

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 4:23-cr-00007
	)	
MAURICE DEMETRIUS METTS,	)	
	)	
Defendant.	)	

DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

COMES NOW the Defendant, Maurice Demetrius Metts, by Counsel Dustin J. Franklin, and files this motion to suppress the evidence seized from 636-1 Cardinal Place, Danville, Virginia pursuant to an unconstitutional search warrant based upon a faulty affidavit.

BACKGROUND

On March 10, 2022, FBI Task Force Officer (TFO) R.P. Wright spoke with a confidential informant whose name has not been provided to the defense. *See* Exhibit 1 at p. 9. This informant was in the custody of the Danville Police Department Investigator (DPD) Lancaster and sought out TFO Wright because “...he wanted to show how much he could assist law enforcement if they were able to help him with his pending probation violation.” *See* Exhibit 1. The informant advised he was an active member of a street gang called the “9 Trey Gangster Bloods” (NTG), a subset of a larger gang called the Klean Up Bloods (KUB). *Id.* The informant provided the names of several people whom he alleged

were active members of KUB, as well as other KUB subsets including one group known as “Grown Whip” based out of Roanoke, Virginia. *Id.* Maurice Metts was one of several names this informant gave in March of 2022 as an alleged member of Grown Whip. *Id.*

TFO Wright began investigating Metts in suspicion of violation of Virginia Code §18.2-46.3, “Recruitment of Persons for a Criminal Street Gang” based upon the information provided by the unnamed informant. *See* Exhibit 2. On July 11, 2022, TFO Wright accessed a Facebook account belonging to one of the individuals named by the DPD informant. *See* Exhibit 1 at p. 9. The search warrant authorizing this surveillance has not been provided to the defense. TFO Wright applied for an additional search warrant for additional accounts through the Meta Platforms based upon this electronic surveillance. *Id.* These search warrants for the various accounts have also not been provided to the defense. According to Exhibit 1, “On July 20, 2022, Investigator R.P. Wright completed a review of the Facebook account operated by [redacted], [redacted], aka [redacted] or [redacted].” *See* Exhibit 1 at p. 10. Based upon the heavily redacted information he states he obtained during this search, TFO Wright concludes that one of the accounts he was investigating belonged to Maurice Metts based upon publicly visible portions of the account.

TFO Wright then applied for and obtained a search warrant for that redacted account. *Id.* That search warrant has not been provided to the defense. TFO Wright states that he used information obtained during that surveillance to connect the account he

believed belonged to Metts to other accounts belonging to alleged members of NTG and KUB. *Id.* On August 24, 2022, TFO Wright applied for and obtained a search warrant for the Gmail account associated with the Meta account he had previously obtained a search warrant for. *Id.* This account was named “mauricemetts116@gmail.com”. *Id.* The defense has not been provided with this search warrant. TFO Wright received the requested account information from Google Inc. on September 4, 2022, which allegedly contains payment confirmation emails from CashApp and emails discussing the NTG criminal street gang. *Id.* Based on the aforementioned activity and investigation, TFO Wright obtained a Pen Register Trap and Trace (PRTT) for an account alleged to belong to Metts on September 29, 2022. *Id.* The target account of the PRTT was registered under the name “Jonathan Jaxkson”. *Id.* The PRTT application states that the Jaxkson account included pictures of Metts, had the same birthday as Metts, and answered to Metts’ names in communication with other Facebook accounts. *Id.* Based upon this information, the PRTT application concludes that Jaxkson is an alias for Metts, and that each communication from the Jaxkson account was in fact a communication sent by Metts. *See Exhibit 2.* On October 5, 2022, and continuing through October 6, 2022, TFO Wright reviewed the historical records of the Jonathan Jaxkson account and states that this account had interactions with several other accounts between October 1 and October 5, 2022. *Id.* The file describing these contacts is so heavily redacted it is impossible to determine who Wright believes the Jonathan Jaxkson account was contacted by, or what those

conversations entailed. An example sentence taken from the file reads thus: “[redacted] advised [redacted] aka [redacted] or [redacted] was a leader for [redacted] and described as a distributor of controlled substances.” *See* Exhibit 1 at p. 8. Finally, on October 6, 2022, TFO Wright states that the Jaxkson account which he believed to be Metts connected with an IP address which originated at 636-1 Cardinal Place, Danville, Virginia for several hours.

