

Excerpt from motion to dismiss written by Daniel Cohen, Legal Research and Writing

Officers from the West Palm Beach Police Department unlawfully charged the defendant in this case, and illegally obtained two search warrants, by thrice submitting probable-cause affidavits fatally marred by material falsehoods and material omissions. Indeed, there is hardly a material statement in the lead detective’s affidavits that is not soundly refuted by the State’s own evidence. Police uttered these materially false statements, and omitted these material facts, in at least four documents: (a) the sworn probable-cause affidavit. Ex. 1; (b) the sworn probable-cause affidavit in the application for a warrant to search Mr. Wilson’s alleged workplace Ex.2; (c) the sworn probable-cause affidavit in the application for a warrant to search Mr. Wilson’s Facebook account Ex. 3; (d) the West Palm Beach Police Department “Synopsis of Facts” Ex.4. The nature, breadth, and depth of the affidavits’ falsity suggest that these material misrepresentations, both express and implied, were uttered, at best, in reckless disregard of the truth. It is more probable that these false allegations were deliberate. Hence, pursuant to the rulings of the Fourth District Court of Appeal in State v. Swain, 689 So.2d 343 (Fla. 4th DCA 1997), and in McDonald v. State, 742 So.2d 830 (Fla. 4th DCA 1999), and pursuant to Rule 3.190(b), Mr. Wilson moves this Court to dismiss the above-styled case.

Egregious Police Conduct

According to the Fourth District Court of Appeal, “[a] trial court should grant a motion to dismiss an information when police conduct is so egregious as to violate the defendant’s due process rights.” McDonald . State, 742 So.2d 830 (Fla. 4th DCA 1999 (rehearing denied) (citing State v. Glosson, 462 So.2d 1082, 1084 (Fla. 1985). Black’s Law Dictionary defines “egregious” as “[e]xtremely or remarkably bad; flagrant.” Black’s Law Dictionary, (8th ed. 2004).

“Due process of law imposes upon a court the responsibility to conduct ‘an exercise of judgment on the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice.’ ” McDonald . State, 742 So.2d at 831 (Fla. 4th DCA 1999) (quoting State v. Williams, 623 So.2d 462, 465 (Fla. 1993) (quoting Malinski v. New York, 324 U.S. 401, 416-17 (1945). “To determine whether police conduct violates a defendant’s due process rights, the courts must weigh the opposing policy considerations which recognize a defendant’s right to be protected from egregious governmental conduct and the government’s need to combat crime.” McDonald at 831.

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The Defendant’s Right To A Hearing

As noted by the Fourth District Court of Appeal, the United States Supreme Court has “created a test for the courts to use when presented with claims of misrepresentation in an affidavit to support probable cause:

[W]here the 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 the 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.

State v. Swain, 689 So.2d 343 (Fla. 4th DCA 1997) (quoting Franks v Delaware, 438 U.S. 154, 155-156 (1978) (internal quotation marks omitted).

Material Misrepresentations and Omissions:

The State’s Deliberate Falsehoods In This Case

According to the Information, Mr. Wilson is charged with two counts of “patient brokering,” an offense that makes it a crime in Florida “to induce the referral of patients or patronage to or from a health care provide or health care facility.” See. s.817.505(1)(a) and (4). As alleged by

Detective Gold in his two probable-cause affidavits submitted to obtain search warrants of Mr. Wilson's alleged workplace and Facebook Account: "*The offering of free or reduced rent subsidy, cigarettes, and gift cards to induce patronage of The Wellness Center is a violation of FSS 817.505(1a) [sic], patient brokering.*" Ex. II: p.2, par. 4 (sworn probable-cause affidavit, May 22, 2017); Ex. III: p.2, par. 7 (sworn probable-cause affidavit, May 26, 2017)

Hence, the ideal evidence to the State in such a case would consist of sworn allegations that Mr. Wilson induced "the referral of patients" or induced "patronage to" his health care facility. In fact, as demonstrated below, virtually every material statement attributed by police to State eyewitness Kaitlyn Hart is patently false. The false statements are 1. so many in number, 2. so comprehensive in topic, 3. generated by a veteran police officer,¹ 4. repeated in four documents prepared by police and provided to the Office of the State Attorney for prosecution, and 5. combined with self-serving material omissions, the false statements cannot be but deliberately stated.

¹ Detective Gold has been a law enforcement officer with the West Palm Beach Police Department since 2004, about 14 years. His prior experience in law enforcement, if any, is presently unknown. At the time of these events, Detective Gold, in his own words, was "a member of the Violent Crimes/Arson Unit of the West Palm Beach Police Department's Criminal Investigation Division." Ex III (affidavit in application for warrant to search "cellular phone storage), p.1, par. 3.