Cite as 2018 Ark. App. 391

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-17-685

ANFERNEE WELLS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** September 5, 2018 APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, CHICKASAWBA DISTRICT [NO. 47BCR-15-339] HONORABLE MELISSA BRISTOW RICHARDSON, JUDGE AFFIRMED

BRANDON J. HARRISON, Judge

This appeal asks whether the circuit court erred when it denied Anfernee Wells's request to suppress evidence of his arrest because, he argues, there was no supporting affidavit for the arrest warrant when the warrant first issued. We hold that the warrant process was not fatally flawed and affirm the denial of the motions to suppress.

I.

Wells was tried and convicted for murdering Vincent Stone. Stone died of a gunshot wound after playing a pickup game of basketball in a Blytheville park on 22 June 2015. During the April 2017 trial, two witnesses identified Wells as one of two gunmen at the Blytheville park that day.

Wells argued to the circuit court before the trial and during the trial that his arrest for first-degree murder was unlawful. Here, he essentially repeats that the arrest in Detroit,

Michigan was bad because the warrant authorizing the arrest was issued without a reasonable-cause affidavit. Wells claims that the fruits of his arrest—that he gave a false name to the arresting officers and that he was arrested in Detroit, making it appear to the jury that he was on the run—should have been suppressed. The circuit court denied the motions, concluding that Wells was lawfully arrested, that no federal or state constitutional violations had occurred, and that there was no police misconduct.

A warrant must be issued by a "neutral and detached magistrate" and "supported by Oath or affirmation." U.S. Const. amend. IV; *Johnson v. United States*, 333 U.S. 10, 14 (1948). Arkansas Rule of Criminal Procedure 7.1 sets forth the warrant process in this state:

> (b) [A] judicial officer may issue a warrant for the arrest of a person if, from affidavit, recorded testimony, or other documented information, it appears there is reasonable cause to believe an offense has been committed and the person committed it. A judicial officer may issue a summons in lieu of an arrest warrant as provided in Rule 6.1. An affidavit or other documented information in support of an arrest warrant may be transmitted to the issuing judicial officer by facsimile or by other electronic means. Recorded testimony in support of an arrest warrant may be received by telephone or other electronic means provided the issuing judicial officer first administers an oath by telephone or other electronic means to the person testifying in support of the issuance of the warrant.
>
> (c) A judicial officer who has determined that an arrest warrant should be issued may authorize the clerk of the court or his deputy to issue the warrant.

Simply summarized, the rule authorizes a judge to issue an arrest warrant if, from the information presented, there is reasonable cause to believe that an offense has been committed and the person to be arrested committed it. *Blanchett v. State*, 368 Ark. 492, 496, 247 S.W.3d 477, 480 (2007). An arrest warrant is valid when a sworn complaint or testimony adequately sets forth the underlying facts and circumstances for an arrest. *Id.* The State cannot save an insufficiently supported warrant by arguing that the police had

additional information to support the probable-cause statement but failed to disclose it to the issuing judge. *Whiteley v. Warden, Wyo. St. Penitentiary*, 401 U.S. 560, 568 (1971). *But see Moya v. State*, 335 Ark. 193, 981 S.W.2d 521 (1998) (holding that additional information known to a police officer but not previously disclosed to the magistrate may be used for the limited purpose of determining the good faith of the police officer).

A timeline is helpful to further understand this case. The following events occurred in 2015:

- June 22: Vincent Stone was shot and killed in Blytheville.
- July 28: A warrant was issued for Wells's arrest. (A copy of the July 28 warrant is certified by the court clerk.)
- August 4: Blytheville police officer Eric Ferrell requested assistance from the United States Marshals Service to apprehend Wells. (No written warrant accompanied the request.)
- September 28: Blytheville detective Robbie McShan swore out an affidavit for Wells's arrest that included facts he obtained when he interviewed a witness to the murder.
- Around October 13: Marshals arrested Wells outside a convenience store in Detroit. (It is undisputed that Wells was arrested a week or two before October 29.)
- October 29: A second arrest warrant, identical to the previous warrant, was generated and it was dated October 29.

Part of what has fueled Wells's suppression effort is that the reasonable-cause affidavit that supported the July 28 arrest warrant was dated September 28—a full two months after the arrest warrant itself was generated. As explained further below, the circuit court evidently credited Detective McShan's trial testimony and concluded that he prepared the reasonable-

cause affidavit on July 28, before the arrest warrant was issued. If the court's decision was not clearly wrong, then this appeal cannot succeed.

II.

In November 2016, Wells moved to suppress evidence of his arrest. Specifically, he asked the court to exclude an arrest warrant. The thinking behind this maneuver was that the arrest in Michigan violated his constitutional rights because it was not supported by reasonable cause, and telling the jury that he was arrested in Michigan prejudiced his case because the State could argue (or at least intimate) to the jury that Wells fled to Detroit to escape being prosecuted for killing Vincent Stone. *See, e.g.*, *Ferguson v. State*, 298 Ark. 600, 602, 769 S.W.2d 418, 419 (1989) ("[F]light to avoid arrest can be considered as corroboration of evidence tending to establish guilt."). Here in his own words is the crux of Wells's pretrial point to the circuit court: "[t]his case stems from Sgt. Ferrell's original illegality by knowingly and falsely requesting the United States Marshals to apprehend [him] on the basis of an arrest warrant that, in fact, had not been issued."

A hearing was held on the motion to suppress in January 2017, during which the State introduced a certified copy of the July 28 arrest warrant. Wells objected, arguing that he had not seen the document before. In other words, he did not have a copy of the July 28 arrest warrant when he filed his motion to suppress; all he had was a copy of the October 29 warrant. The court overruled the objection and received a certified copy of the July 28 arrest warrant as State's exhibit 1. The warrant states that it was served on October 28.

