NO._____

In The
Supreme Court of the United States

LEDGER LYNN HAMMONDS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4316

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

LEDGER LYNN HAMMONDS, JR.,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Louise W. Flanagan, District Judge. (7:18−cr−00050−FL−1)

Submitted: October 3, 2022 Decided: November 9, 2022

Before WILKINSON and DIAZ, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Frank H. Harper, II, EVERETT & HITE, LLP, Greenville, North Carolina, for Appellant. Kenneth A. Polite, Jr., Assistant Attorney General, Lisa H. Miller, Acting Deputy Assistant Attorney General, Thomas E. Booth, Appellate Section, Criminal Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; G. Norman Acker, III, Acting United States Attorney, David A. Bragdon, Assistant United States Attorney, Lucy P. Brown, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee

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PER CURIAM:

After several buffalo on his farm were shot and killed, a local rancher began to suspect his nephew and neighbor with a criminal record, Ledger Hammonds. Law enforcement obtained a warrant and searched Hammonds's home, where they found two firearms. After a conditional guilty plea in 2021, Hammonds was convicted of possession of a firearm by a felon, in violation of 18. U.S.C. § 922(g)(1). The district court sentenced him to 180 months in prison. Hammonds timely appealed, claiming he was wrongly denied an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), and contesting his sentence enhancement under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1). The district court did not err in either finding, so we affirm.

I.

In 2015, law enforcement began interviewing people in connection with animal cruelty complaints after several buffalo were found dead on a local farm. Police interviewed Ronald Hammonds, who owned the herd of buffalo and reported that he heard a gunshot and saw someone with a flashlight near his pasture at night. Ronald initially said he might have seen Joshua Hammonds, but then corrected himself and said it was Ledger Hammonds—Ronald's nephew with a criminal record who lived nearby. Ronald also reported that he had previously suspected Ledger of stealing his rifle and that he and Ledger had gotten into an altercation over trespassing.

Based on this information, Investigator Erich Von Hackney submitted an affidavit requesting a search warrant for the home of Ledger Hammonds. Von Hackney used Ronald's statements in the affidavit, but he also relied on an interview with a local animal

cruelty investigator, who reported that she saw Hammonds with a firearm on two separate occasions. Von Hackney thus asserted there was probable cause to believe Ledger Hammonds had committed the crimes of cruelty to animals and possession of a firearm by a convicted felon. *United States v. Hammonds*, No. 7:18-CR-050-FL-1, 2019 WL 5626276 at *2 (E.D.N.C. Oct. 30, 2019).

The court approved the search warrant, and when police executed the search, they found a rifle and a handgun in Hammonds's home. *Id.* As a result, Hammonds was indicted and charged with a single count of possession of a firearm by a convicted felon in violation of 18 U.S.C. 922(g)(1). Hammonds moved to suppress the evidence discovered at his home, alleging that the search warrant affidavit recklessly or intentionally omitted information in violation of *Franks v. Delaware*, 438 U.S. 154 (1978). Hammonds demanded an evidentiary hearing—a *Franks* hearing—to show these omissions.

A magistrate judge recommended denying this motion, which the district court followed, reasoning that Hammonds's assertions failed to show reckless or intentional omissions. *Hammonds*, 2019 WL 5626276 at *4. The district court also found that Hammonds qualified for a sentence enhancement under the Armed Career Criminal Act for past convictions of breaking and entering under North Carolina General Statute § 14-54. J.A. 95–97. Hammonds conditionally pled guilty and was sentenced to 180 months in prison.

II.

Hammonds appeals on two issues. First, he challenges the denial of his suppression motion and his requested *Franks* hearing, which he argues should have been granted

because the search warrant either intentionally or recklessly omitted material facts that undermine a finding of probable cause. Appellant's Opening Brief at 13. Second, Hammonds challenges his sentence enhancement, asserting that breaking and entering is not "a crime of violence for purposes of the Armed Career Criminal Act because the North Carolina Statute is broader than [] generic breaking and entering." *Id.* at 14. We address each issue in turn.

