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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of General Sessions
Hon. Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-001053

THE STATE,

Respondent,

v.

MICHAEL ANTHONY DOLAN, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

In order to receive an evidentiary hearing to contest the veracity of a search warrant affidavit, a defendant must make a “substantial preliminary showing” that 1) the affiant made an intentionally or recklessly false statement in the affidavit, and 2) without the false statements, the affidavit did not support a finding of probable cause. Dolan did not offer any evidence showing the affidavit contained bad faith false statements, and the remainder of the affidavit supported a finding of probable cause without reliance on the disputed statements. Did the trial court correctly deny his motion for an evidentiary hearing?

STATEMENT OF THE CASE

A Lexington County grand jury indicted Appellant Michael Dolan for trafficking in methamphetamine. Dolan proceeded to jury trial before the Honorable Martha M. Rivers, Circuit Court Judge. At trial, the State presented evidence that police recovered 792 grams of meth from Dolan's property while executing a search warrant seeking evidence of a chop shop violation. Dolan was convicted and sentenced to 28 years' incarceration. In this direct appeal, Dolan alleges the trial court erred by refusing to conduct an evidentiary hearing on his claim that the search warrant affidavit contained bad faith false statements and did not support a finding of probable cause.

STANDARD OF REVIEW

On review of a motion to suppress based on the Fourth Amendment, the appellate court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022). Entitlement to a Franks hearing is a matter of law subject to de novo review. State v. Porch, 417 S.C. 619, 626, 790 S.E.2d 440, 444 (Ct. App. 2016).

ARGUMENT

The trial court correctly denied Dolan's motion for an evidentiary hearing to challenge the veracity of a search warrant affidavit because Dolan failed to make a substantial preliminary showing of an intentionally or recklessly false statement in the affidavit, and probable cause existed even without the alleged false statements.

The trial court correctly refused to conduct a full evidentiary hearing to address Dolan's claim that the affidavit supporting the search warrant for his property contained false statements. Dolan failed to make the required "substantial" showing that the affidavit contained bad faith false statements, and the affidavit supported a finding of probable cause even without the alleged false statements. Specifically, the affidavit detailed DMV records which showed Dolan repeatedly registered motorcycles with false identification numbers. The trial court correctly refused to conduct a full evidentiary hearing. This Court should affirm.

A. Relevant facts.

Dolan was the target of a SLED investigation into a suspected chop shop violation. (Warrant affidavit). Dolan operated a motorcycle repair shop and was suspected of criminal activity by the Gaston Police Department, who asked SLED to investigate. SLED Agent Alex Gray conducted the investigation and ultimately obtained a search warrant for Dolan's home and shop. The search of Dolan's property uncovered extensive evidence of a chop shop operation, including numerous stolen vehicles and vehicle parts with altered identification numbers. (Court's Exhibit #2).

In a written pretrial motion and again at a pretrial hearing, Dolan raised the issue of bad faith falsity in the search warrant affidavit. (Written motion). All of the allegedly false statements appear in the first paragraph of the affidavit, in which Agent Gray explained the background of his investigation, including hearsay he received from Gaston Police Chief Watkins. Agent Gray wrote that Chief Watkins told him that he had received “numerous anonymous tips” that Dolan was running a chop shop and asked him to investigate. Chief Watkins told Agent Gray that Gaston police had arrested an individual named Cody Sitton for possessing a stolen motorcycle with an altered VIN number. Chief Watkins told Agent Gray that Sitton “had ties” to Dolan’s property and went to Dolan’s property after his arrest. Dolan disputed the accuracy of this information. He also complained that Agent Gray did not specify that Chief Watkins received anonymous tips the previous year, and that the information was stale. Dolan claimed Agent Gray also gave supplemental oral testimony which was false. (Tr.p.58–62).

To support his claim, Dolan offered the testimony of the magistrate who issued the search warrant, who would testify that he may have formed a different opinion about probable cause if he had known about the alleged inaccuracies. Dolan also offered to present testimony from the Gaston officer who arrested Cody Sitton, claiming the officer would testify he did not observe Sitton go to Dolan’s property after his arrest. Dolan did not offer affidavits or testimony from Agent Gray or Chief Watkins, the source of the alleged false information.

