

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

IAN CHRISTOPHER HELD,)	
)	
Appellant,)	Case No. 83549
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

Appeal from Jury Verdict and Conviction
Second Judicial District Court of the State of Nevada
The Honorable David Hardy

APPELLANT'S OPENING BRIEF

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APPELLANT'S OPENING BRIEF

JURISDICTIONAL STATEMENT

Appellant, Ian Christopher Held (hereinafter "Mr. Held"), appeals from a final judgment under Nevada Rule of Appellate Procedure 4(b) and NRS 177.015. The district court filed the Judgment of Conviction on September 9, 2021. Joint Appendix ("JA") 5-6. Held timely filed his Notice of Appeal on September 23, 2021. JA7-8

ROUTING STATEMENT

Mr. Held's case is presumptively assigned to the Nevada Supreme Court because he was convicted of two category B felonies and one category C felony after jury trial. JA5-6. Convictions involving category A or B felonies after jury trial are not within the original jurisdiction of the Court of Appeals. See NRAP 17(b)(2)(A).

STATEMENT OF THE ISSUE(S) ON APPEAL

- I. The District Court Committed Reversible Error by Denying Mr. Held's Motion to Suppress the Fruits of an Unlawfully Acquired Search Warrant.

STATEMENT OF THE CASE

Officers with the Reno Police Department ("RPD") arrested Mr. Held on September 28, 2020, for a Residential Burglary, another Attempted Residential Burglary, and the Theft of a Motor Vehicle. The State subsequently filed numerous criminal complaints. However, most germane to this appeal, in the Third Amended Complaint the State charged Mr. Held with four counts: Count I: Residential

Burglary, Second or Subsequent Offense; Count II: Residential Burglary, Second or Subsequent Offense; Count III: Attempt Residential Burglary, Second or Subsequent Offense, and Count IV: Possession of a Firearm by Prohibited Person. JA 930-932.

Reno Township Justice Court Department 5 conducted Mr. Held's preliminary hearing on March 3 and 8, 2021. JA 924. At the hearing's conclusion the magistrate found probable cause for counts I, III, and IV and held Mr. Held to answer in the Second Judicial District Court Department 15. Id.

Mr. Held pleaded not guilty and invoked his right to a speedy trial at his arraignment on March 22, 2021. JA 925. The court scheduled Mr. Held's trial to commence on June 29, 2021. JA 929.

Prior to trial, on May 12, 2021, Mr. Held filed a *Motion to Suppress Fruits of Search Warrant Pursuant to Franks v. Delaware*. JA 29-39. The State filed its Opposition on May 24, 2021. JA 40-214. After Mr. Held had an opportunity to view some physical evidence, he filed an additional *Motion to Suppress* related to best evidence on June 16, 2021, which the State opposed on June 22, 2021. JA 16-28. The court eventually scheduled an evidentiary hearing on Mr. Held's motions for June 29, 2021, which was the first day of trial. JA 237-401. At the hearing's conclusion, the court denied both motions. JA 237-401. The court did not file any written findings of fact and conclusions of law.

Trial commenced immediately after the evidentiary hearings on Mr. Held's motions. After a five (5) day trial, the jury found Mr. Held guilty of Residential Burglary, Attempted Residential Burglary, and Felon in Possession of a Firearm. JA 926-28.

At his sentencing hearing on September 2, 2021, the District Court sentenced Mr. Held on count one to 48 to 120 months in the Nevada Department of Corrections, with 340 days credit for time served; on count two the court sentenced Mr. Held to 24 to 60 months in the Nevada Department of Corrections, consecutive to Count one, with 0 days credit for time served; and on Count three the court sentenced Mr. Held to 12 to 30 months in the Nevada Department of Corrections, consecutive to Counts one and two, with 0 days credit for time served. JA 5-6. The court announced the total aggregate sentence as 84 to 210 months. Id. Mr. Held timely filed his Notice of Appeal on September 23, 2021. JA 7-8.

STATEMENT OF FACTS

On September 21, 2020, RPD officers responded to a call for service at 1440 Whisper Rock Way. JA 521. Upon arrival, officers located evidence suggesting a burglary. Id. Arriving officers processed the scene for evidence and interviewed witnesses. JA 523. One witness, Chris Gardella ("Gardella"), had taken a photograph of a U-Haul pickup truck that had been parked on the street the day before. JA 524-525. Using this information, Officers contacted U-Haul to ascertain

the renter's identity. JA 526. U-Haul advised officers that the truck had been rented to Ian Held. Id.

