

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT JULIAN-BORCHAK
WILLIAMS,

Plaintiff,

Case No. 21-cv-10827

v.

Hon. Laurie J. Michelson

CITY OF DETROIT, a municipal
Corporation, DETROIT POLICE
CHIEF JAMES WHITE, in his official
Capacity, and DETECTIVE DONALD
BUSSA, in his individual capacity,

Defendants.

_____ /

DECLARATION OF BARI BLAKE WOOD

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I was a magistrate in the 36th District Court from January 2016 to January 2020.
2. During the nine years I spent between graduating law school and being appointed as a magistrate, I worked for the City of Detroit Law Department, as a law clerk for the Michigan Court of Appeals (which included performing work for the Michigan Court of Claims), and in private practice.

3. During my four-year tenure as a judicial law clerk, I honed my attention to detail, among other skills. I brought that attention to detail to my work as a magistrate to ensure a high level of quality.
4. In addition to my magistrate duties, I also served as chief magistrate from November 2017 to December 2019. As chief magistrate, I helped manage the magistrates' administrative needs and advocated for the provision of certain job-related training for the magistrates, including on topics such as the level of proof needed before issuing a search or arrest warrant.
5. During my time as a magistrate, I reviewed thousands of warrant requests, authorizing both arrests and searches. The 36th District Court is a high-volume court, so I was very busy. Still, I would carefully review warrant requests in between conducting various hearings and handling other administrative matters.
6. As a magistrate, it was my job to make sure all the necessary information supporting a showing of probable cause was in either the arrest warrant request packet or the affidavit in support of a search warrant.
7. Detroit does not record the officer swearing to a warrant, so after the swear-to process, any details communicated verbally would not be available to a defendant in the resulting criminal case or anyone else who might need the information. In addition, as it related to arrest warrants, the swear-to officer

was often different from the detective who put together the warrant request packet. It was therefore important to have all the relevant information in the warrant request packet itself.

8. Because I had limited time to review each warrant request packet and no ability to further investigate the facts surrounding each request, I relied on the warrant request packets to present all the facts necessary for a probable cause determination. I relied primarily on the narrative of events in the warrant request's Investigator's Report, and also on supporting documentation as needed. If, for example, a store had video surveillance that captured the suspect, the warrant request packet should include the best still image of that individual from that video, as it was not uncommon that a copy of said video may not be available to me at the time of the swear-to.
9. I assumed that any warrant request contained all the relevant exculpatory evidence known to the requesting detective, in addition to relevant inculpatory evidence, because that is what the law requires.
10. As a magistrate reviewing warrant requests, I needed to be able to make the determination regarding whether there was probable cause, so I needed to be able to weigh all relevant information at the same time.

11. If I could tell something was missing, I would tell the swear-to officer. I frequently rejected warrant requests, which frustrated the Detroit Police Department and my employer.
12. My approach to reviewing warrant requests depended on the type of warrant at issue. For example, for an arrest warrant, I would look at the charge(s). For each charge, I would examine the information in the warrant request packet to see that all the legal elements of the charge were satisfied. For certain types of retail fraud, for example, my review process would include looking for proof of: the identity of the person to be arrested, the date and time of the incident, the suspect stealing goods that were offered for sale when the store was open to the public, and the value of the stolen goods.
13. There was no specific training for magistrates in the 36th District Court regarding facial recognition technology.
14. As a result, I did not know precisely how facial recognition technology worked. All I knew was what was presented to me in a warrant request packet that included the use of facial recognition.
15. I reviewed the Detroit Police Department's Request for Warrant that was submitted in August 2019, in conjunction with the Detroit Police Department's investigation into a theft incident on October 2, 2018, at a Shinola store in Detroit.

16. After reviewing the warrant request, I issued an arrest warrant on September 2, 2019, for Robert Julian-Borchak Williams.
17. I do not remember specifics from the swear-to process regarding this warrant request.
18. I remember noticing that the theft had taken place at the Shinola store on the other end of the street from where I lived at the time.
19. I remember thinking at the time that the still image from the surveillance footage of the alleged suspect that was included in the warrant request packet was not a detailed photograph.
20. I could not tell what the suspect looked like based on that image, and I was not sure how anyone else could use the image to determine what the suspect looked like.
21. Because I could not tell what the suspect looked like from the still image, I put more weight on the eyewitness identification. I assumed that the six-pack photographic lineup procedure was conducted properly, and I believed the eyewitness would have had been in a better position to identify the suspect because I believed, based on the information presented, that the eyewitness saw the suspect in person.
22. However, based on information about the investigation that I have subsequently learned in connection with this case, but that was not presented

to me in the warrant request packet at the time, I now believe that there was not sufficient evidence to establish probable cause to arrest Mr. Williams.

23. Had I known that the witness who participated in the photographic lineup had never seen the suspect in person, but only reviewed surveillance footage after the theft, I would not have issued the warrant.
24. Had I known that this witness relied on a still image from the surveillance footage as the basis of her identification during the lineup, I also would not have issued the warrant.
25. The Investigator's Report led me to believe that the lineup witness, Katherine Johnston, had seen the suspect in person at the time of the theft. The language in the report suggests that Ms. Johnston was a direct eyewitness at the Shinola store.
26. In the Investigator's Report, under "Details of Investigation," the combination of "[v]ideo was reviewed by Katherine Johnston" and "Ms. Johnston seen [sic] the suspect" is ambiguous as to whether Ms. Johnston saw the suspect in person at the time of the theft or on video after the theft had occurred. However, the fact that Ms. Johnston was the witness for the photographic lineup procedure strongly implied that she both saw the suspect in person and subsequently reviewed the video footage.