A.

"In considering whether the district court should have ordered a *Franks* hearing, we review legal determinations de novo and any factual findings for clear error." *United States v. Seigler*, 990 F.3d 331, 344 (4th Cir. 2021). The veracity of a facially valid search warrant affidavit is generally not open to challenge, but in *Franks v. Delaware*, 438 U.S. 154 (1978), "the Supreme Court carved out a narrow exception to this rule," *United States v. Allen*, 631 F.3d 164, 171 (4th Cir. 2011), allowing the affidavit to be challenged if the defendant can show a false statement or misleading omission.

When arguing there was an omission, as Hammonds does here, the "burden increases yet more" for an affidavit "cannot be expected to include . . . every piece of information gathered in the course of an investigation." *United States v. Tate*, 524 F.3d 449, 454–55 (4th Cir. 2008) (quoting *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir.1990)). Hammonds "must show that the omissions were '*designed to mislead*'" or "made in *reckless disregard of whether they would mislead*," and that the omissions "would defeat probable cause." *United States v. Clenney*, 631 F.3d 658, 664 (4th Cir. 2011) (quoting *Colkley*, 899 F.2d at 301).

Hammonds argues that the affidavit omitted information such as inconsistencies in Ronald Hammonds's statements and the fact that Ledger Hammonds brought charges against Ronald after a trespassing incident. He also contends that the affidavit omitted the fact that the animal cruelty investigator, who reported seeing Hammonds twice with a firearm, was wrong about the dates she saw Hammonds.

Hammonds, however, cannot make the required showing. The allegations regarding Ronald's interview fall short of showing that these omissions were intended to mislead. As we have explained, "the very process of selecting facts to include for the demonstration of probable cause must [] be a deliberate process of omitting pieces of information." *Tate*, 524 F.3d at 455. A mere assertion of omitted information lacks the requisite showing of intentionality or recklessness. Thus, it "does not fulfill *Franks'* requirements." *Id.*

Regarding the allegedly erroneous dates reported by the animal cruelty investigator, simple mistakes do not rise to the level of intentional or reckless omissions. *Tate*, 524 F.3d at 454 (explaining that allegations of "innocent mistakes are insufficient"). Moreover, mistakes regarding the dates on which Hammonds was seen possessing a firearm would not defeat probable cause. As a felon, he should not have had a firearm on any date. Absent evidence that the omitted information was *designed* to mislead, Hammonds cannot carry the burden needed to obtain a *Franks* hearing.

B.

"Whether an offense constitutes a violent felony under the ACCA is a question of law, and therefore we review it de novo." *United States v. Croft*, 987 F.3d 93, 97 n.3 (4th Cir. 2021). Under the ACCA, a person convicted of violating 18 U.S.C. § 922(g) who has

three prior convictions for a violent felony is subject to a sentence enhancement of 15 years. *United States v. Dodge*, 963 F.3d 379, 381 (4th Cir. 2020) (citing 18 U.S.C. § 924(e)(1)). The district court enhanced his sentence because Hammonds had been convicted of breaking and entering in North Carolina multiple times. We have previously addressed whether breaking and entering as defined in North Carolina General Statute § 14-54 is a violent felony under the ACCA, and we have already held that it is. *United States v. Dodge*, 963 F.3d 379, 385 (4th Cir. 2020).

Hammonds argues that breaking and entering is not a violent felony because the definition of "building" in the North Carolina statute is broader than the generic definition. Hammonds, however, acknowledges that we rejected this argument in *Dodge*. Appellant's Opening Brief at 26–27. Hammonds's only response is to urge us to overturn *Dodge*, but this argument runs headfirst into the well-known rule that "only the full court, sitting en banc, can overrule" a past panel's decision. *Demetres v. East Coast West Const., Inc.*, 776 F.3d 271, 275 (4th Cir. 2015). Thus, the district court did not err in concluding that Hammonds's breaking and entering offenses triggered a sentence enhancement.

