IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,731-01

EX PARTE AARON MATHEWS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 1392768-A IN THE 208TH DISTRICT COURT HARRIS COUNTY

Per curiam.

O P I N I O N

In 2013, Applicant pled guilty to delivery of a controlled substance, namely cocaine, in an amount less than one gram, a state jail felony offense. He was sentenced to 180 days in the Harris County Jail.[1] In 2019, Applicant was notified that Officer Gerald Goines of the Houston Police Department—the officer working undercover at the time of his alleged

[1] Texas Penal Code Article 12.44(a) provides that, "a court may punish a defendant who is convicted of a state jail felony by imposing the confinement permissible as punishment for a Class A misdemeanor[.]" TEX. PENAL CODE § 12.44(a). Because Applicant was convicted of a felony, even though he received a misdemeanor punishment pursuant to Section 12.44(a), the requirements for a cognizable Article 11.07 application for writ of habeas corpus are satisfied. *See Ex parte Sparks*, 202 S.W.3d 670, 682 (Tex. Crim. App. 2006); *see also Ex parte Palmberg*, 491 S.W.3d 804, 805 n.1 (Tex. Crim. App. 2016).

offense and the sole witness against him—was under investigation for falsifying evidence and that Goines had been relieved from duty.

Applicant now claims that the Court should infer that Officer Goines's testimony against him is false and that Applicant's right to due process was violated.[2] We filed and set this cause to address whether the requirements for the inference of falsity that this Court adopted in *Coty* should apply in cases involving a police officer with a demonstrated pattern of misconduct in drug-related cases. *Ex parte Coty*, 418 S.W.3d 597 (Tex. Crim. App. 2014). We conclude that it should, but we remand for further proceedings not inconsistent with this opinion.

BACKGROUND

On August 21, 2020, the convicting court adopted, by order, the parties' "Agreed Proposed Findings of Fact, Conclusions of Law, and Order." That document set forth the facts underlying this case, as they were described in the police offense report generated by Officer Goines. It explained that Goines was working undercover in an unmarked car in 2013. As he pulled up to an intersection, a man approached the driver's side of the car. Goines displayed a twenty-dollar bill and said, "hook me up." The man gave Goines a rock-like substance, which later tested positive for cocaine. Goines notified nearby uniformed

[2] Although Applicant has completed his term in the county jail, he alleges collateral consequences, such as the possibility of an enhanced penalty for a future conviction, potential impeachment of his credibility in future proceedings, and increased difficulty in procuring a job. It is therefore appropriate to review his case in a post-conviction application for writ of habeas corpus under Article 11.07. *See Ex parte Harrington*, 310 S.W.3d 452, 457 (Tex. Crim. App. 2010) ("Because applicant currently suffers collateral consequences arising from his conviction, he is 'confined' for the purpose of seeking habeas relief under article 11.07.").

officers to arrest the man and provided a description of the man's appearance and clothing.

The report further reflected that, when the uniformed officers arrived, they did not see the described suspect. So, Goines drove back to the location himself. As he did, Applicant emerged from behind a nearby house on a bicycle. Goines radioed the uniformed officers that Applicant was the man who had sold him the cocaine. The officers then arrested Applicant.

Applicant was convicted on his plea of guilty for delivering cocaine in a quantity of less than one gram. Apart from his own unsworn statement, executed on April 7, 2020, and attached to his writ application, in which he denied selling cocaine to Goines, Applicant cannot presently prove that Goines provided false information in his specific case. But because it is alleged that Goines has some history of misconduct in drug-related cases, as detailed below, Applicant argues that it would be appropriate to apply the *Coty* inference-of-falsity rubric to his case. The Harris County District Attorney, the State Prosecuting Attorney, and amicus curiae, all agree that the *Coty* inference should apply in cases like this one.[3]

The Mallet Brothers

Goines was previously found to have provided false information in at least one separate drug-related case. Goines testified under oath at Otis Mallet's trial that, while working undercover in April of 2008, he gave Steven Mallet $200 of "police money" in exchange for drugs, and that he did not recover the money. He claimed that Steven Mallet

[3] *See* State's Brief on the Merits at 9; State Prosecuting Attorney's Letter Brief; Brief of Amicus Curiae Innocence Project of Texas at 6.

gave his brother, Otis Mallet, that money and brought back crack cocaine to Goines's vehicle. *See Otis Mallet v. State*, Nos. 14-11-00094-CR, 14-11-00095-CR, 2012 WL 3776357 (Tex. App.—Houston [14th Dist.] Aug. 30, 2012) (mem. op., not designated for publication). Both Steven and Otis Mallet were convicted and sentenced to confinement for 10 months and 8 years, respectively.

