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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Martha Rivers, Circuit Court Judge

Lower Court Case Nos.
2024-GS-32-00867 and 2024-GS-32-02893

The State, Respondent,

v.

Michael Anthony Dolan, Jr., Appellant.

Appellate Case No. 2025-001053

INITIAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES..... ii

ARGUMENT IN REPLY1

The trial court erred in denying Mr. Dolan a *Franks* hearing because he made a substantial preliminary showing that the search warrant affidavit contained recklessly false or misleading statements, and the affidavit lacked probable cause without those statements.1

A. Mr. Dolan made a substantial preliminary showing that the affidavit contained recklessly false or misleading statements.....1

B. The affidavit lacked probable cause without the false and misleading statements.....3

CONCLUSION.....5

TABLE OF AUTHORITIES

Cases

Franks v. Delaware,
438 U.S. 154 (1978).....1, 2, 4, 5

State v. Kinloch,
410 S.C. 612, 767 S.E.2d 153 (2014)4

State v. Sampson,
317 S.C. 423, 454 S.E.2d 721 (Ct. App. 1995).....3

State v. Trapp,
420 S.C. 217, 801 S.E.2d 742 (Ct. App. 2017).....3

ARGUMENT IN REPLY

The trial court erred in denying Mr. Dolan a *Franks* hearing because he made a substantial preliminary showing that the search warrant affidavit contained recklessly false or misleading statements, and the affidavit lacked probable cause without those statements.

A. Mr. Dolan made a substantial preliminary showing that the affidavit contained recklessly false or misleading statements.

The State implies that Mr. Dolan was required to produce affidavits or testimony from Agent Gray or Chief Watkins, even though they are the individuals responsible for the false statements, before he could obtain a hearing to test those statements. (BOR pp. 6–7). This argument misunderstands the *Franks* framework. The purpose of a *Franks* hearing is to afford the defendant an opportunity to cross-examine the affiant and the affiant’s sources. Requiring the defendant to obtain sworn admissions of falsity from those same individuals before the hearing would render the hearing itself meaningless. *Franks* requires only a “substantial preliminary showing” of deliberate falsity or reckless disregard. *Franks* does not require conclusive proof. 438 U.S. at 155–56. The defendant need only show that the allegations are supported by “[a]ffidavits or sworn or otherwise reliable statements of witnesses,” or that “their absence [is] satisfactorily explained.” *Id.* at 171.

Mr. Dolan satisfied this burden. He offered the testimony of two witnesses with direct knowledge of the facts underlying Agent Gray’s affidavit. The magistrate who issued the search warrant was present in court and available to testify that, had he known the anonymous tips were from over a year before the warrant and that the investigation had failed to corroborate the alleged connection between Sitton and Mr. Dolan, he would have reached a different determination on probable cause. (Tr. p. 86, ll. 15–19). Lieutenant Marzol, the officer who conducted the traffic stop of Sitton, was available to testify that he did not observe Sitton go to Mr. Dolan’s property and that

his report made no mention of Mr. Dolan. (Tr. p. 78, l. 24 – p. 79, l. 15). These are precisely the types of witnesses contemplated by *Franks*.

The State dismisses the magistrate’s testimony as irrelevant, arguing that probable cause is judged by an objective standard. (BOR p. 7). But the State misapprehends the purpose of the proffered testimony. Mr. Dolan did not seek to substitute the magistrate’s subjective opinion for an objective analysis. Rather, the magistrate’s testimony was relevant to demonstrate the materiality of Agent Gray’s omissions and false statements. Specifically, the omission of the timeline and the false assertion about Sitton’s ties to Mr. Dolan’s property were material to the probable cause determination. Furthermore, the magistrate’s notes revealed that Agent Gray had orally represented that there were “twenty-five motorcycles connected to gang members” at the property—information that was not true. (Tr. p. 61, l. 24 – p. 62, l. 17). The magistrate’s testimony would have established what information Agent Gray actually provided, both in writing and orally, and how that information impacted the determination of probable cause.

