

**IN THE COUNTY COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

DESHON BAYLESS

APPELLANT

V.

CAUSE NO. 34CO2:23-cr-10403

THE STATE OF MISSISSIPPI

APPELLEE

**DEFENDANT'S COMBINED MOTION TO QUASH SEARCH WARRANT
TO DISMISS, OR ALTERNATIVELY (1) FOR A FRANKS
HEARING, AND (2) FOR ADDITIONAL DISCOVERY**

Defendant DeShon Bayless files this Combined Motion to Quash, Dismiss, or Alternatively, for a Franks Hearing and Additional Discovery, and in support thereof, shows the Court the following:

I. FACTS

1. At approximately 5:15 pm on January 11, 2023, deputies with the Jones County Sheriff's Department illegally entered and seized the residential property at 4737 University Avenue, Laurel, Mississippi (the "Bayless Property").

2. The basis for the disorderly conduct charge against Mr. Bayless is set out in the Officer Affidavit sworn to by Deputy Yates. (*See* Deputy Yates Affidavit attached to Doc. 46 as Exhibit "B").

3. In Deputy Yates's Officer Affidavit, he swore under oath that (1) while executing a Search Warrant, (2) Mr. Bayless physically resisted, and (3) Mr. Bayless ignored commands. This testimony was not true.

4. Despite not having legal authority to be on the Bayless Property and no power to command or order Mr. Bayless to do anything on his private property, deputies (1) gave unlawful orders to Mr. Bayless; (2) unlawfully threw Mr. Bayless to the ground; (3) assaulted

Mr. Bayless, (4) handcuffed Mr. Bayless, (5) falsely arrested Mr. Bayless; (6) illegally seized the Bayless home; (7) illegally searched the Bayless home; (8) wrongly transported Mr. Bayless to the Jones County Detention Center; (9) falsely imprisoned Mr. Bayless; and (10) falsely charged Mr. Bayless with violating Miss. Code Ann. § 97-35-7.

5. Nothing illegal was found during the search because Mr. Bayless and his mom were the residents of the property and law-abiding citizens of Jones County.

6. The Search Warrant used to justify the deputies' actions was illegally obtained after the fact.

7. The Underlying Facts and Circumstances sworn to by deputies and used to obtain the Search Warrant also contains false statements. Specifically, deputies falsely claimed (1) that the 4737 University Avenue residence was "directly tied to" Patrick Francis who was a known drug dealer; (2) that this connection was confirmed by "information obtained by other Narcotic Agents;" (3) that an informant notified Agent Driskell that Mr. Bayless was a friend of Patrick Francis and tied to his drug distribution activities; and (4) that throughout three days of surveillance Mr. Bayless was in the yard of Patrick Francis.

8. Besides the false statements contained in the Underlying Facts and Circumstances, there is another red flag. This red flag concerns the timing of the disclosure of the document to Mr. Bayless. Mr. Bayless requested a copy of this document on February 12, 2023. (**See Exhibit "A" - Email Request - attached hereto**). However, the document was not provided to Mr. Bayless until July 17, 2023 (almost three months after the April 20, 2023, Justice Court trial).

9. Given the belated disclosure of the Underlying Facts and Circumstances, the false testimony in it, and the other wrongful conduct by deputies, Mr. Bayless has legitimate concerns

about the creation of the document itself. Under these circumstances, Mr. Bayless is entitled to further investigation and discovery concerning the creation of this document.

10. Another questionable official document is the incident narrative for the arrest of Mr. Bayless. This document was not created until 97 days after deputies arrested Mr. Bayless, which was two days before the April 20, 2023, Justice Court trial.

11. A review of this document shows that a deputy added additional information to a previous incident narrative involving Patrick Francis from December 2, 2022. This official law enforcement report contains numerous errors and false statements. (**See Exhibit "B" - Yates Altered Narrative Report - attached hereto**).

12. The altered narrative incorrectly states that the interaction with Mr. Bayless happened on December 2, 2022, rather than January 11, 2023.

