NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0382n.06

Case No. 25-5607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 25, 2026
KELLY L. STEPHENS, Clerk

DANTE DEWAYNE WATTS, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY OPINION

Before: SUTTON, Chief Judge; DAVIS and RITZ, Circuit Judges.

DAVIS, Circuit Judge. A jury convicted Dante Dewayne Watts of drug and money laundering conspiracies. The district court sentenced Watts to 408 months' imprisonment. Watts appealed his convictions, and we affirmed. Watts then filed a 28 U.S.C. § 2255 petition to vacate, asserting eleven ineffective-assistance-of-counsel and five prosecutorial-misconduct claims. The district court denied his petition as well as his requests for an evidentiary hearing and for a certificate of appealability ("COA"). Following the district court's denial, Watts filed another motion for a COA. Although it had previously denied a COA, the district court granted Watts's motion as to four of his claims, citing the government's failure to respond. This appeal followed. Because Watts's arguments fail, we AFFIRM.

I.

Between May 2015 and April 2016, Watts purchased more than $3.5 million in casino

chips and redeemed about $2 million in cash from the chips. Casino records did not reflect significant winnings for Watts. And Watts did not claim any gambling income in his tax returns, loan application, or mortgage application.

In May 2016, the government began wiretapping Ismael Gonzalez's phone. It learned that Watts was a key player in a drug trafficking conspiracy, along with Gonzalez and others. Watts received drug shipments, cut heroin with fentanyl, distributed the drugs to dealers, and returned the dealers' profits to Gonzalez.

In late June 2016, the government intercepted a call between Watts and Gonzalez, in which they discussed an upcoming drug delivery in July. Law enforcement tracked this delivery through additional intercepted calls. When the truck arrived in Louisville, Kentucky, law enforcement intercepted the delivery, seizing about 32 kilograms of cocaine, 15.4 grams of cocaine base, and 4.6 kilograms of heroin. Police then arrested Watts, searched his home, and located guns and more evidence of drug trafficking.

A federal grand jury indicted Watts on one count of conspiracy to possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(b)(1)(A), 846; one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A); one count of conspiracy to launder monetary instruments, in violation of 18 U.S.C. § 1956(h); and forty-one counts of money laundering, in violation of 18 U.S.C. §§ 1956(a), 1957(a).

Before trial, Watts and his codefendants filed various motions to suppress. Relevant here, Watts joined his co-defendant's motion to suppress evidence from the Gonzalez wiretap, which the district court denied. Watts also filed a motion seeking to suppress all evidence seized in violation of the Fourth Amendment, based on *Carpenter v. United States*, 585 U.S. 296 (2018),

and *Riley v. California*, 573 U.S. 373 (2014). The district court denied the motion. Watts then moved to suppress evidence found at his residence on Blackthorn Trace in Louisville, and the district court denied that motion based on the merits and its untimeliness.

At trial, the government introduced three videos that it extracted from Watts's iPhone. In the first video, Watts showed various items in his home, including a flat screen television connected to surveillance cameras. He also flipped the camera around to himself and referenced Kiniki Lucas, his girlfriend, by name. In the second, Watts again displayed different parts of his home, including the flat screen and several iPhone boxes on the counter. The third depicted someone installing surveillance cameras outside of the home. Watts appeared to be speaking directly to the camera in each of the videos. According to Brian Sanders, Special Agent at the Drug Enforcement Administration, Watts recorded the first video on June 17, 2016; the second on June 25, 2016; and the third on June 24, 2016. Sanders testified that Watts sent the videos to Lucas.

A jury convicted Watts of the drug and money laundering conspiracy charges but acquitted him of the firearm charge. On the government's motion, the district court dismissed the forty-one individual money laundering counts.

