

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 16, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-2956-CR**

**Cir. Ct. No. 99CF113**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**STEVEN R. OLSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Barron County:  
JAMES C. EATON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PETERSON, J. Steven Olson appeals from an order denying his motion to suppress evidence. Olson was convicted of manufacturing methamphetamine, contrary to WIS. STAT. § 961.41(1)(e)3 (1997-98). Olson argues that a search warrant was defective because: (1) the search warrant affidavit omitted material facts that would not have supported a probable cause

determination; and (2) the information provided by the citizen informant in the search warrant affidavit was stale. We disagree and affirm the order.

## BACKGROUND

¶2 On September 23, 1999, Wisconsin Department of Justice agent Tim Schultz applied for and received a warrant to search Olson's residence for evidence of methamphetamine, its manufacture and delivery. The search warrant affidavit listed an unnamed citizen informant and Michael Tanberg, an inmate at the county jail, as two sources of information.

¶3 The affidavit stated that in early 1999, Schultz spoke with a citizen informant who stated that Olson told her he was manufacturing methamphetamine and was "cooking" it in his garage. She stated that she met with Olson in a grocery store and observed that he had a grocery bag that contained a large amount of ephedrine.<sup>1</sup> The citizen informant also claimed to have been at Olson's residence on several occasions and that Olson showed her what he claimed was methamphetamine. The citizen informant also stated that Olson drives a new black pickup truck.

¶4 As to Tanberg, the affidavit stated that he was in custody at the Barron County jail awaiting extradition to Arkansas for "violating parole for drug manufacturing offenses in Arkansas." It stated that Tanberg previously had provided information that was reliable and accurate regarding illegal drug activity. The affidavit stated that Tanberg, "without any financial inducement or other promises regarding any pending actions against him," informed Schultz that

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<sup>1</sup> Olson told the citizen informant that ephedrine is "what I make my crank out of."

within the last three weeks, he had obtained methamphetamine from Olson in exchange for ephedrine tablets, that Olson told him he “cooks methamphetamine in his garage,” and that Olson drives a black pickup truck.

¶5 The officer executed the search warrant and found evidence of methamphetamine. On September 27, 1999, a criminal complaint was issued, charging Olson with unlawfully manufacturing methamphetamine. Olson discovered that the citizen informant who provided information regarding his alleged drug manufacturing was Laurie Sue Loeffler, Olson’s ex-wife. In a statement to Schultz on June 7, 1999, Loeffler described events that allegedly occurred in November 1998, January 1999 and April 1999. Olson also discovered that Tanberg had an extensive criminal history, was in custody because of manufacturing and distributing methamphetamine and, prior to his arrest, had lied to an officer regarding his identity.

¶6 Based on these facts revealed in discovery, Olson moved to suppress all evidence obtained as the result of the search warrant and requested a *Franks* hearing. *Franks v. Delaware*, 438 U.S. 154 (1978). The circuit court concluded the omitted information was not material, denied the *Franks* hearing request and the suppression motion. Pursuant to a plea agreement, Olson pled guilty to manufacturing methamphetamine. The court accepted his plea, withheld sentence, and placed Olson on probation for seven years. As a condition of probation he was to serve one year in the county jail.

## DISCUSSION

## I. OMISSIONS OF MATERIAL FACTS

¶7 Olson argues that the search warrant was defective because the supporting affidavit omitted material facts that would have raised doubt as to the credibility and reliability of the informants. Olson contends that had the affidavit included the omissions, the affidavit would not have supported a finding of probable cause.