Otis Mallet's attorneys later discovered a sworn expense report, executed by Goines for the month of April 2008, showing that he did not, in fact, use $200 of "police money" to purchase narcotics.[4] In addition, a different sworn report executed by Goines for the month of May 2008, showed that Goines had paid a police informant $200 for information related to the case against the Mallet brothers. In February of 2020, the convicting court in Otis Mallet's case concluded that Goines testified falsely and committed a *Brady* violation during Otis's original trial.[5] Also in February of 2020, a different district court concluded that Goines provided false evidence in Steven Mallet's case. This Court accepted the district courts' recommended conclusions that Goines lied in official government documents and during the trial as previously mentioned, and it granted post-conviction relief to both Steven and Otis Mallet accordingly. *Ex parte Otis Mallet*, Nos. WR-90,980-01 & WR-90,980-02, 2020 WL 3582438 (Tex. Crim. App. 2020) (not designated for

[4] Officer Goines's expense report for April of 2008 reflected that he drew out $1,000 of police money during the month of April 2008, that $0.00 of that money was spent during that month, and that the full amount was returned at the end of the month. *Ex parte Otis Mallet*, 602 S.W.3d 922, 923 (Tex. Crim. App. 2020) (Richardson, J., concurring).

[5] A *Brady* violation occurs when evidence favorable to the defendant is suppressed, willfully or inadvertently, if that evidence is material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83 (1963).

publication); *Ex parte Otis Mallet*, 602 S.W.3d 922 (Tex. Crim. App. 2020) (Richardson, J., concurring); *Ex parte Steven Mallet*, 620 S.W.3d 797 (Tex. Crim. App. 2021) (Richardson, J., concurring).

The 2019 Investigation and Alleged False Affidavit Information

In 2019, Goines came under investigation for allegedly falsifying information in an affidavit seeking a search warrant for a drug raid in east Houston.[6] According to Applicant's memorandum of law filed in support of his habeas application, "[i]t was determined that Goines had provided false information in an affidavit in support of a search warrant for the residence. Although he claimed in the affidavit that a confidential informant had bought heroin from the residence, Goines later admitted that there was no confidential informant." The State does not contest Applicant's allegation that Goines falsified information in the 2019 search warrant affidavit, nor has it stipulated to that fact, and the record presently contains no hard evidence to otherwise substantiate that allegation.[7]

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[6] The drug raid subsequently left two residents dead and five officers wounded. In the wake of that raid, Goines was relieved of duty and indicted in the 228th District Court in Harris County for two instances of felony murder. The alleged felony underlying both murder indictments was tampering with a government record by incorporating false evidence in the search warrant affidavit. But, of course, an indictment does not count as any evidence of guilt. *See* TEX. CODE CRIM. PROC. art. 38.03 ("The fact that [an accused] has been . . . indicted for . . . the offense gives rise to no inference of guilt at his trial."). In any event, the focus of the present case is not the botched raid itself or the resulting deaths, but instead the allegation that Goines falsified claims in the affidavit to obtain the search warrant.

[7] In Applicant's Memorandum of Law in Support of Application for Writ of Habeas Corpus, he claims that, although Goines swore there was a confidential informant in his search warrant affidavit, he "later *admitted* that there was no confidential informant." App. Mem. of Law p. 2 (emphasis added). Applicant's memorandum of law points to no evidence substantiating this claim aside from the fact of Goines's indictments in cause numbers 1643519 and 1643520. An indictment is no evidence of guilt. *See* note 6, *ante.*

EX PARTE COTY

In *Coty*, the applicant relied on the fact that a forensic chemist working for the State had demonstrably falsified lab-test results in *other* cases, not his own. *Coty*, 418 S.W.3d at 598. On this premise, however, he argued that the State had also obtained *his own* guilty plea based upon false evidence. *Id*. This Court held that an applicant's proof of such demonstrable "dry labbing" in other cases could create an inference of the use of false evidence in the applicant's own case, which the State would then be given the opportunity to rebut. The Court declared that it would consider an inference that the evidence in question was false if the applicant could demonstrate that:

> (1) the technician in question was a state actor,
>
> (2) the technician committed multiple instances of intentional misconduct in another case or cases,
>
> (3) the technician was the same technician that worked on the applicant's case,
>
> (4) the misconduct was the type of misconduct that would have affected the evidence in the applicant's case, and
>
> (5) the technician handled and processed the evidence in the applicant's case within roughly the same period of time as the other misconduct.