On October 6, 2022, TFO Wright applied for a search warrant for 636-1 Cardinal Place. *See* Exhibit 3. In the section of the warrant application labeled “The material facts constituting probable cause that the search should be made are:” TFO Wright states the following:

“Within the last 48 hours your affiant was contacted by a confidential human source (CHS) who provided information concerning the location of Maurice METTS as well as information concerning communication accounts that METTS was currently utilizing. The CHS advised METTS was keeping a firearm with him and was a convicted felon. Prior to receiving this information, your affiant had obtained historical records for METTS' communication accounts and witness METTS communicating about firearms. On October 5, 2022, your affiant utilized the aforementioned information along with investigative tools and confirmed METTS was currently connected to the internet at the location described in section II of this affidavit. Your affiant queried METTS' criminal history and confirmed METTS' has four felony convictions.”

See Exhibit 3.

In the section of the warrant which described the credibility of the person who provided the information and/or the reliability of the information, TFO Wright lists his own qualifications before concluding this section by stating, “Your affiant is aware that

the aforementioned CHS has provided reliable information in the past that has led to the seizure of multiple firearms in the past.” *Id.*

The internal reports describing Wright’s investigation of Metts never mention this alleged conversation with a confidential informant, nor do any other files detailing TFO Wright’s investigation which were provided to the defense. According to TFO Wright’s application for a search warrant, a confidential source contacted him at the exact same time that TFO Wright was concluding his months-long electronic surveillance and explicitly told TFO Wright that the electronic surveillance information was accurate. The source allegedly went so far as to corroborate Metts’ location and even told TFO Wright that Metts was “keeping a firearm with him and was a convicted felon.” *See* Exhibit 3. This detail is particularly relevant given that the investigation began due to suspected violation of Virginia Code §18.2-46.3 “Recruitment of persons for a criminal street gang” but the search warrant directs officers to recover evidence related to “18.2-308.2 Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons.”¹ *See* Exhibit 1, Exhibit 3. Curiously, the *lone* documentation of this alleged conversation between the confidential source and TFO

¹ It should be noted that Mr. Metts’ potential punishment for the felon in possession charge would be a mandatory minimum five years in prison. However, the potential penalty for recruiting someone for a street gang would be a misdemeanor sentence of up to twelve months in jail. Mr. Metts highlights this discrepancy to illustrate the egregiousness of the lack of effort by the Danville Police Department in preparation of the search warrant affidavit. Mr. Metts would be facing a mandatory minimum state sentence based on nothing more than one boilerplate sentence in an affidavit allegedly vouching for a confidential informant’s veracity.

Wright is the search warrant application itself. Despite TFO Wright's meticulous recordkeeping and the inclusion of heavily redacted information when Wright is describing confidential informants and information relating to the investigation, there is no record at all – redacted or otherwise – of the conversation TFO Wright alleges he had with a confidential informant in the 48 hours prior to applying for this search warrant. The search warrant affidavit is the first and only mention of this confidential human source in any of the investigative records provided to the defense.

ARGUMENT

- I. The search warrant for 636-1 Cardinal Place is facially defective because there was insufficient information for a reasonably prudent magistrate to have substantial basis to conclude that probable cause exists.**

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. It is designed “to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.” *INS v. Delgado*, 466 U.S. 210, 215 (1984) (citing *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)). It seeks to strike a balance between the need for legitimate law enforcement tools and “the set of values reflecting society’s deeply felt belief that the criminal law cannot be used as an instrument of unfairness. ...” *Shneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973).