¶8 A defendant may contest a finding of probable cause to issue a search warrant by making “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 affidavit, and if the allegedly false statement is necessary to the finding of probable cause ....” *Franks*, 438 U.S. at 155-56. The *Franks* rule was extended in *State v. Mann*, 123 Wis. 2d 375, 388, 367 N.W.2d 209 (1985), to include omissions from a warrant affidavit if the omissions are the equivalent of deliberate falsehoods or reckless disregard for the truth. “For an omitted fact to be the equivalent of a ‘deliberate falsehood or a reckless disregard for the truth,’ it must be an undisputed fact that is critical to an impartial judge’s fair determination of probable cause.” *Id.* (footnote omitted). We independently review the application of the *Franks* rule. *Mann*, 123 Wis. 2d at 384.

¶9 The existence of probable cause is determined by applying the totality of the circumstances test. See *Illinois v. Gates*, 462 U.S. 213, 239 (1983). When issuing a search warrant, the magistrate must simply make a common sense determination that the objects sought by the warrant are linked with a crime. *State v. Benoit*, 83 Wis. 2d 389, 394-95, 265 N.W.2d 298 (1978). In making this

decision, the magistrate must consider all of the circumstances set forth in the affidavit, including the "veracity" and the "basis of knowledge" of the persons supplying hearsay information. *State v. Anderson*, 138 Wis. 2d 451, 468, 406 N.W.2d 396 (1987). Elaborate specificity, however, is not required, and suppliers of information in support of the warrant are entitled to the benefit of usual inferences that reasonable people draw from facts. *State v. Marten*, 165 Wis. 2d 70, 75, 477 N.W.2d 304 (Ct. App. 1991).

#### A. Tanberg's Statements

¶10 Olson argues that additional information regarding Tanberg's criminal history is an omission of material fact critical to a probable cause determination. He contends that Tanberg was not a reliable or credible source of information because he had lied to law enforcement officers regarding his identity and had a criminal history in both Wisconsin and Arkansas.

¶11 If an informant's tip is the source of information, the affidavit must recite "some of the underlying circumstances from which the informant concluded" that relevant evidence might be discovered, and "some of the underlying circumstances from which the officer concluded that the informant ... was credible or his information reliable." *Franks*, 438 U.S. at 165 (citation omitted). Schultz did that. The affidavit explained that Schultz met with Tanberg at the jail, where he was being held awaiting extradition to Arkansas. The affidavit further explained that Tanberg had obtained methamphetamine from Olson in exchange for ephedrine. Information relating to the specifics of Tanberg's criminal history was not necessary. The affidavit made it clear that Tanberg is a criminal involved in illegal drug activity.

¶12 Simply because a person has an extensive criminal history, which includes incidents of untruthfulness, does not necessarily mean that he or she is unable to provide “reliable and accurate” information regarding criminal activity. Police often rely on information provided by criminals. Tanberg’s involvement in methamphetamine does not make the information he provided untrustworthy. In fact, the information may make Tanberg more credible. Tanberg was more knowledgeable about methamphetamine production than a person with no experience. “[C]redibility determinations, the weighing of evidence, or the drawing of one of several inferences from a fact[]” are considerations outside the scope of a *Franks* hearing. *Mann*, 123 Wis. 2d at 389.

¶13 Olson fails to offer any support for his suggestion that the magistrate must be made aware of an informant’s complete criminal history and all of the instances in which the informant has been untruthful. The law does not require that an informant’s entire rap sheet and instances of untruthfulness be recited in every search warrant affidavit. “Informants’ tips doubtless come in many shapes and sizes from many different types of persons.” *Gates*, 462 U.S. at 232. Rigid legal rules are ill suited to an area of such diversity. *Id.*

¶14 Next, Olson contends that Schultz’s statement that Tanberg “had provided information that has proven to be reliable and accurate regarding illicit and illegal drug dealings” was a misrepresentation because Tanberg had previously lied to the police. However, the affidavit only represented that Tanberg’s past information regarding illicit drug dealing had been reliable. Lying to police when he was arrested is unrelated to and does not undermine the reliability of Tanberg’s information about drug dealing.

