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TRAINING BULLETIN

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Sergeant Joe Friday in the show *Dragnet* may have set the standards in 1950's with his alleged catch phrase "just the facts, ma'am." In 1986 the Supreme Court set a standard for officers with respect to arrest warrant affidavits. The standard set by SCOTUS in *Malley v Briggs* has remained with us for over 30 years and the case is still often cited to this day. In this case, the Supreme Court affirmed a 1st Circuit decision denying Qualified Immunity to a detective who had drafted an arrest warrant affidavit that was later found to be lacking probable cause. The Supreme Court determined that while Qualified Immunity generally protects "all but the plainly incompetent", it is still the

officer's responsibility – not the reviewing magistrate's or the prosecutor's – to bring forward an affidavit with the requisite level of facts to support probable cause.

Today, we will look at a recent 2019 case out of the 7th Circuit Court of Appeals. This case provides precedent for those of you in the states of Illinois, Indiana, and Wisconsin and should provide guidance to those of you outside of the 7th Circuit. In *Rainsberger v. Benner*, the 7th Circuit was faced with a case alleging that a detective had embellished inculpatory facts learned during a homicide investigation and failed to include exculpatory facts also learned during the investigation.

FACTS

William Rainsberger was the primary caregiver for his 88 year-old mother Ruth who was suffering from dementia. His brother, Robert, and sister, Rebecca, also helped to care for Ruth. On the afternoon of November 19, 2013, the Plaintiff went to his mother's apartment and found her lying on the floor with a blanket partially covering her face and head. She was barely breathing and there was a circle of dried blood on the blankets and congealed blood on the floor by her head. William immediately called 911 and when paramedics arrived, he explained that someone had "caved his mother's head in". Paramedics attended to the mother but she later died at the hospital. William called his brother Robert and both spoke with Detective Benner who arrived on the scene. The detective noted that the front door and lock had not been damaged, there was some cash and a checkbook still in the apartment but medications and the victim's pocketbook were missing.

Both brothers then went to the station where they gave statements and Detective Benner spoke with the sister the following day. A week later the detective asked all three siblings to come to the station to review the autopsy results. However, when the three siblings arrived the detective accused them of killing their mother and requested they take a polygraph. All three refused and left the station. A week later, after obtaining legal counsel, the two brothers returned to the station and submitted to being fingerprinted and having buccal swab taken.

The detective submitted an arrest warrant application prior to learning the DNA results and the prosecutor refused to pursue it absent additional information. Shortly thereafter, the DNA results came back but the DNA collected from the blanket came back to two males but did not match the two brothers. The detective then submitted a second affidavit that did not disclose the DNA information but did disclose two additional pieces of information. First, the detective alleged that cell phone records showed William had called his brother from his mother's apartment several hours after the time of the attack and an hour before William called 911. The detective also alleged that the cell site location records could not place William outside of the area of his mother's apartment at the time of the attack. Based on this additional information a warrant was issued.

The Plaintiff was arrested for murder and spent two months in jail before he was able to post bail. One year later, the prosecutor elected not to prosecute the case because of "evidentiary issues". Rainsberger then brought suit alleging that his 4th Amendment rights were violated by the detective. The defendant filed a Summary Judgment motion

claiming he was entitled to Qualified Immunity. The trial court denied the motion finding that, once the false information was removed from the affidavit and the exculpatory information was added, the affidavit lacked sufficient probable cause. This appeal then followed.

7th Circuit Findings

Clearly, the most damning piece of “new” evidence added to the second affidavit involves the phone records. According to the affidavit the phone records showed that the defendant made a call to his brother from the victim’s apartment an hour before he called 911. However, a phone expert at the police department had informed the detective that the time data on the cell site sheet was off one hour because the cell location was located in a different time zone. The phone call information actually depicted the call the plaintiff made to his brother after finding his mother on the floor.

Rainsberger told the detective that he had purchased an iced tea on the way to his mother’s house. Police reviewed video surveillance that they claim showed the defendant “discarding a long straight object in the trash” – inferring that the defendant discarded a weapon in the trash. However, the court reviewed the video footage and determined the discarded object looked more like the iced tea can the plaintiff testified he had purchased.

In the affidavit the detective claimed nothing was taken from the apartment and that a lockbox containing savings bonds was in plain view and untouched. However, the actual facts were that the victim’s pocketbook and medications were taken and the lockbox was hidden and did not contain any valuables.

The detective also claimed that the brothers showed no concern over their mother’s condition at the hospital, “stormed” out of the station when asked about the polygraph, and that the detective never heard from them again. In actuality, the family members left the station, sought legal counsel, and then returned to give fingerprint and DNA samples. The brothers also asked for time to call their sister at the hospital to check on their mother’s condition and then asked for directions to the hospital when they left the initial meeting with the detective.

And, finally, there was no information in the affidavit documenting the unidentified DNA samples of two unknown males found on the blanket covering the victim.

Against this backdrop of embellished facts and missing information, the court determined that it is not enough to remove the untrue information from the affidavit to determine if there is probable cause. Rather, under the totality of the circumstances principles the court was required to remove the untrue information AND add any exculpatory information in order to determine the presence or absence of probable cause.

Affirming the district court’s refusal to grant Qualified Immunity the 7th Circuit determined that *“a competent officer would not even entertain the question whether it was lawful for him to lie in a probable cause affidavit. The hypothetical officer in the qualified immunity analysis is one who acts in good faith. That is what the standard of “objective reasonableness” is designed to capture.”*

WRAP UP

The term “closing the case” means more than just making an arrest, we need to make sure we arrest the culpable party. A guiding investigative principle tells us that in any investigation it is important for the investigator to keep an open mind and let the facts lead the way to the suspect. Making too quick of a decision as to the guilt or innocence of a particular suspect can lead to the types of liability issues we see in this case.

More importantly, we need to be sure that all of our documents, particularly affidavits, accurately portray the facts, both inculpatory and exculpatory, in a clear and concise way. As Sgt. Joe Friday was apt to say – “Just the facts, ma’am”.