Thus, the Framers were careful to stipulate that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. Accordingly, the Supreme Court has concluded that the Fourth Amendment requires that search warrants are to be issued by detached, neutral magistrates and supported by probable cause. *United States v. Harris*, 403 U.S. 573, 577 (1971). Probable cause is determined by viewing the totality of the circumstances, from the point of view of a person of “reasonable prudence.” *See Ornelas v. United States*, 517 U.S. 690, 696 (1996). Probable cause is only established when a magistrate judge determines that “given all the circumstances set forth in the affidavit[,] . . . including the veracity and basis of knowledge of persons supplying hearsay information, 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) (emphasis added); *United States v. Bynum*, 60 F.3d 161, 165 (4th Cir. 2010) (internal citations omitted).

If a magistrate finds that probable cause exists, then reviewing courts must determine whether there was a substantial basis for concluding that probable cause existed. *Gates*, 462 U.S. at 238-39. Thus, although the finding of the magistrate should be given deference, the magistrate’s probable cause determination must not reflect a “rubber stamp” for the officer seeking the warrant. *See United States v. Wilhelm*, 80 F.3d 116, 121 (4th Cir. 1996). In other words, “[s]ufficient information must be presented to the

magistrate to allow that official to determine probable cause; his actions cannot be a mere ratification of the bare conclusions of others.” *Gates*, 462 U.S. at 239.

The Supreme Court has created a good faith exception to render valid a search warrant that would otherwise be invalid for lacking sufficient probable cause. *See United States v. Leon*, 468 U.S. 897 (1984). Under *Leon*, the results of a search conducted as the result of an invalid warrant should not be suppressed unless “a reasonably well-trained officer would have known that the search was illegal despite the magistrate’s authorization.” *Id.* at 925; *see also United States v. McKenzie-Gude*, 671 F.3d 452, 459 (4th Cir. 2011). It is therefore appropriate to exclude evidence seized pursuant to a warrant if the “officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.” *United States v. Lator*, 996 F.2d 1578, 1583 (4th Cir. 1993) (citing *Leon*, 468 U.S. at 914). Thus, the good faith exception will not apply under the following circumstances: “(1) when the affiant based his application on knowing or reckless falsity; (2) when the judicial officer wholly abandoned his role as a neutral and detached decision maker and served merely as a “rubber stamp” for the police; (3) when the affidavit supporting the warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) when the warrant was so facially deficient that the executing officers could not reasonably have presumed that the warrant was valid.” *United States v.*

Wellman, 663 F.3d 224, 228-29 (4th Cir. 2011) (citing *United States v. Doyle*, 650 F.3d 460, 467 (4th Cir. 2011)).

As discussed below, the affidavit filed in support of the warrant to search 636-1 Cardinal Place was facially deficient in it did not provide probable cause that a search would yield evidence of possession or transportation of firearms, firearms ammunition, stun weapons, explosives, or concealed weapons by convicted felons. Accordingly, the warrant is facially invalid, and the fruits of the ensuing search should be suppressed. Additionally, the good faith exception does not render the warrant valid as the magistrate judge wholly abandoned her role as a neutral and detached decision maker; the warrant is so lacking in indicia of probable cause that it is facially invalid and any reliance on it was unreasonable; and the unsubstantiated claims that a confidential source corroborated the results of potentially unconstitutional electronic surveillance is so lacking in indicia of credibility and/or reliability that any reliance on it was not reasonable.

A. TFO Wright included false or misleading information in the search warrant affidavit which necessitates an evidentiary *Franks* hearing to determine the validity of the warrant.²

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 an affiant in a search warrant affidavit, the Fourth Amendment requires that an evidentiary

² As discussed below, it is Mr. Metts' assertion that the warrant is so deficient that it is facially invalid, thus, the Court has ample ground to grant Mr. Metts' motion without the necessity of a *Franks* hearing. However, as TFO Wright's probable cause is so lacking that it calls into question whether the information is false or misleading, Mr. Metts felt it necessary to address the *Franks* issue as yet another ground on which his motion should be granted.

hearing is held at the defendant's request if that false or misleading information was material to the finding of probable cause. *Franks v. Delaware*, 438 U.S. 154, 164 (1978); *United States v. Pulley*, 987 F.3d 370, 379 (4th Cir. 2021); *United States v. Moody*, 931 F.3d 366, 370 (4th Cir. 2019).