At sentencing, Watts mentioned in his allocution that he believed the government illegally recorded two of the videos that it introduced at trial by accessing his phone without his permission. He admitted that he recorded one of the videos but denied recording the other two. And he maintained that he did not send these two videos to Lucas. Watts stated that he did not know about the videos prior to trial and that he informed his counsel that he did not record two after he learned about them. The district court found that it was "clear" that Watts knew he was being videotaped and that there was no evidence that the videos were improper. (Sentencing Tr., R. 632, PageID

4989). The court also explained that the evidence against Watts was "simply overwhelming" even without the videos. (*Id.* at PageID 5010). It then sentenced Watts to 408 months' imprisonment.

Watts appealed his convictions, and we affirmed. *See United States v. Watts*, No. 21-5302, 2022 WL 706603, at *10 (6th Cir. Mar. 9, 2022). He then moved to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255. Watts raised eleven ineffective-assistance-of-counsel ("IAC") claims and five prosecutorial-misconduct claims. The magistrate judge recommended that the district court deny the § 2255 petition, Watts's request for an evidentiary hearing, and a COA. Watts timely objected to the magistrate judge's recommendations. The district court adopted the magistrate judge's recommendations in full.

Watts moved for reconsideration, which the district court denied. Watts then filed a motion for a COA and notice of appeal.[1]

After the government failed to respond, the district court granted Watts's subsequent motion for a COA. The district court limited the COA to the following issues: (1) whether trial counsel rendered ineffective assistance by failing to challenge the admission and authenticity of evidence obtained from Watts's cell phone, (2) whether trial counsel was ineffective in failing to investigate and rebut the government's "unexplained wealth" theory, (3) whether the government engaged in prosecutorial misconduct by fabricating or illegally obtaining electronic evidence, and (4) whether the district court erred in denying an evidentiary hearing. (Order, R. 675, PageID 5441).

II.

[1]Watts's notice of appeal addressed both the denial of his § 2255 petition and the denial of his motion for reconsideration. However, Watts does not challenge the denial of his motion for reconsideration on appeal. So, we need not consider this issue. *See Buetenmiller v. Macomb Cnty. Jail*, 53 F.4th 939, 946 (6th Cir. 2022) (treating undeveloped arguments as forfeited).

In reviewing the district court's denial of a § 2255 petition, we review factual findings for clear error and legal conclusions de novo. *Davis v. United States*, 900 F.3d 733, 735 (6th Cir. 2018). To prevail under § 2255, the petitioner "must show (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid." *McPhearson v. United States*, 675 F.3d 553, 559 (6th Cir. 2012) (citation modified).

As a preliminary matter, Watts insists that the district court erred by considering the lack of support for his claims on the merits, instead of focusing solely on whether he sufficiently showed that he was entitled to an evidentiary hearing. But a petitioner is not entitled to a hearing if "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). And because that determination is bound up with the merits of Watts's claims, evaluating the merits was appropriate. *See Carson v. United States*, 3 F. App'x 321, 324 (6th Cir. 2001) (per curiam) (affirming denial of evidentiary hearing where IAC claims were "clearly without merit"); *Mathews v. United States*, 11 F.3d 583, 585 (6th Cir. 1993) (concluding that denial of evidentiary hearing was proper where there was "no merit to petitioner's substantive contentions"). So, we first assess the merits of Watts's claims before turning to the district court's decision to deny Watts an evidentiary hearing.

III.

A. Ineffective Assistance of Counsel

On appeal, Watts argues that his trial counsel was ineffective in two ways: (1) he failed to challenge the admission and authenticity of certain electronic evidence the government introduced, and (2) he did not investigate or present evidence that Watts had legitimate gambling income to dispel the government's "unexplained wealth" theory. (Appellant's Br., ECF 16-1, 24, 30).

Neither argument has merit because Watts cannot show prejudice.

"Claims of ineffective assistance of counsel are properly raised in a section 2255 [petition]." *Huff v. United States*, 734 F.3d 600, 606 (6th Cir. 2013); *see also Massaro v. United States*, 538 U.S. 500, 509 (2003) ("[F]ailure to raise an ineffective-assistance-of-counsel claim on direct appeal does not bar the claim from being brought in a later, appropriate proceeding under § 2255."). As a mixed question of law and fact, an IAC claim receives de novo review. *Campbell v. United States*, 686 F.3d 353, 357 (6th Cir. 2012).