13. The altered narrative falsely states that an MBN Agent knew the person who turned out to be Mr. Bayless to be involved with Patrick Francis. However, MBN was not investigating Mr. Bayless and did not have any evidence linking Mr. Bayless to the drug activity of Patrick Francis.

14. The altered narrative falsely states that two deputies "stood at the back door of the residence" and repeatedly called out to see if anyone was in the residence when, in fact, deputies illegally opened the door to the home without a warrant and went inside.

15. To further cover up the excessive force deputies used, the altered narrative leaves out material information and falsely states that deputies "physically placed [Mr. Bayless] on the ground." In truth, deputies threw Mr. Bayless to the ground, assaulted him, and then took him to jail when Mr. Bayless had not committed any crime.

16. At the Justice Court trial on April 20, 2023, rather than dismissing the false

charge against Mr. Bayless, deputies doubled down and falsely testified against Mr. Bayless. As a result, Mr. Bayless was wrongly convicted despite one deputy asserting his Fifth Amendment Right against self-incrimination when questioned about the accuracy of the Officer Affidavit used to charge Mr. Bayless.

17. During the Justice Court trial, the deputies provided false testimony to support their claimed probable cause to obtain the Search Warrant for the Bayless Property. This false testimony included (1) claiming that Judge Wayne Thompson gave them verbal permission to seize the property, (2) claiming that MBN Agent Josh Stringer linked Mr. Bayless to Patrick Francis's drug operation, and (3) claiming that they had a Search Warrant for Patrick Francis's property. (See Justice Court Transcript).

18. The State has now conceded that no warrant existed for the Bayless Property when the deputies entered the Bayless Property.

II. THE SEARCH WARRANT MUST BE QUASHED

19. The Search Warrant for the Bayless Property must be quashed because (1) it is void as a matter of law, (2) it was obtained based on false statements, and (3) it was unsupported by probable cause. Accordingly, the actions by the deputies in obtaining the Search Warrant were unreasonable and violated the rights of Mr. Bayless under the Fourth Amendment to the United States Constitution (U.S. Const. Amend. IV).

20. The law in the United States settled that a warrant may not be issued unless probable cause is established correctly and the scope of the authorized search is set out with particularity. See *Payton v. New York*, 445 U.S. 573, 584, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Probable cause requires "something more than mere suspicion." *United States v. Froman*, 355 F.3d 882, 889 (5th Cir. 2004). Probable cause exists where "given all the circumstances set

forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Cavazos*, 288 F.3d 706, 710 (5th Cir. 2002). "Facts in the affidavit must establish a nexus between the [place] searched and the evidence sought." *United States v. Payne*, 341 F.3d 393, 400 (5th Cir. 2003).

21. In this case, nothing in the Search Warrant establishes a fair probability that drugs would be found in the Bayless home (4737 University Avenue). Instead, a review of the underlying facts and circumstances for the warrant shows only three conclusory allegations.

22. First, deputies relied on a purported confidential informant who purportedly said that an unidentified individual [later determined to be Mr. Bayless] was living next door to Patrick Francis and drove a Dodge Charger, was a friend of Patrick Francis, and was "tied into his drug distribution." This information is conclusory and lacks specifics. Furthermore, there is nothing that would give a reasonable deputy any basis for concluding that drugs would be found in the Bayless home. Moreover, the vehicle Mr. Bayless was driving was not a Dodge Charger.

23. Second, deputies claim that they observed an unknown black male "in the yard" of Patrick Francis. This claim is entirely meaningless, lacks substance, and unsupported by specific observations or facts necessary to establish probable cause. As it contains no indicia of anything illegal whatsoever, it also does not give any basis for concluding that drugs would be found in Mr. Bayless's home.

24. Third, deputies claimed that "information" was obtained by other narcotic agents. This statement is even more conclusory and lacks any specifics. It also does not give any basis for concluding that drugs would be found in Mr. Bayless's home.