The threshold inquiry determining the necessity of a *Franks* hearing is if a defendant can show by a preponderance of the evidence that an affiant included false or misleading information in a search warrant affidavit. In *Franks v. Delaware*, the defendant established this threshold by showing that an affiant on the affidavit stated he had direct contact with two witnesses who later testified that they had never spoken to the affiant. *Franks*, 438 U.S. 154, 158. The court noted that, "...the integrity of the affidavit was directly placed in issue by petitioner in his allegation that the affiants did not, as claimed, speak directly to Lucas and Morrison." *Id.* at 164. *See also United States v. Moody*, 931 F.3d 366, 370 (4th Cir. 2019) (Holding that showing of falsity cannot be conclusory and must rest on affidavits or other evidence); *United States v. Pulley*, 987 F.3d 370, 379 (4th Cir. 2021) (Holding that a defendant seeking a *Franks* hearing must demonstrate objective falsity through an evidentiary showing).

Leaving aside the issue of the confidential human source, which TFO Wright failed to memorialize in any way, which allegedly corroborated every aspect of TFO Wright's months-long electronic surveillance in the same time window that surveillance was wrapping up, the search warrant affidavit is facially misleading because Wright fails to

provide the issuing magistrate with clarifying details regarding the alleged connection between Maurice Metts and the Jonathan Jaxkson account. *See Exhibit 2, Exhibit 3.*

The name Jonathan Jaxkson does not appear anywhere within the four corners of the search warrant affidavit for 636-1 Cardinal Place, nor does any information about how Jonathan Jaxkson could in fact be an alias for Maurice Metts. *Id.* In short, TFO Wright completely fails to provide the magistrate with any nexus between the “historical records for Metts’ communication accounts” (in reality the “Jonathan Jaxkson” account) and any current criminal activity.³ This is fatal to the warrant application because this leads the magistrate to assume, without any evidence, that Mr. Metts had previously communicated with people about firearms. The *Franks* court rejected the state’s argument that the factual inaccuracies were of only peripheral relevancy to the showing of probable cause because the inclusion of the inaccurate information called the integrity of the entire affidavit into question. *Franks*, 438 U.S. 154, 160. This Court should hold similarly, because TFO Wright did not allow the issuing magistrate to come to her own conclusion

³ Another fatal flaw for TFO Wright on this point is his vague assertion that “prior to receiving [the CS information]” he obtained the historical records discussed here. He fails to provide any timeframe for this information allegedly linking Mr. Metts to possession of a firearm. TFO Wright asserts that these historical accounts contain Mr. Metts merely communicating about firearms. Per Exhibit 1, TFO Wright accessed this Facebook account on August 8, 2022, almost two full months before the search warrant application. Per TFO Wright’s own records, the account he accessed two months before the warrant already had these communications regarding firearms. While Mr. Metts will refrain from arguing that merely discussing firearms is not illegal, he will highlight to the court that any information already on the Facebook account when TFO Wright accessed it on August 8 would fall afoul of the staleness doctrine and should not have been considered by the magistrate. *See United States v. McCall*, 740 F.2d 1331 (4th Cir. 1984). TFO Wright’s failure inform the magistrate of the true timeline of his investigation, and the actual staleness of his information, is the exact conduct *Franks* is designed to prevent.

about whether the Jonathan Jackson account was in fact Metts based on the information obtained in the investigation. TFO Wright's statement that he "witnessed Metts communicating" without providing support for his conclusion that Jonathan Jackson is an alias for Metts— or even mentioning that the account Wright "witnessed communicating" was registered to and communicating from a different name than Maurice Metts – would not have provided a reasonably prudent magistrate with the opportunity to fairly evaluate the totality of the circumstances in the affidavit to find probable cause. *Id.* This omission is exactly the type of false or misleading information that necessitates a *Franks* hearing because it is neither conclusory nor subjective, appears on an affidavit, and calls into question the integrity of the entire affidavit while begging the question: What else might TFO Wright have omitted or falsely stated?