The State also argues that because search warrant affidavits commonly include hearsay, Agent Gray’s reliance on Chief Watkins’ statements was proper. (BOR p. 8). But the issue is not whether hearsay may be included in an affidavit but rather whether Agent Gray recklessly included hearsay that he had not corroborated while simultaneously omitting material facts that would have undermined the reliability of that hearsay. Agent Gray included Chief Watkins’ assertion that Sitton “had ties” to Mr. Dolan’s property without any independent corroboration. His own investigation, which included surveillance and a DMV search, had produced no evidence linking Sitton to Mr. Dolan. (Mot. at 5–6). And Agent Gray omitted the critical fact that the anonymous tips were from June 2022, some fourteen to fifteen months before the warrant. (Tr. p. 59, ll. 9–19). This is not mere reliance on hearsay; this is the inclusion of uncorroborated hearsay coupled with the omission

of material information that would have revealed its staleness and unreliability. *See State v. Trapp*, 420 S.C. 217, 241, 801 S.E.2d 742, 755–56 (Ct. App. 2017) (expressing concern over omission of timeline in search warrant affidavit).

The State also contends that Agent Gray’s investigation corroborated Chief Watkins’ information because it revealed that Sitton and Mr. Dolan were part of the same scheme to fraudulently rebrand motorcycles. (BOR p. 9). But the discovery of similar VINs on Sitton’s and Mr. Dolan’s motorcycles does not corroborate the specific claims that Sitton had ties to Dolan’s property and went there after his arrest. It establishes, at most, that both individuals may have been involved in registering motorcycles with questionable identification numbers which is an entirely different factual claim. Furthermore, as Mr. Dolan’s counsel specifically pointed out, the VIN numbers on the two motorcycles were different: Sitton’s motorcycle began with 4C9PD08 while Mr. Dolan’s began with 4CPPB05. (Tr. p. 77, l. 21 – p. 78, l. 3).

As in *State v. Sampson*, Mr. Dolan adequately alleged that Agent Gray lacked personal knowledge of the key assertions in the first paragraph of his affidavit. 317 S.C. 423, 425, 454 S.E.2d 721, 722 (Ct. App. 1995). Agent Gray did not personally observe Sitton go to Mr. Dolan’s property; he merely repeated what Chief Watkins told him. Just as the affiant in *Sampson* relied on another person’s observations without having personal knowledge, Agent Gray reiterated another person’s hearsay without independent verification. By highlighting this lack of corroboration, Mr. Dolan established that Agent Gray was at least reckless in his disregard for the truth.

B. The affidavit lacked probable cause without the false and misleading statements.

The State argues that probable cause existed independently of the challenged statements because the second paragraph of Agent Gray’s affidavit detailed his investigation into DMV records showing Mr. Dolan had registered motorcycles with altered VINs. (BOR pp. 10–11). The

State characterizes the first paragraph of the affidavit as mere “background information” that was immaterial to probable cause. However, the information contained in the second paragraph of the search warrant flowed directly from the information in the first paragraph.

Moreover, the DMV evidence does not independently establish probable cause. The alleged connection between Mr. Dolan and Sitton was critical to the State’s establishing probable cause because only Sitton was caught with a stolen motorcycle. The second paragraph of the search warrant affidavit continues to press the connection between them by alleging that the MCO and VIN numbers were similar. (Warrant). But as previously mentioned, the VIN numbers were not so similar as to rise to the level of probable cause. (Tr. p. 77, l. 21 – p. 78, l. 3). Again, the only direct evidence that Agent Gray supplied linking Mr. Dolan to criminal activity was the connection between Sitton’s stolen motorcycle and Mr. Dolan, but Sitton lived forty miles away from Mr. Dolan’s residence, and the investigation produced no evidence that stolen property was located on Mr. Dolan’s property. (Mot. at 5). As Mr. Dolan’s counsel argued below, “there’s nothing in this entire affidavit that indicates that stolen property is located on Mr. Dolan’s property.” (Tr. p. 76, ll. 23–25 – p. 77, ll. 6–10). Without the tainted information from Chief Watkins, the affidavit fails to establish the necessary nexus between Mr. Dolan’s property and criminal activity. *See State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) (probable cause requires a fair probability that evidence of a crime will be found in a particular place).

For these reasons, this Court should reverse the trial court’s denial of a *Franks* hearing.