25. These allegations fall far short of what is required for probable cause to search a person's residence.

26. To the extent the Search Warrant was based on the purported statements of a confidential informant, they are subject to additional scrutiny. Concerning reliance on information purportedly provided by a confidential informant, the Court must further look to (1) whether the informant's statements are against his own penal interests, (2) whether the information has been corroborated by independent investigation or contemporary observations of police, (3) the degree of detail of the information provided by the informant, and (4) whether the informant's reliability is corroborated by something other than unsupported conclusions of the affiant. *United States v. Fields*, 182 F. Supp. 2d 575, 578–79 (E.D. Tex. 2002); *United States v. Reddrick*, 90 F.3d 1276, 1280 (7th Cir. 1996) (explaining that an officer's statement in an affidavit that the informant provided reliable information in the past, without more, is an unsupported conclusion which does not demonstrate probable cause).

27. There is nothing to show that the purported informant's statements were against the informant's penal interest. There is no specific information that Mr. Bayless is involved in any drug distribution operation. The informant has no detailed information about the Bayless Property being used to store or sell drugs. The informant's reliability is not corroborated by anything other than the self-serving conclusions of the deputies.

28. Given (1) the conceded illegal nature of the Search Warrant, (2) the false Officer Affidavit, (2) the questionable Underlying Facts, and Circumstances, (3) the lack of probable cause, (4) the false trial testimony, and (5) the violations of Mr. Bayless's constitutional rights, this Court must enter an order quashing the Search Warrant.

III. THE DISORDERLY CONDUCT CHARGE MUST BE DISMISSED

29. If the Search Warrant for the Bayless Property is quashed for any reason, the charge against Mr. Bayless must be dismissed as a matter of law.

30. For this Court to find that Mr. Bayless is guilty of violating Mississippi Code Section 97-35-7, the prosecution must prove that (1) Mr. Bayless, with the intent to provoke a breach of the peace, or under circumstances as may lead to a breach of the peace, refused to comply with an order to act; (2) the purpose of the order was to avoid a breach of the peace by Mr. Bayless; (3) the person giving the order was a law-enforcement officer; and (4) the law enforcement officer, at the time of giving the order, had the authority to then and there arrest Mr. Bayless for a violation of the law. *Mastin v. State*, 180 So. 3d 732, 737 (Miss. Ct. App. 2015).

31. As a matter of law, even if Mr. Bayless disobeyed a command by deputies, the command was not lawful because deputies had no authority to arrest Mr. Bayless. The justification given by the deputies for being on the Bayless Property was a Search Warrant that had not been issued and that was not supported by probable cause. At no time any order was given did deputies have the authority to arrest Mr. Bayless. *Terry v. State*, 173 So.2d 889, 891 (Miss. 1965) (holding that where "the sheriff had no right to arrest defendant unless it was evident to him at the time that some breach of the peace was being threatened or a crime was being committed in his presence").

32. Furthermore, Mr. Bayless cannot breach the peace as he was on his own private property.

33. For these reasons, this case must be dismissed. Alternatively, given the deputies' undisputed misconduct and false testimony, and/or based on the discovery violations, this case must be dismissed.

**IV. ALTERNATIVELY
(1) DEFENDANT REQUESTS A *FRANKS* HEARING**

34. "The legal standard for challenging a search[-]warrant affidavit is found in *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)." *Russell v. State*, 73 So.3d

542, 545 (¶ 10) (Miss. Ct. App. 2011) (citations omitted). "Under *Franks*, a search warrant may be challenged if (a) the defendant makes a substantial preliminary showing that the affiant made a false statement knowingly and intentionally or with reckless disregard for the truth, and (b) the allegedly false statement was necessary to the finding of probable cause." *Id.* (citing *Franks*, 438 U.S. at 155–56, 98 S.Ct. 2674). "The defendant's claims must be more than conclusory." *Id.* *908 (citing *Franks*, 438 U.S. at 171, 98 S.Ct. 2674).

