Reznicek*, No. 21-2548, 2022 WL 1939865 (8th Cir. June 6, 2022) (per curiam) (unpublished). He says that "*Reznicek* concerned the *actual application* of USSG § 3A1.4 and not Application Note 4."

We conclude that Smith has not established a breach of the plea agreement. The prosecutor's comments do raise some concern about the prosecution lending support to an increase under § 3A1.4 when the government had agreed not to seek that adjustment. But in the end, the government expressly followed through on its agreement to recommend a departure under application note 4, rather than an increase under § 3A1.4, because the victims in this case were private companies. A "less than enthusiastic" recommendation does not violate a plea agreement. *United States v. Has No Horses*, 261 F.3d 744, 750 (8th Cir. 2001). Nor does the government's reference to *Reznicek* constitute a breach. The government cited that case *in support* of applying application note 4. The memorandum observed that the defendant in *Reznicek* argued that it was error to apply the increase under § 3A1.4 because her actions, like Smith's, were directed at a private company.

B.

Smith next contends that the district court committed procedural error by departing upward under application note 4 to § 3A1.4. He argues that the evidence does not support a finding that his motive “was to intimidate or coerce a civilian population” as required by the upward departure provision. USSG § 3A1.4, comment. (n.4) (Nov. 2024). On the question of motive, the district court relied on the fact that Smith “was very interested in hearing whether he made the news after committing the attack.” The court also remarked that Smith acted “in the name of an extremist group called Extinction Rebellion with which Mr. Smith had apparently associated himself.” An investigator described the organization as “a climate change activist group” whose members “attend various climate change related protests” and were present during protests in Atlanta during 2024 that damaged construction equipment.

The government defends the departure by suggesting that Smith shot at electrical substations and spray-painted environmental symbols at the two substations “to coerce the North and South Dakota civilian populations into implementing climate change.” The government says that he sought news coverage to “reach a larger audience to coerce [those] populations.” The government also suggests that Smith targeted private entities to “intimidate or coerce” the private entities—and the civilian populations they served—into abating their use of carbon energy.

We are not convinced that the evidence supports a finding that Smith acted with a “terrorist motive . . . to intimidate or coerce a civilian population,” as required by application note 4. Efforts to intimidate or coerce an energy company may ultimately affect a civilian population, but they are not the same as efforts to intimidate or coerce the civilian population itself. To be sure, the record suggests that Smith sought publicity for his actions, but a desire for public attention does not without more establish a motive to intimidate or coerce those who read or watch the

news. The government suggested at oral argument that Smith hoped for others to “rise up” and join his climate activism, but a motive to recruit followers is not a motive to intimidate or coerce. There was no threat here to commit violence against a civilian population. It is undisputed that Smith targeted two electrical substations in remote, unpopulated areas during the middle of the night when there were no people around. It would stretch the application note beyond its natural meaning to accept on this record that Smith’s motive was “to intimidate or coerce a civilian population.” We therefore conclude that there was an error in calculating the advisory guideline range. Because there was a procedural error that requires resentencing, we do not address Smith’s alternative contention that the sentence imposed was substantively unreasonable.

C.

Smith also contends that the district court erred by imposing a total restitution award of more than \$2 million. He argues that the court violated his rights under the Sixth Amendment by applying a preponderance of the evidence standard of proof when calculating the award. In his plea agreement, however, Smith waived all rights to appeal “any assessment, restitution or forfeiture order.” The agreement was knowing and voluntary, and enforcement would not constitute a miscarriage of justice. *See Hunter v. United States*, 146 S. Ct. 1702, 1714 (2026); *United States v. Schulte*, 436 F.3d 849, 851 (8th Cir. 2006); *United States v. Andis*, 333 F.3d 886, 894 (8th Cir. 2003) (en banc). As we said in *Schulte*, “[i]f a defendant sentenced erroneously to a lengthy term of imprisonment that was within the statutory range but well beyond that authorized by the former mandatory guidelines could not establish a miscarriage of justice, then we think it would be anomalous to hold that a defendant challenging an order to pay a monetary sum could on that basis avoid an appeal waiver to which he knowingly and voluntarily agreed.” 436 F.3d at 851. An alleged error with respect to the standard of proof is not akin to the sort of “extreme” situations—such as imposition of sentence without “some minimum of civilized

procedure’”—that might justify disregarding the waiver. *See Hunter*, 146 S. Ct. at 1714 (quoting *United States v. Adkins*, 743 F.3d 176, 192-93 (7th Cir. 2014)).

* * *

For the foregoing reasons, we affirm the convictions and dismiss the challenge to the restitution orders as barred by Smith’s appeal waiver. We vacate the sentence and remand for resentencing. The government’s motion to dismiss based on the appeal waiver is granted in part and denied in part.