The only witness to testify at the suppression hearing was Officer Eric Ferrell. He attempted to explain the discrepancies with the dates, speculating that Detective McShan's

reasonable-cause affidavit, though it was plainly dated September 28, had in fact been prepared on July 28 and before the July 28 arrest warrant was issued. When asked why the affidavit was dated September 28, Officer Ferrell said, "My opinion is that he [Detective McShan] just typed the wrong month in." Regarding the arrest warrant dated October 29, Officer Ferrell said that when a warrant is printed out, then "today's date" appears on the warrant—meaning the date on which the warrant is printed, or reprinted, appears on the document. According to Officer Ferrell, October 29 was a day or two after Wells had been taken into custody, and a copy of the original warrant was printed on October 29.

When confronted with the previously undisclosed July 28 arrest warrant, Wells essentially maintained that the October 29 warrant was the only bona fide warrant, and it was issued *after* his arrest in Michigan. Wells also maintained that the date printed on the September affidavit was correct.

The circuit court denied the motion to suppress, and the case went to trial in April 2017. At trial, witnesses testified that Wells shot Stone. Detective McShan—who wrote the reasonable-cause affidavit that supported the arrest warrant—testified for the first time. His trial testimony is critical to this appeal because, if credited, then it arguably fills a hole in the proof that remained at the end of the pretrial hearing—the hole being that the only affidavit that was received as evidence was dated later than the July 28 arrest warrant. The affidavit was not admitted as evidence during the suppression hearing, and the only affiant, Detective McShan, did not testify during the suppression hearing.

In any event, during the trial, when asked by the prosecutor when he obtained the arrest warrant, the detective replied, "He [a witness to the shooting] came in the 27th. We

presented the information on the 20th to the prosecutor's office. And that's when the warrant was issued . . . the 28th. . . of July." Wells was arrested around October 13 or 14, according to Detective McShan.

Wells cross-examined the detective and proffered the September 28 reasonable-cause affidavit as defendant's exhibit 1, which the circuit court received. On cross-examination, Detective McShan agreed that he had signed the document (defense exhibit 1, the September 28 affidavit) and that it accurately represented the affidavit that he had drafted to initiate the warrant process.

Wells renewed his motion to suppress twice during the trial. The circuit court denied it twice. That Wells renewed his motion to suppress during the trial is important because it was there that more evidence on the affidavit and warrant was presented and considered by the circuit court. So when deciding whether Wells was unlawfully arrested, the circuit court had Detective McShan's testimony that he had sworn the affidavit before the July 28 arrest warrant; and the court had Officer's Ferrell's opinion that the September 28 date on the affidavit was a mistake.

III.

We review a denial of a motion to suppress de novo based on the totality of the circumstances, review historical facts for clear error, and give due weight to inferences by the circuit court. *Davis v. State*, 351 Ark. 406, 413, 94 S.W.3d 892, 896 (2003). "Our cases have recognized that a police officer may draw inferences based on his own experience in deciding whether probable cause exists. . . . An appeals court should give due weight to a trial court's finding that the officer was credible and the inference was reasonable." *Id.* at

412, 94 S.W.3d at 895 (internal citations omitted). The truth of an affidavit that supports a warrant is ordinarily assumed because the affiant swears to its truth. *Franks v. Delaware*, 438 U.S. 154 (1978); *see also United States v. Martin*, 615 F.2d 318, 328 (5th Cir. 1980).

According to Wells, the circuit court ruled against him during the suppression hearing although it had no timely reasonable-cause affidavit before it as evidence; nor had the court heard testimony from someone who personally knew about the factual circumstances that supported the affidavit. Though Officer Ferrell testified at the suppression hearing, he was not the affiant; therefore he could only guess that the affidavit contained the wrong date, says Wells. Furthermore, says Wells, the July 28 warrant is, arguably, facially invalid because the supporting affidavit that recited the reasonable cause for Wells's arrest postdates the warrant by two months.

We hold that the circuit court did not err when it denied the motions to suppress. Contrary to Wells's assertion, and as we have already mentioned, the suppression-hearing testimony is not the only evidence we consider when reviewing the denial of a motion to suppress. *Cain v. State*, 2010 Ark. App. 30, at 5, 373 S.W.3d 392, 395 ("We review the entire record to affirm the circuit court's ruling, not just the record of the suppression hearing."). Though quite a hole in the proof remained after the suppression hearing, during the subsequent trial, Detective McShan said that he generated the reasonable-cause affidavit after the eyewitness had come to his office, that he took the affidavit to the prosecutor's office, and that the warrant was issued on July 28, well ahead of the day (approximately October 13) that Wells was arrested in Michigan. Wells asked the circuit court to consider this trial testimony when he renewed his motion to suppress at the close of the State's case

and at the close of all the evidence. During his cross-examination of Detective McShan, the circuit court received the affidavit into evidence for the first time in the case.

We acknowledge that a minimum of three vital actors in the warrant process—Detective McShan, the prosecutor's office, and the judge who issued the warrant—apparently failed to appreciate that an incorrect date (September 28) was printed on the affidavit. Case-initiating documents against this State's citizens should be prepared with care and attention to the details. That said, we defer to the circuit court's ability to evaluate the credibility of witnesses and to make reasonable inferences that may flow from the evidence received during the suppression hearing and the subsequent trial. The court could have credited the police officers' testimony. It could have inferred from the evidence that the date of September 28, which appeared on the reasonable-cause affidavit, was a ministerial error, not a substantive timing error in the warrant process. Having considered the record and the parties' arguments, we are not left with the definite and firm conviction that a mistake was made.

Affirmed.

HIXSON and MURPHY, JJ., agree.

The Burns Law Firm, PLLC, by: *Meagan Burns*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.