35. The Defendant has made a substantial preliminary showing that the search warrant was illegally obtained after the fact and that deputies knowingly made false statements in affidavit submitted to obtain the search warrant.

36. The state has conceded that the deputies had no ability to acquire authority to enter the property on the phone based on a conversation with Judge Thompson, and thus has conceded that the deputies entered the property at 4737 University without legal authority.

37. Accordingly, the Defendant is entitled to a *Franks* Hearing before trial.

38. The Defendant further requests that the Court, as part of the *Franks* Hearing, conduct an in-camera hearing to ensure the existence of the purported confidential informant and that the deputies did not misrepresent the informant's information.

(2) ADDITIONAL DISCOVERY

39. Government disclosure of material exculpatory and impeachment evidence is part of the constitutional guarantee to a fair trial. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). The law requires the disclosure of exculpatory and impeachment evidence when such evidence is material to guilt or punishment. *Brady*, 373 U.S. at 87; *Giglio*, 405 U.S. at 154. Because they are Constitutional obligations, *Brady* and *Giglio* evidence must be disclosed regardless of whether the Defendant

requests exculpatory or impeachment evidence.

40. In this case, Mr. Bayless was convicted of disorderly conduct failure to comply in the Jones County Justice Court on April 20, 2023. However, despite an obligation to produce the "Underlying Facts and Circumstances" before the Justice Court trial, this document was not produced to the Defendant until August 24, 2023.

41. On information and belief, no copy of the "Underlying Facts and Circumstances" was left with the issuing judge.

42. In addition, while MRCP 4.4(b) requires that the deputies executing the Search Warrant and the Underlying Facts and Circumstances "shall promptly return the search warrant...to the court," the deputies in this case failed to do so.

43. Because of these discovery violations, irregularities, and the false testimony by the deputies, the Defendant has significant legitimate concerns surrounding the creation of the "Underlying Facts and Circumstances" that was used to obtain the Search Warrant for 4737 University Avenue.

44. Under these circumstances, the prosecution should be required to thoroughly investigate and disclose: (1) exactly when the "Underlying Facts and Circumstances" was prepared, (2) the computer used; (3) the date and time the document was edited; (4) the metadata showing the file size, date of document creation, the names of the author and most recent modifier, the dates of any changes, and the total edit time.

45. The "Underlying Facts and Circumstances" also references deputies calling the issuing judge before the search warrant was issued. The prosecution should disclose the phone used, the specific time any calls were made, and the duration of those calls.

46. At the Justice Court trial, deputies testified that a picture of Mr. Bayless was sent

to MBN Agent Josh Stringer, who confirmed that Mr. Bayless was connected to Patrick Francis and suspected of being involved in drug activity. The prosecution must be required further to disclose (1) a copy of this picture, (2) the date and time the picture was taken, (3) who took the picture, (3) the date and time the picture was sent, and (4) all other pictures, evidence, and documentation showing that throughout the claimed three days of surveillance, Mr. Bayless was in the yard of Patrick Francis or connected in any way to the Patrick Francis drug operation.

47. The State has not produced an investigative report that was created concerning the January 11, 2023, arrest of DeShon Bayless, even though no less than six deputies participated in the execution of the warrants in question on that date. No use of force reports have been produced. The State should be compelled to disclose any and all investigative reports by all State agents and deputies that were created concerning the search and seizure at the Bayless Property whether these reports are in the opinion of the State exculpatory or not.

48. Finally, the State should be required to produce at trial, or a reasonable time before, the originals of all Affidavits and Search Warrants so that the same can be inspected by counsel for Mr. Bayless.

RESPECTFULLY SUBMITTED, this the 6th day of September 2023.

DESHON BAYLESS

By: /s/ Michael V. Cory
Michael Cory (MSB # 9868)

/s/Matthew W. Lawrence
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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing document on the MEC filing system, which sent notice to the clerk of the Court and to all counsel of record, and to the Special Judge by email.

Dated: September 6, 2023.

/s/ Michael V. Cory

Michael Cory (MSB # 9868)