



ARE OFFICERS LIABLE FOR INCORRECT NAMING OF A SUSPECT IN A POLICE REPORT?

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On November 13, 2017, the Fifth Circuit Court of Appeals of decided *Melton v. Phillips*ⁱ, which serves as instructive regarding officer liability for incorrectly identifying a suspect in an initial incident report. The relevant facts of *Melton*, taken directly from the case, are as follows:

In June 2009, Deputy Phillips interviewed an alleged assault victim and filled out an incident report identifying the alleged assailant by the name "Michael David Melton." After Deputy Phillips submitted the report, an investigator with the Sheriff's Office began investigating the assault. A year later, the alleged victim provided the investigator with a sworn affidavit identifying the alleged assailant as "Mike Melton." The Hunt County Attorney's Office then filed a complaint against "Michael Melton." The alleged assailant's first and last names are the only identifying information contained in the complaint, and their accuracy is undisputed. Four days after the complaint was filed, a Hunt County judge issued a *capias* warrant correctly identifying the assailant as "Michael Melton." Two years after the judge issued the warrant, Melton was arrested on assault charges and detained for sixteen days before being released on bond. It is undisputed that Deputy Phillips's involvement in the chain of events that led to Melton's May 2012 arrest and detention ended with the incident report in June 2009. *Melton v. Phillips*, 837 F.3d 502, 505 (5th Cir. 2016).

The assault charges against Melton were ultimately dismissed for insufficient evidence. Melton then sued Deputy Phillips under 42 U.S.C. § 1983, alleging that Deputy Phillips was responsible for his arrest under *Franks* and *Hart* because Deputy Phillips included false information in his incident report. Deputy Phillips asserted the affirmative defense of qualified immunity and provided an affidavit stating broadly that the identifying information in the incident report "would have been based solely on what I was told by [the victim]." In his affidavit, Phillips also averred, as is stated in the incident report, that the victim provided the assailant's first name, last name, gender, ethnicity, and date of birth.

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Melton responded by alleging that Deputy Phillips did not obtain any identifying information from the victim other than the assailant's first and last names. Melton relied on an affidavit by former Hunt County Patrol Lieutenant Brian Alford for his explanation of how Deputy Phillips obtained the information in the incident report. According to Alford's affidavit, victims generally cannot provide the exact date of birth or driver's license number of an offender who is not a family relation. Therefore, Alford averred that Deputy Phillips must have obtained the information from a database called a P.I.D. used by the Hunt County Sheriff's Office. Alford further stated that Melton and the true assailant have no identifying characteristics in common other than their first and last names. Accordingly, Alford inferred that Deputy Phillips must have obtained the information in the incident report from the P.I.D. without asking the victim to verify any information other than first and last names. Finally, Alford's affidavit averred that a reasonable officer would not rely on the P.I.D. without verifying additional information beyond first and last names."ⁱⁱⁱ

Officer Phillips filed a motion for summary judgment and qualified immunity. The district court denied the motion, and Officer Phillips appealed to the Fifth Circuit Court of Appeals.

The issue on appeal was whether a police officer who takes an incident report can be liable under the Fourth Amendment for listing an incorrect person as a suspect, when that incorrect suspect is later arrested under a warrant obtained by a different officer or charges filed by the prosecutor.

The plaintiff in this case relied on the United States Supreme Court case of *Franks v. Delaware*ⁱⁱⁱ, in which the court held that

[T]he Fourth Amendment entitles a defendant to a hearing on the veracity of a warrant affidavit if he can make a sufficient preliminary showing that the affiant officer obtained the warrant by recklessly including material falsehoods in a warrant application. *Id.* at 171-72. Particularly relevant to our analysis here, the Supreme Court also observed in a footnote that an officer should not be permitted to "insulate" a deliberate misstatement "merely by relaying it through an officer-affiant personally ignorant of its falsity." *Id.* at 163 n.6.^{iv}

Thus, under *Franks*, an officer violates the Fourth Amendment if swears to a warrant affidavit that recklessly includes material falsehoods or omits information that would negate probable cause. Further, an officer cannot evade liability by relaying the information to another officer and having another officer obtain the warrant. The court of appeals stated

***Franks* liability can reach not only those fully responsible for preparing a warrant application, but also those who "deliberately or recklessly provide[] false, material information for use in an affidavit." *Hart*, 127 F.3d at 448. Likewise, "an officer who makes knowing and intentional omissions that result in a warrant being issued without probable cause" is also liable under *Franks*. *Michalik v. Hermann*, 422 F.3d 252, 258 n.5 (5th Cir. 2005) (citing *Hart*, 127 F.3d at 448).^v**

Thus, the theory of liability on which the plaintiff relied was that, when Officer Phillips incorrectly listed Melton as the suspect in initial police report, this information was used to obtain the arrest warrant; further, the plaintiff alleged that it was reckless for the officer to use the P.I.D. system alone to obtain a

full name, date of birth and other identifying information that he listed in the report, allegedly without verifying the information.

After examining *Franks*, and various precedent in the Fifth Circuit, the court articulated the rule that governs this case as follows:

[W]e interpret our precedents to be consistent and do not choose to announce a broad new rule of liability, **we apply the requirement that an officer must have assisted in the preparation of, or otherwise presented or signed a warrant application in order to be subject to liability under *Franks*.**^{vi} [emphasis added]

The court then noted that, in preparing the police report, the officer did not “present or sign” the warrant and did not assist in the preparation of the warrant. In fact, the officer did not check the boxes on the report to refer the case for prosecution and had no way to know that the information he listed would be solely (allegedly) relied upon to issue a warrant. As such, Officer Phillips has no Fourth Amendment liability in this incident under *Franks* or Fifth Circuit precedent.

Additionally, the court noted that there is no case law on point that would have put the officer on notice that it would be a Fourth Amendment violation to incorrectly name a suspect on a police report.

As such, the court of appeals reversed the decision of the district court and granted summary judgment for Officer Phillips.

ⁱ No. 15-10604 (5th Cir. Decided November 13, 2017)

ⁱⁱ Id. at 2-4

ⁱⁱⁱ 438 U.S. 154 (1978)

^{iv} Phillips at 7

^v Id. at 10

^{vi} Id.