Officers proceeded to follow Mr. Held for a week. During this time, police had placed a GPS tracking device on the red Jeep Mr. Held was driving.¹ JA 529. During their surveillance, a call for service came from a residence on University Park Loop. JA 186. At this location, Mr. Held allegedly threw a rock through the window of the residence and confronted the occupant.² JA 132. However, police lost surveillance on Mr. Held when the GPS tracker stopped working. JA 184, 186. Eventually, police decided to go to Mr. Held's residence to continue their investigation. JA 187. Upon arrival at the trailer park where Mr. Held resided, officers contacted the park manager who confirmed Mr. Held was the sole occupant of the trailer at spot 81, but the trailer was owned by Mr. Held's mother. JA 346.

On September 28, 2020, officers arrested Mr. Held and Annabelle Bush ("Bush") as they exited the trailer. JA 260. Officers transported Mr. Held and Bush to the Reno Police Department for questioning. Id. Although police repeatedly asked Mr. Held for permission to search the trailer, Mr. Held declined to consent. JA 263-264. Officers then took Bush back to the trailer and allowed her to enter to

¹ Police obtained permission from the Jeep's owner to place the GPS device on the vehicle.

² Mr. Held is not appealing his attempt burglary conviction related to this incident.

retrieve personal belongings. JA 262. Officers did not have Mr. Held's permission for Bush to enter and did not possess a search warrant at this time. JA 264.

Later that day, officer Kenneth Fye ("Fye") applied for a telephonic search warrant for Mr. Held's trailer. JA54-69. In his affidavit supporting the request, Fye told the magistrate that during investigation into the Whisper Rock Way burglary, "A neighbor observed a U-Haul truck in the driveway, and was able to get the license plate off the U-Haul." (emphasis added). JA 64. However, Gardella never claimed the U-Haul was parked in the driveway. Rather, Gardella told officers it was parked on the public street, the day before the alleged burglary. JA 524-525, 532. Fye admitted he made this false claim during the evidentiary hearing held on June 29, 2021. JA 269-271.

Additionally, Fye failed to disclose to the magistrate that police allowed Bush to enter the trailer after Mr. Held had denied their request to search. JA 54-69. The magistrate granted Fye's application for warrant even though Fye made an intentional false claim and a material omission in his affidavit. JA 57. Inside the trailer, officers located numerous items of interest including: a Ryobi drill set, miscellaneous tools, and firearms. JA 58.

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SUMMARY OF ARGUMENT

The district court committed reversible error by refusing to suppress the fruits of the illegal search warrant on Mr. Held's trailer. Officers made a deliberate or reckless material misrepresentation in the affidavit supporting the search warrant request. Specifically, Officer Fye falsely claimed a witness had seen a U-Haul truck rented by Mr. Held parked in the victim's driveway. JA 64. In actuality, the witness told police he saw the U-Haul parked on a public street. JA 269-70. Additionally, officers omitted in their affidavit a material fact. JA 62-67. Officers failed to inform the magistrate that they had allowed Bush to enter Mr. Held's trailer – after Mr. Held declined consent to enter. Id. This is material because Bush was instructed to enter the trailer on police instruction to retrieve “stolen property” and to separate her property from that of Mr. Held's prior to any search warrant application. JA 249, 254. Had officers not intentionally or recklessly omitted information concerning Bush and misrepresented the location of the U-Haul trailer the magistrate would not have granted the search warrant request.

Finally, the district court's refusal to suppress the fruits of the illegal search was not harmless. Although the State bears the burden to prove the district court's erroneous decision did not contribute to the verdict, the State cannot meet this burden. Officers recovered a drill from inside Mr. Held's trailer. That drill was allegedly owned by the resident at Wisper Rock and was the only piece of evidence

connecting Mr. Held to the burglary at that location. Accordingly, had the district court correctly suppressed evidence that the drill was recovered during execution of the illegal warrant, no reasonable juror could possibly have convicted Mr. Held for the charged crime.

ARGUMENT

I. The District Court Committed Reversible Error by Denying Held's Motion to Suppress the Fruits of an Unlawful Search Warrant.

The United States and Nevada Constitutions both guarantee “[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; Nev. Const. art. 1, § 18. “The bulwark of Fourth Amendment protection, of course, is the Warrant Clause, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search.” Franks v. Delaware, 438 U.S. 154, 164 (1978). Thus, a warrant may be invalidated when it is shown that the affidavit supporting a warrant omitted a material fact either deliberately or with reckless disregard for the truth and the omitted fact was essential to the magistrate’s probable-cause determination. Id. at 155-56. On appeal, when analyzing a district court’s refusal to grant a defendant’s motion to suppress, this Court reviews the district court’s factual findings for clear error and its legal conclusions *de novo*. State v. Sample, 134 Nev. 169, 171 (2018) (citing State v. Beckman, 129 Nev. 481,

486 (2013)); see also State v. Lloyd, 129 Nev. 739, 743 (2013).