The two-prong standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), applies to IAC claims. *Huff*, 734 F.3d at 606. First, Watts must establish that his trial counsel was deficient, meaning that his "counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. And second, he must show prejudice by illustrating that "there is a reasonable probability that, but for [his] counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Our assessment of his counsel's performance is "highly deferential." *Id.* at 689. In turn, Watts "must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)).

1. Admission and Authenticity of Electronic Evidence

Regarding the admission and authenticity of the videos obtained from his phone, Watts contends that his counsel failed to challenge or independently review the source of the videos and failed to timely file a motion to suppress evidence obtained from his home. The crux of his argument is that law enforcement obtained the videos through use of "Stingray" cell-site locator information technology, which requires a warrant, *see Carpenter*, 585 U.S. at 316, so his attorney

should have taken various actions to preclude their admission.

a. Source of the Videos

Specifically, Watts argues that his counsel should have (1) retained a forensic expert to verify the source of the videos, (2) requested discovery or a hearing on possible cell-site simulator use, (3) cross-examined Sanders or called Lucas to testify about the source of the videos, and (4) challenged the dates listed on the government's extraction reports. He maintains that he was incarcerated when one of the videos was created, so he could not have recorded it—and this fact could have "cast doubt" on all of the videos. (Appellant's Br., ECF 16-1, 25). Further, because the videos were "the key evidence" connecting Watts to the Blackthorn address, prejudice was "manifest." (*Id.* (citation modified)). By Watts's telling, there was a reasonable probability that establishing doubt about the genesis of the videos would have raised a reasonable doubt as to his guilt by at least one juror. (*Id.*). But even assuming that his counsel's failure to challenge the video evidence rendered his performance deficient—a proposition that Watts does little to develop—he has not shown that, barring any deficiency, there was a reasonable probability of a different result. Thus, the prejudice prong alone closes the door to a meritorious claim. *See Strickland*, 466 U.S. at 697 (explaining that we need not address both prongs if the petitioner's claim fails on one).

In short, we agree with the district court that even without the videos, the evidence to convict Watts was "overwhelming." (Sentencing Tr., R. 632, PageID 5010). Critically, Watts was the sole owner of the Blackthorn property. And Watts acknowledged that he recorded at least one video from inside the house. Moreover, intercepted phone calls and extracted text messages between Gonzalez and Watts revealed multiple conversations about pending and completed drug deliveries. Cell-phone location data and video surveillance also placed Watts at multiple locations

where drug transactions took place during the conspiracy. So Watts cannot show that the exclusion of the videos would have created a reasonable probability of a different result.

Watts also relies on *Carpenter* in his prejudice analysis. But *Carpenter* merely established that police "must generally obtain a warrant . . . before acquiring [CSLI]." 585 U.S. at 316. And, as the district court observed, the evidence Watts sought to suppress came from the execution of two search warrants. Because Watts does not argue that those warrants lacked probable cause or point to any facts indicating that the government exceeded their scope, *Carpenter* does not require holding that his counsel's failure to corroborate the source of the videos was prejudicial. *See United States v. Ennis*, No. 21-1093, 2022 WL 976930, at *2 (6th Cir. Mar. 31, 2022) (holding *Carpenter* was satisfied where "the government complied with its edict: To 'get a warrant'" (quoting *Carpenter*, 585 U.S. at 320)).

b. Motion to Suppress Evidence from Blackthorn

Watts's next argument—that he received ineffective assistance of counsel when his attorney filed an untimely motion to suppress evidence obtained from the search of his home—exceeds the scope of the COA.