B. Magistrate Amos should not have granted the search warrant because the affidavit is so lacking in indicia of credibility and/or reliability that any reliance on it was unreasonable.

A reasonably prudent magistrate must not "rubber stamp" a search warrant affidavit based upon information provided by a confidential informant when the affidavit fails to establish the veracity and reliability of that informant. *Illinois v. Gates*, 462 U.S. 213, 233 (1983); *United States v. Lull*, 824 F.3d 109, 111 (4th Cir. 2016); *United States v. Perez*, 393 F.3d 457, 461–62 (4th Cir. 2004).

If an affidavit omits or fails to specify information regarding the credibility of an informant, the issuing magistrate's ability to perform their role as a neutral arbiter of

probable cause is compromised. In *United States v. Lull*, the Fourth Circuit noted that an issuing magistrate cannot properly conduct the “totality of the circumstances” test for probable cause if the basis for probable cause comes from conversations with confidential informants that are unsubstantiated by any indicia of reliability. 824 F.3d 109, 111. The court noted, “...a judicial officer's assessment of probable cause ... *must* include a review of the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information.” Quoting *United States v. Perez*, 393 F.3d 457, 461–62 (4th Cir. 2004) (emphasis added) (citations and internal quotation marks omitted). See also *United States v. Wilhelm*, 80 F.3d 116 (4th Cir. 1996) (Holding that when the information forming the basis for probable cause comes from an informant, the informant's “veracity” and “reliability” are critical to the totality of the circumstances test).

Indicia of reliability is established through specific information that allows a magistrate to determine probable cause and cannot be demonstrated through general or conclusory statements. In *Illinois v. Gates*, the Supreme Court held that a sworn statement that “[the affiant] has cause to suspect and does believe that liquor illegally brought into the United States is located on certain premises *will not do.*” 462 U.S. 213, 239 (1983) (emphasis added). Quoting *Aguilar v. Texas*, where a defendant challenged a search warrant that led to his conviction of heroin possession, the court additionally noted that, “An officer's statement that ‘affiants have received reliable information from a credible person and believe that heroin is stored in the home’ is *likewise inadequate.*” *Id.* (emphasis

added). The information provided by an affidavit as to the reliability of a confidential informant must be specific enough to allow the issuing magistrate to do more than merely ratify the bare conclusions of others. *Id.* See also *United States v. Pulley*, 987 F.3d 378-379 (4th Cir. 2021) (Holding that affiants must provide specific indicia of reliability and credibility to bolster information provided by an unidentified person).

Magistrate Amos wholly abandoned her role as a neutral and detached decision maker and served merely as a “rubber stamp” for TFO Wright’s affidavit when she granted the search warrant for 636-1 Cardinal Place without a scintilla of indicia of reliability as to the confidential informant. TFO Wright dedicates just a single sentence of the affidavit to establishing the reliability of the confidential informant, stating, “Your affiant is aware that the aforementioned CHS has provided reliable information in the past that has led to the seizure of multiple firearms in the past.” See Exhibit 3. This general and conclusory statement is so devoid of specific indicia of reliability that no reasonably prudent magistrate examining the totality of the circumstances in the affidavit could have substantial basis for the conclusion that probable cause exists.