The trial court denied Dolan's motion for a full evidentiary hearing, ruling Dolan failed to show bad faith false statements and that the warrant affidavit contained sufficient information to support a probable cause finding even without the disputed information. (Tr.p.87–88). The court pointed to the second paragraph of the warrant affidavit, in which Agent Gray detailed his own investigation into Dolan's shop. As will be discussed further below, Agent Gray discovered DMV records which showed Dolan registered numerous motorcycles with altered VIN numbers and Manufacturer Certificates of Origin (MCOs). The MCOs were "nearly identical" to the false identifiers on Sitton's stolen motorcycle.

B. The Franks standard.

When a defendant makes "a substantial preliminary showing" that a false statement "knowingly and intentionally, or with reckless disregard for the truth," was included by the affiant in a search warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. Franks v. Delaware, 438 U.S. 154, 155–56 (1978). There is a "presumption of validity" with respect to the affidavit supporting the search warrant. Id. at 171. A party attempting to demonstrate information was intentionally or recklessly omitted from an affidavit bears a heavy burden of proof. State v. Porch, 417 S.C. 619, 627, 790 S.E.2d 440, 444 (Ct. App. 2016). A defendant must do more than "allege" or "argue" certain information was false. Brief of Appellant at 13–15. He must "show" it to be so.

To make the required showing, "affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily

explained.” Franks, 438 U.S. at 171. It is not enough to show an inaccuracy. The defendant must show bad faith by the affiant, and that the probable cause determination depended on the false information. Franks, 438 U.S. at 165 (explaining affidavit must “be ‘truthful’ in the sense that the information put forth is believed or appropriately accepted by the affiant as true”).

C. Dolan failed to make a “substantial preliminary showing” that the warrant affidavit contained bad faith false statements.

In his brief, Dolan argues he was entitled to an evidentiary hearing because the affidavit included two pieces of allegedly false information: 1) that Sitton had ties to Dolan; 2) that, by failing to include a timeline of when Chief Watkins received the anonymous tips, the affidavit “implied” they were recent, but they were not. Brief of Appellant at 14. Dolan asked to take testimony from two witnesses in support of his motion to suppress—the magistrate who issued the warrant and the officer who arrested Sitton, Officer Marzol.

The magistrate’s testimony would have served no purpose. The magistrate had no idea whether any of the statements in the affidavit were false, much less intentionally false. His testimony was offered to show—hypothetically—that if the statements were false, this may have affected his probable cause determination. (Tr.p.59–60). Dolan wanted to elicit testimony about the magistrate’s “process of evaluation.” (Written motion to suppress). This testimony would not have been relevant. Probable cause is judged by an objective standard based on the information in the affidavit, not the subjective testimony of the issuing magistrate. Ornelas v. United States, 517 U.S. 690, 696 (1996). The circuit court properly

evaluated probable cause by an objective standard based on the text of the warrant affidavit.

Similarly, Officer Marzol's testimony would not have been material because it related to a peripheral matter: whether Sitton received a ride to Dolan's property from a member of the Warlocks motorcycle club. (Written motion). This information was passed to Agent Gray from Chief Watkins. Dolan did not call Chief Watkins or Agent Gray to testify. Instead, Dolan argued that because Marzol's incident report did not mention Sitton receiving a ride to Dolan's property, it must not have happened. (Tr.p.58). This logical leap does not prove the information was untrue. The affidavit does not claim Marzol observed Sitton at Dolan's property. It correctly states Chief Watkins told Agent Gray about the incident. Indeed, Agent Gray's report states that Chief Watkins made the observation, not Officer Marzol. (Court's Exhibit #2). Officer Marzol's incident report confirms Chief Watkins responded to the scene. (Court's Exhibit #3). Dolan failed to show this information was false, and failed to call the witness who would have been able to testify about the incident.

Even if the information was false, this would not show bad faith by Agent Gray or undermine the probable cause determination. Dolan complained the information was hearsay, and uncorroborated. (Tr.p.64). But just because it's hearsay doesn't make it untrue. Search warrant affidavits commonly include hearsay, which is completely proper if the hearsay is reliable or furnishes only part of the probable cause. See Franks, 438 U.S. at 165. Agent Gray plainly acknowledged the information was hearsay, but included it in the affidavit as background information.

He did not mislead the magistrate into believing he had personal knowledge of the event and did not rely on it for probable cause. Cf. Franks, 438 U.S. at 164; United States v. Calisto, 838 F.2d 711, 715 (3d Cir. 1988).