Id. at 605. The Court explained that, "[o]nce [an] applicant satisfies this initial burden by establishing the identified factors, the applicant has proven that the [state actor] in question has engaged in a pattern of misconduct sufficiently egregious in other cases that the errors could have resulted in false evidence being used in the applicant's case." *Id*. It is up to the applicant, the Court said, "to establish the extent of the pattern of misconduct the [state actor] is accused of," but if an "[a]pplicant can establish the necessary predicate facts, then

the burden shifts to the State to offer evidence demonstrating that the [state actor in the applicant's case] committed no such intentional misconduct in the applicant's case." *Id*.

The Court also held in *Coty* that the burden of establishing the materiality of the false evidence rested exclusively on the applicant. *Id*. at 605. The Court later also explained that an applicant who has pled guilty satisfies this burden of materiality by showing that he would not have decided to plead guilty but for the falsified forensic evidence aligned against him. *See Ex parte Barnaby*, 475 S.W.3d 316, 327 (Tex. Crim. App. 2015) ("[T]he materiality of false evidence is measured by what impact that false evidence had on the defendant's decision to plead guilty.").

ANALYSIS

Extending the *Coty* Factors

The five-part inquiry for the inference of falsity from *Coty* was established in response to a state-actor lab-technician's history of misconduct, and it has been used to guide courts in similar false evidence claims against state-actor lab-technicians or forensic scientists. In only one case about which we are aware has the *Coty* inference been applied to a case involving a police officer; however, that claim of false evidence clearly failed to meet the second *Coty* factor, and the matter was therefore not explored in any depth. *See Ex parte Meredith*, No. 11-17-00016-CR, 2017 WL 2986847, at *8 (Tex. App.—Eastland July 13, 2017, no pet.) (mem. op., not designated for publication) ("Appellant only showed that [the officer] committed one act of misconduct, rather than the multiple acts required by *Coty*."). We agree with the parties that it is appropriate to extend *Coty*'s framework to the context of police officers with a proven history of falsifying evidence to secure arrests

in, and obtain convictions for, drug-related cases.

In *Coty*, the Court justified adoption of the inference of falsehood on essentially two grounds. First, the Court found it appropriate, in cases where the *Coty* factors were met, to shift the burden to establish an absence of falsehood in the individual case onto the State because of the "egregious nature" of the misconduct on the part of the State's actor. 418 S.W.3d at 605. Second, the Court recognized how "onerous" it would typically be for an applicant to have to prove actual misconduct by a state actor in that individual's own case. *Id.*; *see also id*. at 606 ("It would be an almost insurmountable burden for each applicant to demonstrate unreliability amounting to falsity in his or her specific case."). A thorough investigation into each individual case would be both costly and time-consuming for applicants, and burdensome for the criminal justice system—and even then, evidence of misconduct may not come to light, even if it occurred. The Court weighed these considerations against the likelihood that, in many of those cases in which the State is unable to rebut an achieved inference of falsity, it may still preserve the integrity of just convictions in which the inference of falsity does not ultimately prove to be material. *Id*. The Court adopted the *Coty* framework because it thought it best balanced these competing interests. *See id*. ("We believe the better method for resolving these claims is to allow an applicant to shift the burden of the falsity issue to the State if the requisite predicate is proven, but the burden of persuasion with respect to materiality will always remain with the applicant.").

We now conclude that the same considerations that drove the Court's decision in *Coty* apply with as much force to cases involving police officers who display a pattern of

mendacity in obtaining drug arrests and convictions as it does for cases involving laboratory technicians who routinely falsify forensic test results and documentation. However, we reiterate that all five *Coty* factors must be met to achieve the inference of falsity. *See Ex parte Owens*, 515 S.W.3d 891, 896–98 (Tex. Crim. App. 2017).

Applying the *Coty* Factors

The first *Coty* factor asks whether a state actor is involved. *Coty*, 418 S.W.3d at 605. Goines, a police officer, is clearly a state actor. The next two *Coty* factors require that the state actor have committed multiple instances of misconduct "in another case or cases," and that he be the same state actor as in the current case. *Id*. Here, Goines was the primary investigating officer involved in Applicant's case, and he has a proven history of both (1) having provided false testimony and (2) having falsified an official government document in at least *one* drug-related set of cases—the Mallets' cases, in 2008. If the 2019 allegations are *also* true—that Goines also falsified information in the affidavit for a search warrant, as alleged in his two felony murder indictments—then the evidence of these circumstances together would appear readily to satisfy the second and third *Coty* factors.