Crucially, the Fourth Circuit has repeatedly stressed that there must be information offered to the magistrate from which he or she can independently assess the informant's reliability, credibility or veracity; and there must be a statement of the circumstances underlying the manner in which the information was gathered (or, at the very least, a detailed description of the accused's criminal activity) sufficient to allow the

magistrate to conclude that there is before him or her ". . . *something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.*" *United States v. Wylie*, 705 F.2d 1388, 1389-90 (4th Cir. 1983) (emphasis added) (internal citations omitted). The informant reliability statement in this case is the exact casual underworld rumor based on reputation that concerned the *Wylie* court. Here, instead of providing the magistrate with any actual indicia of reliability of the alleged confidential source, TFO Wright merely provided the magistrate with a single boilerplate sentence substantiated only by TFO Wright's cryptic "awareness" of the confidential informant's reliability. *See* Exhibit 3. These omissions of any indicia of credibility are critical because a magistrate cannot reasonably rely upon a hearsay statement from an unidentified witness or informant whose veracity or basis of knowledge has not been established or verified by other facts. *United States v. Harrick*, 582 F.2d 329 (4th Cir. 1978). Moreover, when asked to determine whether a magistrate had sufficient information to determine that probable cause existed, a reviewing court must consider only the information presented to the magistrate who issued the warrant. In this case, the information presented to the magistrate was lacking in any detail about the informant's reliability and credibility. *United States v. Anderson*, 2019 U.S. Dist. LEXIS 122131 (W.D. VA., July 23, 2019). Specifically, TFO Wright merely says that he is "aware" of the

confidential source providing reliable information in the past.⁴ Based on that sentence, which is the entirety of the reliability of the confidential source, the question is fairly raised whether TFO Wright has any personal knowledge of this informant's reliability. This mere "awareness" of the confidential source's alleged reliability is not, "specific enough to allow the issuing magistrate to do more than merely ratify the bare conclusions of others." *Gates*, 462 U.S. 213 (1983).

TFO Wright's false or misleading statements regarding the electronic surveillance and the connection between the "Jonathan Jaxson" account and Maurice Metts call into question the reliability of the information in the search warrant affidavit regarding electronic surveillance. More importantly, a complete lack of indicia of reliability or corroboration in the investigative record of the confidential human source calls into question the reliability of the information in the search warrant affidavit regarding that confidential source. Viewed *individually*, either of these deficiencies is clear evidence of the necessity of an evidentiary *Franks* hearing to determine the validity of the warrant.

⁴ TFO Wright asserts that this past information has led to the seizure of firearms. This barebones statement fails to provide any indicia that this individual is familiar with convicted felons, the Bloods gang sets in Danville, or any other familiarity that would aid the magistrate in evaluating whether the informant is credible as it relates to Mr. Metts. Again, TFO Wright's mere "awareness" lacks any specificity to time, place, action, or any other nexus showing that this informant even exists. It strikes Mr. Metts as curious that TFO Wright claims this source has given information that has led to the past seizure of multiple firearms but cannot list even one instance of this being true. It also strikes Mr. Metts as extremely odd that TFO Wright's source claims to know Mr. Metts so intimately that he/she knows Mr. Metts is a convicted felon, knows Mr. Metts' current location, knows Mr. Metts is currently in possession of a firearm, and knows that Mr. Metts is prohibited from possessing a firearm, yet nowhere in the affidavit does TFO Wright say how this source comes by any of this information. This barebones affidavit without any corroboration stands in stark contrast to the affidavits found sufficient in certain cases discussed here.

Viewed *in tandem*, these deficiencies are a clear violation of Mr. Metts' Fourth Amendment rights and any evidence found as a result of a search authorized by that warrant must be suppressed.

CONCLUSION

For the foregoing reasons, the search warrant authorizing the search of 636-1 Cardinal Place was invalid. Accordingly, Mr. Metts respectfully requests that this Court suppress the evidence obtained in the search conducted pursuant to the warrant. In the alternative, Mr. Metts requests an evidentiary *Franks* hearing to determine the validity of the search warrant.

Respectfully submitted,
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⁵ Counsel is indebted to law clerk Jake Brudney, whose hard work has been invaluable to preparation of this motion.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was electronically filed and will be forwarded to the Assistant United States Attorney, this 23rd day of June 2024.

s/Dustin J. Franklin, Esq.