A. Police Officers made deliberate or reckless false statements, and made a material omission, in the affidavit for search warrant for Mr. Held's trailer and but for these actions, the search warrant would not have been approved.

To prevail on a motion to suppress the fruits of a warrant issued upon omitted or falsified facts, the defendant must: “(1) make a ‘substantial showing’ of deliberate falsehood or reckless disregard for the truth and (2) establish that, but for the dishonesty, the challenged action would not have occurred.” Liston v. City of Riverside, 120 F.3d 965, 973 (9th Cir. 1997). “Clear proof of deliberat[ion] or reckless[ness] is not required.” U.S. v. Stanert, 762 F.2d 775, 781 (9th Cir. 1985), *amended by* 769 F.2d 1410 (9th Cir. 1985). Rather, a simple showing of specific allegations of falsehood, accompanied by an offer of proof is enough. See Franks, 438 U.S. at 171. Moreover, “the deliberate or reckless omission by a government official who is not the affiant” can also be the basis for suppression because “[t]he Fourth Amendment places restrictions and qualifications on the actions of the government generally, not merely on affiants.” U.S. v. DeLeon, 979 F.2d 761, 764 (9th Cir. 1992). Importantly, recklessness may be inferred where the omitted fact was critical to the probable cause determination. See Rivera v. U.S., 928 F.2d 592, 604 (2nd Cir. 1991). However, “[a] defendant is not entitled to suppression of the fruits of a search warrant, even based on intentional falsehoods or omissions, unless probable cause is lacking once the false information is purged and any omitted

information is considered.” Doyle v. State, 116 Nev. 148, 159 (2000) (citing Franks, 438 U.S. at 155–56; U.S. v. Cronan, 937 F.2d 163, 165 (5th Cir.1991); Point v. State, 102 Nev. 143, 150, 717 P.2d 38, 43 (1986), disapproved of on other grounds by Stowe v. State, 109 Nev. 743, 857 P.2d 15 (1993).

Here, officers applied to Justice of the Peace Ryan Sullivan for a search warrant of Mr. Held’s trailer on September 28, 2020 at 6:08 p.m. JA54-69. In his sworn testimony, Fye stated, “The suspect stole power tools, wine, DVDs, and some other personal belongings from this homeowner.” Id. Additionally, “[a] neighbor observed a U-Haul truck in the driveway, and was able to get a license plate off the U-Haul”. JA 64. This statement was false. In actuality, Gardella (1) observed the U-Haul in the public street adjacent to the burglarized property and near the mailboxes, (2) took the photo a day before the burglary at 1440 Whisper Rock was reported, and (3) the neighbor did not call in the U-Haul as suspicious nor see anyone from the U-Haul near the house at 1440 Whisper Rock. At the suppression hearing on June 29, 2021, Fye admitted he made his own interpretation as to the location of the U-Haul and did not relay the correct information he received from Sargent Welch. JA 269-71.

Similarly, Fye made another false statement when he claimed, “[t]hey [Bush and Held] admitted to doing all the burglaries I just mentioned, and stealing the vehicle.” JA 66. This statement was false. At the suppression hearing on June 29, 2021, when asked “[d]id Ms. Bush say, I burglarized those residents?” Fye

responded, “She did not.” JA 272. The questioning went on as follows:

Q: And isn’t it accurate that Ms. Bush separated herself from Mr. Held’s actions during her interview?

A: Correct.

Q: And ultimately you determined that Ms. Bush was not a participant in the burglaries, correct?

A: Correct.

Q: And she was what you called a witness.

A: Correct.

Q: So, in fact, she did not admit to committing a crime, correct?

A: Correct.

JA 272-73.

Fye also made a material omission in his affidavit for warrant. Specifically, Fye never mentioned Bush’s entry into Mr. Held’s trailer prior to officers applying for the warrant and after Mr. Held denied consent to search. JA 54-58. Indeed, Bush testified at the hearing on June 29th, 2021 that after her interrogation, officers took her back to the trailer and asked her to recover “stolen property.” JA 246. Bush’s testimony continued as follows:

Q: And did you end up going in that trailer?

A: Yes.

Q: Was that your trailer?

A: No.

Q: And did you let them know it was not your trailer?

A: Yes.

Q: Did they let you know at any time if they had consent to go in that trailer?