In his § 2255 petition, Watts raised this issue. As regards ineffective assistance of counsel, however, the district court granted a COA only on the specific issues of "[w]hether trial counsel rendered ineffective assistance by failing to challenge the admission and authenticity of electronic evidence obtained from Mr. Watts'[s] phone" and "[w]hether trial counsel was ineffective in failing to investigate and rebut the government's assertion of unexplained wealth." (Order, R. 675, PageID 5441). Thus, the COA did not encompass this claim. So we decline to review it. *See Campbell*, 686 F.3d at 360 n.4 (declining to address issues "fall[ing] outside the scope of the

[COA]").

2. Government's "Unexplained Wealth" Theory

Watts also asserts that his counsel was ineffective because he did not investigate and present evidence of his legitimate gambling income. He says that such evidence "would have undermined the 'unexplained wealth' narrative and potentially reduced both offense level and forfeiture exposure." (Appellant's Br., ECF 16-1, 30–31). This argument is unavailing.

To begin, Watts does not explain what, if any, evidence his counsel would have uncovered to show that he had legitimate gambling income. At trial, an Internal Revenue Services ("IRS") agent testified that he conducted a comprehensive assessment of Watts's financial background between May 2015 and April 2016. The IRS agent explained that nothing in the casino records showed that Watts had significant gambling income. Instead, the records revealed that Watts had lost about $1.5 million through gambling activities during that period. Additionally, the government introduced an eviction letter from Tropicana Casino, where most of Watts's gambling occurred. The letter explained that Watts had engaged in significant gambling activity there but could not verify his income. Watts challenged the admission of the Tropicana letter on direct appeal, and we concluded that any error in its admission was harmless due to the government's ample additional evidence. *Watts*, 2022 WL 706603, at *7. His trial attorney attempted to undermine this evidence by cross-examining the IRS agent, R.553 at 19, and eliciting testimony indicating that the expert had not received records from every casino Watts visited, R.553 at 23–33. It is therefore unclear how any additional investigation by his attorney would have refuted the government's theory and, consequently, how counsel's alleged failure to investigate caused prejudice.

Watts relies on *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Glover v. United States*,

531 U.S. 198 (2001). But neither case helps him. In *Wiggins*, the Supreme Court concluded that counsel's failure to investigate the petitioner's life history for mitigating evidence about his sexual abuse in a death-penalty case was both deficient and prejudicial. 539 U.S. at 524–25, 535. Even there, however, the Court also acknowledged that "*Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." *Id.* at 533. Even assuming Watts has identified a "conceivable" line of defense, he has not established how it would have helped him at sentencing. For instance, he does not specify the amount by which any alleged gambling income would have reduced either his sentencing guidelines, offense level or his forfeiture amount. To be sure, in *Glover*, the Supreme Court held that a counsel's failure to object to an error resulting in a sentence increase can constitute prejudice, even if the increase is minimal. 531 U.S. at 203. But Watts has not shown that his counsel's investigation of the casino records would have affected his sentence at all. So, *Wiggins* and *Glover* do not show that Watts's counsel's performance was prejudicial.

B. Prosecutorial Misconduct

Next, Watts argues that the government committed prosecutorial misconduct by "knowingly rel[ying] on altered or unlawfully obtained video evidence and fail[ing] to disclose the method of acquisition." (Appellant's Br., ECF 16-1, 31).

The government suggests that Watts procedurally defaulted on his prosecutorial-misconduct argument by failing to raise it on direct appeal. Watts does not address whether this claim is procedurally defaulted.

If a petitioner fails to raise an issue on direct appeal, that issue generally is waived. *See Huff*, 734 F.3d at 605–06. However, the petitioner can raise the issue in a § 2255 petition if he shows "cause and prejudice" or that he is "actually innocent." *Massaro*, 538 U.S. at 504; *Dufresne*

v. Palmer, 876 F.3d 248, 256 (6th Cir. 2017) (per curiam). Relevant here, ineffective assistance of counsel can constitute cause. *Huff*, 734 F.3d at 606. But as discussed, Watts's IAC claims regarding his trial counsel are without merit. And, in any event, Watts obtained new counsel after his trial. He does not raise any IAC claims in his § 2255 petition related to his appellate counsel. Therefore, ineffective assistance of counsel cannot excuse his failure to raise the prosecutorial-misconduct claim on direct appeal. And Watts procedurally defaulted this claim.