¶15 Olson further contends that Schultz’s statement that Tanberg provided the information “without any financial inducement or other promises regarding any pending actions against him” was also a misrepresentation because Tanberg was not charged with a crime despite the fact that he had been found with evidence of a crime.<sup>2</sup> The fact that Tanberg was not charged with a crime does not mean that he was promised anything in exchange for his information. Tanberg was awaiting extradition to Arkansas for parole violations relating to drug manufacturing offenses there. It would be reasonable not to pursue charges in Wisconsin when Tanberg would be extradited to Arkansas and likely to serve time there.

#### B. Loeffler’s Information

¶16 Olson argues that Schultz was required to inform the circuit court that the citizen informant was Olson’s ex-wife. However, Olson does not even allege that there was any ill will between himself and Loeffler. Rather, he appears to advance the theory that an ex-spouse is always unreliable and that the fact of the former marriage must be exposed in the affidavit.

¶17 Even if the divorce and post-divorce situation were rancorous, this does not mean that the relationship must be revealed in the affidavit. Olson cites no authority for his assertion that designating an informant as a citizen informant rather than as an ex-spouse is the type of omission requiring a *Franks* hearing or resulting in a *Franks* violation. Here, the circuit court found that the omitted information regarding Loeffler would have actually made the finding of probable

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<sup>2</sup> Olson appears to imply that Tanberg was not charged with a crime in Wisconsin in return for his statements regarding Olson.

cause stronger. It could reasonably be inferred that Loeffler was in a position to view the evidence relating to Olson's drug manufacturing and that because of their past relationship, Olson felt comfortable discussing his operations with her.

¶18 We conclude that the omissions were not critical to a probable cause hearing. Therefore, the omissions cannot be considered the equivalent of a deliberate falsehood or reckless disregard for the truth as required by *Franks. Mann*, 123 Wis. 2d at 388.

## II. STALE INFORMATION

¶19 Loeffler provided Schultz with information from November 1998, January 1999 and April 1999 regarding Olson's involvement in methamphetamine production. The search warrant was issued in September 1999. As a result, Olson argues that the information was too stale to support probable cause.

¶20 “Although search warrants may not rest on stale evidence, *Sgro v. United States*, 287 U.S. 206, 210 (1932), whether evidence is ‘stale’ is not determined simply ‘by counting the time between the occurrence of the facts relied upon and the issuance of the warrant.’” *State v. Loranger*, 2002 WI App 5, ¶24, 250 Wis. 2d 198, 640 N.W.2d 555 (citations omitted). Rather, “timeliness depends upon the nature of the underlying circumstances ....” *State v. Ehnert*, 160 Wis. 2d 464, 469, 466 N.W.2d 237 (Ct. App. 1991). Loeffler's information combined with Tanberg's more recent information suggested that the methamphetamine operation was ongoing. *See State v. Moley*, 171 Wis. 2d 207, 213-14, 490 N.W.2d 764 (Ct. App. 1992).



¶21 The circuit court found:

The overall tenor and tone of the Tanberg material was that he had, within three weeks leading up to the warrant's application, been dealing rather extensively with this defendant and his crank production scheme, and it further reinforced the citizen informant's claim that the business was ongoing ....

“When the activity is of a protracted and continuous nature, the passage of time diminishes in significance.” *Ehnert*, 160 Wis. 2d at 469-70. Because Olson's methamphetamine production operation was an ongoing enterprise, the issuing court could properly rely on Loeffler's information about events from 1998 and early 1999. As we noted in *Moley*:

There is not, however, any dispositive significance ... in the mere fact that some information offered to demonstrate probable cause may be called stale, in the sense that it concerns events that occurred well before the date of the application for the warrant. If such past fact contributes to an inference that probable cause exists at the time of the application, its age is no taint.

*Moley*, 171 Wis. 2d at 213. Because all of the information Loeffler provided contributes to the inference that probable cause existed at the time of the warrant application, it was properly considered by the circuit court in issuing the warrant.

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