27. The photographic lineup report that was included in the warrant request packet contained three questions for the witness. As the witness, Ms. Johnston answered the question “Where do you recognize them from?” by writing: “10/2/18 shoplifting at Shinola’s Canfield store.” I interpreted this answer as further indicating that Ms. Johnston was a direct, in person, eyewitness to the theft.
28. In addition, the Investigator’s Report implied that Ms. Johnston physically worked at the Shinola store where the theft took place.
29. The report states that “Ms. Johnston saved the [surveillance] video,” but it has since been represented to me that the store saved the video and sent it to Ms. Johnston. Moreover, the assertion that Ms. Johnston saved the video comes after a statement that Ms. Johnston saw the suspect. The report further states that “Ms. Katherine Johnston provided a statement from the store and video of the incident.” Without clarifying otherwise, this language further led me to believe that Ms. Johnston worked at, and was physically present at, the Shinola store during the time of the theft. It has since been represented to me, in connection with this case, that she was actually a loss prevention consultant who worked for an outside organization of whom Shinola was a client.

30. In my experience with other similar cases, loss prevention personnel were located onsite during a theft, at the location of the theft, or in a nearby area (such as on another floor of the building where the theft occurred). In some of these other cases, if loss prevention personnel did not witness the theft, they still saw the suspect in person because they stopped the suspect after the theft.
31. Here, the report simply states that “Ms. Katherine Johnston provided a statement from the store and video of the incident.” The detective should have clarified that Ms. Johnston was stationed offsite, because as written, the language bolsters the incorrect conclusion that Ms. Johnston was an on-scene eyewitness.
32. Had I known Ms. Johnston was not an eyewitness, I would have made further inquiries, such as asking why the detective did not use actual eyewitnesses to participate in the photo array.
33. Had I known that the only identification in this investigation was from Ms. Johnston, who was not an eyewitness, I would not have issued the warrant.
34. Not only did the Investigator’s Report mislead me regarding Ms. Johnston’s non-eyewitness status, but it also misled me about the quality of the six-pack photographic lineup procedure in other aspects.

35. When I reviewed the warrant request packet in this case, I did not know any details about how the six-pack photographic lineup procedure was conducted. As a general matter, when reviewing warrant request packets, unless the facts set forth in warrant suggested otherwise, I assumed the photographic lineups were conducted properly. However, based on the facts that have been represented to me in connection with this case, I have learned that there were serious problems with the way the photographic lineup was conducted, and none of these defects were explained in the warrant request. Because these defects were not set forth in the information I was provided, I was led to believe that the photographic lineup was conducted properly.
36. Information about the photographic lineup procedure is very important to the probable cause determination because this procedure is supposed to result in an identification based on an independent recollection. An eyewitness participating in review of a photo array cannot be prompted or refreshed with extrinsic information.
37. It has been represented to me that Ms. Johnston had a still image from the surveillance footage with her during her review of the array which she used as the basis of her identification. Had I known that Ms. Johnston had referenced the image during presentation of the photo array, I would not have issued the warrant.

38. The witness reviewing a photo array must not have any outside information from the detective conducting the photo array. Yet here, I have since learned that the detective presenting the photo array told Ms. Johnston that the Detroit Police Department had a facial recognition match for the suspect *before* she made her identification. This was obviously and improperly suggestive.
39. It also would have been helpful to have more information about the facial recognition search run in this case and the investigative lead it produced when I was reviewing this warrant request packet because such information was relevant to the reliability of the facial recognition “match.”
40. It would have helped me to be informed that facial recognition technology is less accurate in identifying people with darker skin tones. It would have also helped me in determining the reliability of the facial recognition “match” had I been informed that various features of a probe image can affect the accuracy of a facial recognition match, such as the lighting, face angle, the image resolution, and facial obstruction. If the warrant had contained such information, I likely would have understood that the probe photograph used in this investigation was unlikely to have produced a reliable match.
41. In addition, more information about the facial recognition “match” itself would have been helpful. As I stated earlier, it is important for the officers to

give all of the information in the warrant request packet, including exculpatory evidence.

42. For example, if the facial recognition system produced a number of potential matches rather than a single match, such a result would have been similar to knowing about a witness that does not positively identify a suspect as the person the officers want to arrest. This is exculpatory evidence that I could have used in making the probable cause determination.
43. The investigative lead presented Mr. Williams as if he was the only match.
44. As the magistrate reviewing the warrant request, my initial assumption would be that if there is a single facial recognition match in the investigative lead, that one person was the technology's first choice.
45. The deficient investigative work behind this warrant request was typical of the warrant requests that officers from the Detroit Police Department submitted to me while I was a magistrate in the 36th District Court.
46. During my time as a magistrate and Chief Magistrate, it was not uncommon for me to find issues with the Detroit Police Department's warrant request packets. The detectives' writing was often unclear, and at times I believed it was misleading. I frequently rejected warrant requests, which frustrated the Department and my employer. I believe that it is possible that detectives may have omitted important information, such as exculpatory evidence,

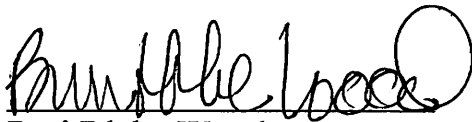
because they knew it was very likely that otherwise, I would reject their warrant requests.

47. Based on the information that has been represented to me in connection with this case, I believe that the warrant request packet presented to me did not provide me the necessary information to identify mischaracterizations or to recognize that there was not probable cause.

48. Had the warrant request in this case accurately stated the exculpatory facts known to the requesting detective, I would have denied the warrant request and sent it back for further investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of May 2023, by:



Bari Blake Wood