Even were that not the case, and as the district court found, his claim would fail on the merits. "On habeas review, 'the relevant question is whether the prosecutor's [conduct] "so infected the trial with unfairness as to make the conviction a denial of due process."'" *Bates v. Bell*, 402 F.3d 635, 640–41 (6th Cir. 2005) (citation modified) (quoting *Darden v. Wainwright*, 477 U.S. 168, 181 (1986)). And even then, "we can provide relief only if the statements were so flagrant as to render the entire trial fundamentally unfair." *Id.* at 641 (citation modified).

Watts points to no evidence that the government illegally recorded the videos using a cell-site simulator, or that Sanders's testimony about Watts creating and sending the videos to Lucas was untruthful and the government knew it. The government denies "us[ing] a cell site simulator, stingray, or any other technology" to gain control of Watts's phone. (Resp. to Mot. to Vacate, R. 645, PageID 5131). And, at trial, Sanders testified that he used a program called Cellebrite to extract data from Watts's phone. Cellebrite placed the data in a container file that a reviewing agent was unable to alter. The government also produced the Cellebrite extraction report. All of this evidence went unrefuted. Thus, Watts has not shown that the government's proffered evidence or testimony rose to the level of prosecutorial misconduct.

Resisting this conclusion, Watts cursorily cites *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), to suggest that the government suppressed material

exculpatory or impeachment evidence. But he does not elaborate on the relevance of either case. While he suggests that the denial of his Freedom of Information Act ("FOIA") request proves that the government withheld material information, all the denial said was that release of "all of the *potentially* responsive records . . . could reasonably be expected to interfere with enforcement proceedings." (Mot. to Accept Suppl. Mem., R. 667, PageID 5358) (emphasis added). Contrary to Watts's assertion, this denial did not indicate that there were, in fact, responsive records at all—let alone ones showing that the government somehow utilized a cell-site simulator to record videos and then plant them on his phone. It is therefore unlikely that, even on a more fully developed record, Watts would be able to show that the government's conduct here was "so flagrant as to render the entire trial fundamentally unfair." *See Bates*, 402 F.3d at 641 (citation modified).

Watts has also not explained how a cell-site simulator could access his phone and record videos without his knowledge. A cell-site simulator merely "pretends to be a cell tower and harvests identifying information, including location data, about every phone that responds to its signals." *Powell v. United States*, No. 20-1894, 2021 WL 4241273, at *3 n.2 (6th Cir. Apr. 5, 2021) (order) (citation modified) (quoting *United States v. Sanchez-Jara*, 889 F.3d 418, 419 (7th Cir. 2018)). Watts similarly describes how cell-site simulators work, adding only that they operate "without the user's knowledge." (Reply Br., ECF 23, 9). This does not explain how a cell-site simulator can hack a phone and record videos.

C. Evidentiary Hearing

Despite his meritless claims, Watts insists that the district court should have afforded him an evidentiary hearing. He contends that the "court made 'findings' about [his] custody status, phone capabilities, and counsel's investigation without evidentiary support." (Appellant's Br., ECF 16-1, 23). But an evidentiary hearing is not required where "the petitioner's allegations

cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Martin v. United States*, 889 F.3d 827, 832 (6th Cir. 2018) (citation modified). As illustrated in the preceding discussion, we agree with the district court that (1) the record "conclusively demonstrate[d] that [Watts was] not entitled to relief," and (2) "overwhelming" evidence supported Watts's conviction. Therefore, the district court did not abuse its discretion in declining to conduct an evidentiary hearing. *See Gabrion v. United States*, 43 F.4th 569, 589 (6th Cir. 2022) (recognizing abuse of discretion standard).

IV.

We AFFIRM.