Further, Agent Gray's subsequent investigation confirmed that Sitton did indeed "have ties" to Dolan; they were part of the same scheme to fraudulently rebrand stolen motorcycles, as evidenced by the "nearly identical" fake VINs and MCOs on their motorcycles. (See affidavit). Because Agent Gray's investigation corroborated the information about Sitton he received from Chief Watkins, he had no reason to doubt its accuracy. And in any case, a minor inaccuracy like this would not show Agent Gray acted in bad faith by including it in the affidavit. See Rugendorf v. United States, 376 U.S. 528, 532 (1964) ("The factual inaccuracies depended upon by petitioner to destroy probable cause . . . were of only peripheral relevancy to the showing of probable cause, and, not being within the personal knowledge of the affiant, did not go to the integrity of the affidavit.").

As to the staleness of the anonymous tips Chief Watkins received, Dolan alleged Chief Watkins received the tips in June of 2022. Counsel cited Agent Gray's report, which does indeed state that Chief Watkins received a tip from the Lexington County Sheriff's Office in June of 2022. (Court's Exhibit #2). However, the report goes on to state that Chief Watkins then began surveillance on Dolan's property and again states Chief Watkins "received anonymous tips" about chop shop activity occurring at Dolan's property. Thus the report does not show that Chief Watkins only received tips in June of 2022. Rather, it implies that he received tips on

multiple occasions, or as Agent Gray wrote in the affidavit, “numerous” tips. Again, Dolan failed to offer an affidavit or testimony from Chief Watkins, the person with knowledge.

Finally, the search of Dolan’s property confirmed Agent Gray’s suspicions. Police discovered extensive evidence of a chop shop operation, including numerous stolen vehicles and vehicle parts with altered identification numbers. (Court’s Exhibit #2). The trial court correctly held Dolan failed to make a “substantial preliminary showing” to support his claim that the affidavit contained bad faith false statements.

D. Probable cause existed even without the alleged false statements.

Dolan also failed to meet the second requirement of Franks: that the false information in the affidavit was necessary to a finding of probable cause. The true probable cause stemmed from Agent Gray’s independent investigation, which documented Dolan’s commission of multiple instances of fraudulent registration of motorcycles with altered VINs or MCOs, not from the background information he received from Gaston police. (Affidavit).

The alleged false statements had little, if any, bearing on the probable cause determination. The alleged falsities are contained in the first paragraph of the affidavit, which is background information about the origin of Agent Gray’s investigation. Agent Gray plainly acknowledged the information was hearsay. He included the information to explain the starting point of his investigation and foundational information such as the fact that Dolan was a mechanic who worked on motorcycles. Agent Gray knew from Chief Watkins that Dolan had many

operable and inoperable motorcycles and motorcycle parts on his property. The first paragraph also contains specifics about the fraudulent identification numbers Agent Gray personally observed on Sitton's motorcycle.

The second paragraph is the meat of the affidavit and contains the information which established probable cause. As the trial court noted, "the second paragraph deals with the investigation that Agent Gray did on his own with the analysis of the DMV records Once they looked at those records that is what helped point them to Mr. Dolan." Tr.p.88.

Agent Gray explained he discovered Dolan had registered a motorcycle with a false Manufacturer Certificate of Origin (MCO) which was "almost identical" to the false MCO on Sitton's motorcycle. Further, both Sitton's and Dolan's motorcycles had false VIN numbers which were similar to each other. Hence the connection between Dolan and Sitton, which corroborates Chief Watkins's tip that Sitton "had ties" to Dolan's property. Upon further investigation, Agent Gray discovered 24 motorcycles registered with similar false identification numbers, all branded under the name "Chop Boyz Custom," a fake company. (Court's Exhibit #2). Four of the false MCOs had the name "Michael Dolan" on them.

Curiously, Dolan fails to even acknowledge in his brief this key evidence. This was the evidence that supplied the probable cause to search, not the "anonymous tips" or background information about Sitton's arrest. Thus not only did Dolan fail to show any false information in the affidavit, he has failed to address the true

probable cause independent of the alleged false statements—documented fraudulent VIN and MCO numbers on four motorcycles registered to Dolan.

CONCLUSION

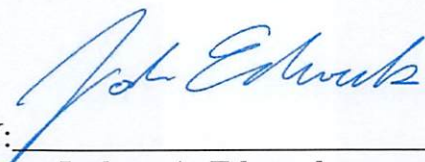
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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