The fourth *Coty* factor asks whether Goines's previous misconduct is of a kind "that would have affected the evidence in" Applicant's case. *Id*. The misconduct Goines has been proven to have engaged in in 2008, as well as the 2019 misconduct he is alleged to have engaged in, would each at least broadly be of the kind that, if repeated in Applicant's case, would have affected the evidence against him: manufacturing false evidence to obtain a drug arrest or conviction.

And finally, the fifth and last *Coty* factor asks whether the state actor acted in

Applicant's case "within roughly the same period of time" that he committed his other acts of misconduct. *Id*. The instances of misconduct committed against the Mallett brothers—lying under oath during Otis's trial and falsifying a document related to both Steven's and Otis's arrest—occurred in 2008, some five years before Applicant's arrest. Whether these acts of misconduct *alone* support the fifth *Coty* factor might be questioned, since it seems a stretch to argue that they occurred even "roughly" during the "same period." On the other hand, if it can be demonstrated that Goines also falsified the search warrant affidavit related to the police raid in 2019, then Applicant's 2013 arrest would have fallen between the misconduct committed against the Mallett brothers in 2008 and the falsified warrant affidavit in 2019, providing a window in time that would at least *encompass* Applicant's case.

Materiality

Even when the falsity inference is established under *Coty*, the burden of materiality remains with the applicant. And this burden is not always met. *See Ex parte Barnaby*, 475 S.W.3d at 326 ("[A]pplicant's assertion that he would not have plead [sic] guilty had he known of the falsity of the laboratory report is unpersuasive in light of the benefit he received from the plea bargain."); *see also Ex parte Owens*, 515 S.W.3d at 898 ("The evidence on the record shows that Applicant's guilty plea was minimally, if at all, impacted by the results of [the challenged] lab testing."). However, in the instant case, it may well be possible for Applicant to meet this burden. Outside of Goines's identification of Applicant as the man who sold him the cocaine, there is no other evidence in the record to identify Applicant as the seller because the uniformed officers did not witness the sale.

There is nothing in the record to indicate that the $20 bill Goines used in making the drug purchase in this case was a marked bill that the uniformed officers were able to recover from Applicant, which might have provided more concrete evidence that Applicant was the seller beyond Goines' otherwise uncorroborated assertion that he was. And we perceive nothing in the record before us that might have otherwise at least corroborated Applicant's identity as the person who interacted with Goines. The State has certainly not drawn our attention to anything of that nature.

Applicant acknowledges that he was induced to plead guilty by a deal that reduced his range of punishment from a state jail felony to a Class A misdemeanor, resulting in a 180-day sentence. But he insists that he would not have taken this deal had he known of Goines's history of falsification beforehand; he claims he would have instead insisted on a trial. Applicant's maximum punishment exposure for a state jail felony offense would have been a sentence of confinement for two years. TEX. PENAL CODE § 12.35(a). We perceive no reason to not credit Applicant's assertion that, had he known of Goines's pattern of mendacity, he would have risked the additional eighteen months' incarceration and insisted on putting the State to its proof in a trial. Certainly, the State has not challenged his claim.

It is true that, as of the date that Applicant pled guilty, in 2013, Goines had not yet committed the alleged falsehood that led to the fatal 2019 drug raid. But even if Applicant knew only of Goines's misconduct that led to the prosecutions of the Mallet brothers, it is reasonable to expect that he would have risked the extra eighteen months' incarceration and insisted on going to trial—on the chance that he might not have been convicted at all.

CONCLUSION

We conclude that it is appropriate to extend *Coty*, at least to a situation in which a police officer has demonstrably lied in multiple instances in order to convict individuals of drug-related offenses. Thus, Applicant has *pled* facts which, if true, may very well entitle him to relief. *See Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985) ("In a postconviction collateral attack, the burden is on the applicant to allege and prove facts which, if true, entitle him to relief."). We remand the cause to the convicting court to make a preliminary determination whether all five *Coty* requirements have been established by evidence. *See Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008) (convicting court is the "original factfinder" making recommendations to this Court). In particular, the convicting court should look to whether it has been shown that Goines provided false information in a search warrant affidavit in 2019—and thus, that he committed *repeated* acts of misconduct in pursuit of illicit-drug investigations. *See Coty*, 418 S.W.3d at 606 & n.11 ("As part of this inquiry, it is incumbent upon the applicant to establish the extent of the pattern of misconduct the technician is accused of."). The convicting court should also determine whether the alleged act of misconduct in this case occurred "within roughly the same period of time as the other misconduct." *Id*. at 605. A stipulation of these facts alone will not suffice.

The cause is remanded accordingly.

DELIVERED: January 26, 2022
PUBLISH