In sum, the district court did not err in its conclusions of fact or law, and its judgment is therefore affirmed.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:18-CR-050-FL-1

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	
	)	
LEDGER LYNN HAMMONDS, JR.,	)	ORDER
	)	
Defendant.	)	
	)	
	)	

This matter is before the court on defendant's motion to suppress and motion for Franks[1] hearing (DE 42). Pursuant to 28 U.S.C. § 636(b)(1)(B), United States Magistrate Judge Robert B. Jones, Jr., entered order and memorandum and recommendation ("M&R"), wherein the magistrate judge denied defendant's motion for Franks hearing and recommended that the court deny defendant's motion to suppress (DE 51). Defendant timely filed an objection to the M&R and order on Franks hearing. (DE 54). The government did not respond to defendant's objection, and the time to do so has expired. In this posture, the issues raised are ripe for ruling. For the following reasons, the court adopts the M&R and denies defendant's motion.

STATEMENT OF THE CASE

On March 14, 2018, the grand jury returned a one count indictment, charging defendant with possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924 (a)(2). On June 4, 2019, defendant filed the instant motion to suppress all evidence derived from

[1] Franks v. Delaware, 438 U.S. 154 (1978).

a search of his residence and additionally to request a hearing to examine whether the search warrant is valid under Franks. In support of the instant motion, defendant relies upon the following: 1) defendant's indictment, 2) search warrant affidavit, 3) search warrant, 4) charges filed against Ronald Hammonds ("Ronald"), 5) transcript of Ronald's interview, 6) charges filed against defendant, 7) affidavit from Shawn Freeman ("Freeman"), 8) affidavit from Albert Locklear ("Locklear"), and 9) affidavit from Nicoya Dail ("Dail").

On August 30, 2019, the magistrate judge entered an order and M&R, denying defendant's request for a Franks hearing, and recommending that defendant's motion to suppress be denied. In objection to the M&R, Defendant maintains that all evidence from the search should be suppressed because law enforcement either intentionally or recklessly omitted and misrepresented material information in the search warrant affidavit.

STATEMENT OF FACTS

The background facts as set forth in section II of the order and M&R, as relevant to the instant motion, are repeated below:

> On October 8, 2015, defendant's uncle, [Ronald], was interviewed by Detective Mike Ellis of the Robeson County Sheriff's Department concerning an investigation into animal cruelty. (DE 42-5). During the interview, Ronald told Detective Ellis that he owned a herd of buffalo and that he had discovered two of them dead in July 2015, one of which had been decapitated. Id. at 3:15-22. Ronald told Detective Ellis that although he did not suspect anyone at the time of the incident, the twelve-year-old son of his nephew's brother-in-law admitted to decapitating the buffalo. Id. at 5:19-22. Ronald told Detective Ellis further that in September 2015, Ronald had seen someone with a flashlight near his pasture at night, and he heard a gunshot. Id. at 10:10-18. During the interview, Ronald first identified defendant's brother Joshua Hammonds ("Josh") as the culprit, then corrected himself and stated that it was defendant. Id. at 10:16-11:9. Ronald stated that on the evening in question he saw defendant holding two items, one of which was a flashlight and one of which could have been a rifle, but Ronald admitted he could not see clearly. Id. at 11:16-22. According to Ronald, the following day he discovered that one of his buffalo had been shot. Id. at 12:14-16.

Several times during his interview with Detective Ellis, Ronald confused Josh's and Defendant's names and corrected himself. Id. at 30:21-24, 32:11-14, 34:21-22, 35:23-24, 40:25-41:5. Ronald told Detective Ellis that he had never seen defendant shoot a firearm but that on one occasion he saw defendant carry a rifle while riding a horse. Id. at 31:2-19. In fact, Ronald told Detective Ellis that when Defendant entered his property the day prior to the interview, Ronald pointed a gun at Defendant, told him to leave, and fired a shot over his head. Id. at 34:1-6. Ronald repeated that he had never seen defendant shoot a firearm.