A: I believe they told me they didn't have consent to go in there.

JA 246. Indeed, in Fye's sworn testimony at the suppression hearing on June 29, 2021 he confirmed Ms. Bush was allowed to return to the trailer and encouraged to go inside and her entry occurred after Mr. Held denied consent to search the trailer. JA263. Further, Fye answered "Correct" when asked, "[b]ut you did not apply for the search warrant prior to letting somebody else go in the trailer." JA 264.

The district court clearly erred when it determined as a factual matter that police did not make deliberate or reckless falsehoods or omissions. JA 384. Gardella told responding officers the U-Haul was parked on public street the day before the alleged burglary. JA 523-525. Fye recounts the truck was parked "directly in front of the house". JA 269. Fye either intentionally or recklessly said the U-Haul was parked in the driveway which made it seem as though any evidence Mr. Held was there was stronger than it actually was. JA 64.

Additionally, Fye told the magistrate that Bush and Mr. Held admitted to all of the burglaries. JA 66. This was another reckless falsehood which misled the magistrate.

Moreover, Fye knew Bush had been allowed entry into the trailer and yet they did not put this information into the affidavit. JA 62-67. This information would

have been important for the magistrate to consider because Bush was arrested with Held, returned and entered the trailer under police direction, officers knowing consent was not given, and knowing Bush was not an occupant of said trailer.

Having erroneously concluded that police did not make intentional or reckless false statements, the district court failed to analyze the second prong of *Franks* and simply concluded, “I cannot conclude that the imprecise language altered the justice of the peace’s conclusion.” JA 384-85.

Had the court correctly acknowledged that officers intentionally or recklessly submitted false information and made material omissions in the affidavit, the court would have had to address whether those false, reckless statements and material omissions which would have affected the magistrate’s decision to grant the warrant request. Plus, the false information made it seem as though officers had direct evidence that Mr. Held was present at the house on Wisper Rock on the actual date of the alleged burglary. Had the magistrate known otherwise, it is substantially likely the magistrate would not have granted the warrant request because the mere fact that a U-Haul rented to Mr. Held was present on a public street the day before an alleged burglary does not support the probable cause necessary for a warrant. “Probable cause requires trustworthy facts and circumstances which would cause a person of reasonable caution to believe that it is more likely than not that the specific items to be searched for are seizable and will be found in the place to be searched.”

State v. Sample, 134 Nev. 169, 173-74 (2018) (internal citations omitted). Simply put, intentional falsehoods about the location of the U-Haul on the date of the alleged burglary cannot be considered trustworthy facts. Had the actual facts been disclosed, a reasonable person would not believe it was more likely than not that property from the Wisper Rock burglary would be located at Mr. Held's trailer. Thus, as a matter of law, because the Magistrate relied on these falsehoods and/or omissions, the search warrant should not have been granted and would not have been granted but for those falsehoods / omissions.

B. The district court's refusal to grant Mr. Held's Motion to Suppress was not harmless.

This Court reviews an erroneous decision to admit evidence acquired through a defective search warrant for constitutional harmless error. Lastine v. State, 134 Nev. 538, 549 (2018) (citing Chapman v. California, 3876 U.S. 18, 24 (1967)). Under this standard reversal is required, unless "the State [can] show beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Medina v. State, 122 Nev. 346, 355 (2006).

Although the State bears the burden to prove the erroneous admission of evidence recovered during the execution of the illegal warrant did not contribute to the verdict, it cannot do so in this case. After securing the search warrant based upon false information and material omissions police recovered a Ryobi drill from Mr.

Held's trailer. Alleged victim Mccullough later identified the drill as the one taken from his home during the burglary at 1440 Whisper Rock. This was the only evidence connecting Mr. Held to the Wisper Rock burglary. Therefore, had the district court correctly suppressed this evidence as a result of the illegal warrant, the State would have insufficient evidence connecting Mr. Held to the charged Wisper Rock Burglary. Accordingly, no reasonable juror could possibly have convicted Mr. Held for that offense.

CONCLUSION

For the reasons put forth above, Appellant Ian Christopher Held respectfully requests that his convictions for the Wisper Rock burglary and possession of a firearm by a prohibited person be reversed.

DATED this 28th day of February, 2022.

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CERTIFICATE OF COMPLIANCE
(NRAP 28.2)

1. I hereby certify that Appellant's Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because the Opening Brief was prepared in a proportionally spaced typeface using Microsoft Word 2003 version in 14 point Times New Roman.

2. I further certify that Appellant's Opening Brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read the Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that the Opening Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

///

DATED this 28th day of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **OPENING BRIEF** to the following:

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