On June 27, 2017, Investigator Erich Von Hackney ["Von Hackney"] of the Robeson County District Attorney's Office submitted an affidavit requesting a warrant to search defendant's home. (DE 42-3). [Von Hackney] stated in the affidavit that in 2013, Ronald reported that he suspected defendant of deer hunting and trespassing on his property. Id. at 2. According to the affidavit, defendant and Josh live near Ronald's property. Id. In July 2015, Ronald found that three of his buffalo had been killed, and one had been decapitated. Id. According to the affidavit, in September 2015, Ronald reported to the Robeson County Sheriff's Office that he heard a gunshot at night near the back of his pasture in the area where defendant and Josh live. Id. at 2-3. The next day, Ronald found that another buffalo had been killed. Id. at 3. Ten days later, Ronald found yet another dead buffalo, and he reported to the Robeson County Sheriff's Office that he witnessed "them" shoot the buffalo. Id. When asked who "they" were, Ronald identified defendant and said that he observed a defendant shoot a pistol. Id. In August 2016, Ronald reported that firearms were discharged near the trailer where defendant and Joshua live. Id. In May 2017, Ronald reported that two more buffalo had been killed. Id. at 3-4. In June 2017, another buffalo was shot. Id. at 4.

[Von Hackney] spoke with Ronald in June 2017. Id. Ronald said that six or seven years ago, he purchased a rifle, and approximately a year after the purchase, he saw defendant holding a rifle, and he noticed that his rifle had been stolen. Id.

[Von Hackney] stated in his affidavit that Katherine Floyd ["Floyd"], the Robeson County Animal Cruelty Investigator, told him that she had observed defendant in possession of a firearm on two occasions. Id. at 6. In particular, on or about May 24, 2017, she saw defendant operate a dirt bike with a firearm in a holster on his right side. Id. In September 2015, Floyd saw defendant riding a horse with a firearm in a hip holster. Id.

[Von Hackney] stated that based on that information, there was probable cause to believe defendant had committed the crimes of cruelty to animals and possession of a firearm by a convicted felon. Id. at 7. A North Carolina magistrate issued a warrant authorizing a search of defendant's home. (DE 42-4). The warrant was executed on June 28, 2017, and a rifle and handgun were seized. (DE 50 at 2).[2]

[2] Page numbers in citations to documents in the record specify the page number designated by the court's

(Order and M&R (DE 51) at 2-4).

DISCUSSION

A. Standard of Review

The district court reviews de novo those portions of a magistrate judge's M&R to which specific objections are filed. 28 U.S.C. § 636(b). The court does not perform a de novo review where a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Absent a specific and timely filed objection, the court reviews only for "clear error," and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). Upon careful review of the record, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

B. Analysis

In his objection, defendant argues the magistrate judge erred in determining that he was not entitled to a Franks hearing.[3] In Franks, the United States Supreme Court delineated circumstances in which defendants may challenge a facially valid search warrant. 438 U.S. 154. First, defendants must "[make] 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

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electronic case filing (ECF) system, and not the page number, if any, showing on the face of the underlying document.

[3] Defendant also reiterates generally his arguments in support of motion to suppress. Upon careful review of M&R, finding no clear error, the court adopts the magistrate judge's recommendation on the issues raised in the motion to suppress.

affidavit." Id. at 154. Second, defendants must demonstrate that "the allegedly false statement is necessary to the finding of probable cause." Id. at 154. Defendants bear the burden of proof, as there is "a presumption of validity with respect to the affidavit supporting the search warrant." Id. at 171.

Defendants' showing "must be more than conclusory . . . there must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be supported by an offer of proof." Id. at 171. "Allegations of negligence or innocent mistake are insufficient. The burden of making the necessary showing is thus a heavy one to bear." United States v. Tate, 524 F.3d 449, 454 (4th Cir. 2008).

Moreover, "[w]hen relying on an omission, rather than on a false affirmative statement, [defendant's] burden increases yet more" because a search warrant affidavit "cannot be expected to include every piece of information gathered in the course of an investigation." Id. at 454-455. Indeed, "the very process of selecting facts for demonstration of probable cause must also be a deliberate process of omitting pieces of information." Id. at 455. As such, "intentional omissions do not satisfy the requirement of Franks." Id.

Rather, "to obtain a Franks hearing, the defendant must show that the omissions were designed to mislead, or made in reckless disregard of whether they would mislead." United States v. Clenney, 631 F.3d 658, 664 (4th Cir. 2011) (internal quotations omitted). Additionally, "defendants must show the omissions were material, meaning that their inclusion in the affidavit would defeat probable cause." Id. (internal quotations omitted).

Here, defendant argues he is entitled to a Franks hearing because: 1) Von Hackney's affidavit omitted information from his interview with Ronald in October 2015 and 2) Floyd allegedly saw defendant with a firearm on May 24, 2017, in North Carolina, but defendant claims

to have been in New York on that date.

1. Omissions in Von Hackney's Affidavit

Defendant alleges Von Hackney omitted the following information pertaining to his October 2015 interview with Ronald: 1) Ronald confused defendant's name with defendant's brother's name multiple times in the interview, 2) Ronald stated that he did not see defendant shoot a firearm,[4] 3) a third party admitted to decapitating Ronald's buffalo, and 4) Ronald was charged with communicating threats and pointing a gun at defendant. (DE 42 at 10-11).

Defendant alleges Von Hackney "chose to keep [this information] from the issuing judge either intentionally or recklessly knowing that it would have given the judge pause and nullified the probable cause sought." Id. at 11. However, defendant fails to support his conclusory allegation with the requisite offer of proof. At most, defendant has shown Von Hackney "chose" to omit information from the search warrant affidavit, but as the Fourth Circuit explained in Tate, "the very process of selecting facts for demonstration of probable cause must also be a deliberate process of omitting pieces of information." 524 F.3d at 455. Absent evidence that Von Hackney intended to mislead, defendant fails to carry the heavy burden needed to obtain a Franks hearing.

2. Floyd's Alleged Sighting on May 24, 2017

Additionally, defendant alleges Floyd's statement that she saw defendant with a firearm in North Carolina on or about May 24, 2017, is false because he was in New York at that time. (DE 42 at 12). In support, defendant proffers three affidavits. The first affiant, Freeman, attests that defendant took a job in New York in May 2017, and returned to North Carolina at the end of May 2017. (DE 42-8 at 1). The second affiant, Locklear, states that he worked with defendant in New

[4] Defendant claims this omission is significant because the affidavit includes Ronald's statement that he saw defendant shoot a pistol in September 2015.

York in May 2017, and they did not return to North Carolina until May 28, 2017. (DE 42-9 at 1). Lastly, in the third affidavit, Thomas Dail attests that he also worked with defendant in New York in May 2017, and he returned with defendant to North Carolina on May 28, 2017. (DE 42-10 at 1).

Assuming without deciding that defendant was in New York on May 24, 2017, and Floyd reported the incorrect date, defendant fails to show Floyd's error was intentional or made with a reckless disregard for the truth. Since allegations of negligent mistakes are insufficient to warrant a Franks hearing, defendant has not carried his heavy burden on this issue.

In sum, defendant has not made the requisite showing that the alleged misrepresentations and omissions in the search warrant affidavit were intentional or made with a reckless disregard for the truth. Therefore, the magistrate judge correctly determined that defendant's request for a Franks hearing must be denied.

CONCLUSION

Based upon the foregoing, upon de novo review of the M&R, and upon considered review of the record and defendant's objections, the court overrules defendant's objections and ADOPTS the M&R (DE 51). Accordingly, defendant's motion to suppress and defendant's motion for Franks hearing (DE 42) are DENIED.

SO ORDERED, this the 30th day of October, 2019.

LOUISE W. FLANAGAN
United States District Judge