

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 4, 2025*
Decided March 20, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-2068

KELLY RAINEY,
Plaintiff-Appellant,

v.

JESSE LEWIS, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 21-CV-1185-SCD

Stephen C. Dries,
Magistrate Judge.

ORDER

Kelly Rainey alleges that his Fourth Amendment rights were violated by two Racine County police officers who arrested him without probable cause and by an investigator who misrepresented facts to support a no-knock search warrant for his

* By prior order (App. Dkt. 27), we vacated oral argument in this appeal. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

home. *See* 42 U.S.C. § 1983. A magistrate judge, proceeding with the parties' consent, entered summary judgment for the defendants, concluding that probable cause supported the arrest and search warrant. We affirm.

I.

The following facts are undisputed, except where noted, and are presented in the light most favorable to Rainey, the party opposing summary judgment. *See Kailin v. Vill. of Gurnee*, 77 F.4th 476, 478 (7th Cir. 2023). In August 2019, Rainey and his ex-girlfriend, Melody Rose, met in his car to discuss his separate lawsuit against a Kenosha Police Department deputy. Rose had agreed to help Rainey complete paperwork for the suit. But after Rose dropped off the paperwork and left Rainey's car, two Racine County Police officers pulled Rainey over and arrested him. He later was charged with conspiracy to commit homicide, possession of cocaine with intent to deliver, and possession of THC. On the same day as Rainey's arrest, a state trial judge issued a no-knock search warrant for Rainey's residence.

The search-warrant affidavit, authored by Jesse Lewis, an investigator for the Racine County Metro Drug Enforcement Unit ("Drug Unit"), detailed the evidence against Rainey. Lewis explained that he had arranged several controlled buys in which a confidential informant (Rose) bought cocaine from Rainey. Before each controlled buy, Drug Unit agents had searched Rose to ensure she did not already possess illicit drugs, and Lewis provided her funds to complete the controlled buy and an audio/video recorder to record the buy. Drug Unit agents dropped her off at Rainey's residence, watched her enter and leave his house, and then saw her return to their car. Rose then gave Lewis a substance that later tested positive for cocaine. The affidavit, citing Lewis's experience that drugs are often accompanied by guns, also referred to the possibility that firearms might be at Rainey's residence; on this basis, a state trial judge issued a no-knock search warrant. Rainey disputes that he had a firearm. After Lewis received the warrant, he ordered two officers to arrest Rainey because Rainey was selling cocaine.

After the police arrested Rainey and he spent 19 months in jail, the State dropped all charges against him. He then filed this § 1983 suit under the Fourth and Fourteenth Amendments, arguing that the officers arrested him without probable cause and that Lewis misled the state judge who issued the search warrant based on false information from Rose.

The magistrate judge entered summary judgment for the defendants. With regard to Rainey's claim against the arresting officers, the judge concluded that they had probable cause to arrest based on (1) their information that Rainey had allegedly sold crack cocaine on prior occasions and (2) Rainey's concession that they were not involved in his investigation and could not have known that the stop was based on incorrect information. As for Rainey's claims against Lewis, the judge determined that Lewis had probable cause to order Rainey's arrest and request a no-knock search warrant for Rainey's house. The judge added that Rainey failed to provide evidence that would allow a reasonable jury to find that Lewis—knowingly, intentionally, or with reckless disregard for the truth—made false statements that were necessary to the probable-cause determination. And to the extent Rainey challenged Rose's credibility as an informant, the judge pointed out that such a challenge would be more properly directed to a jury in a criminal trial.

II.

A. Probable Cause for the Search of Rainey's Residence

Rainey first challenges the finding that probable cause supported Lewis's search of his residence. But "a police officer has probable cause to conduct a search when 'the facts available to [him] would 'warrant a [person] of reasonable caution in the belief' that contraband or evidence of a crime is present.'" *Florida v. Harris*, 568 U.S. 237, 243 (2013) (citations omitted). Because Rainey cannot dispute that Rose—having been searched by police ahead of time—obtained drugs from his residence, the magistrate judge correctly concluded that no reasonable jury could find that probable cause did not exist to search Rainey's residence for cocaine.

Rainey relatedly asserts that the search-warrant affidavit was tainted because Lewis omitted information about the lack of credibility of the confidential informant, Rose. Rainey compares his circumstances to *United States v. Glover*, in which we reversed the denial of the defendant's motion to suppress an invalid search warrant because the affiant completely omitted damaging information about an informant's credibility. 755 F.3d 811, 816 (7th Cir. 2014).

True, a search warrant is invalid if the required probable-cause finding is premised on an officer's "false statement [made] knowingly and intentionally, or with reckless disregard for the truth." *Franks v. Delaware*, 438 U.S. 154, 155 (1978). But unlike *Glover*, in which the affiant relied exclusively on the informant's word in requesting the warrant, 755 F.3d at 816, Lewis testified in his affidavit that he received cocaine from

Rainey's residence. Without evidence from Rainey to the contrary, this information would be sufficient to support probable cause to search—even apart from any information Rose may have gathered.

Rainey also asserts that Lewis materially lied in his affidavit by suggesting that firearms might be found at his residence. But the magistrate judge was correct to dismiss this argument. Rainey proffered no evidence to support a challenge under *Franks* regarding the presence of firearms in his residence. Nor does he suggest that the evidence in the affidavit did not support reasonable suspicion that the search would be dangerous—the standard for the issuance of no-knock search warrants. *See Richards v. Wisconsin*, 520 U.S. 385, 394 (1997). Without such evidence, the magistrate judge correctly concluded that a reasonable jury could not conclude that Lewis made intentional or reckless misrepresentations of fact that were necessary to the issuance of the no-knock search warrant.

B. Probable Cause for the Defendants' Arrest of Rainey

Rainey next asserts that his denial that he ever sold cocaine to Rose gives rise to a fact question over whether Lewis had probable cause to order his arrest. But probable cause to arrest exists if the totality of the circumstances show that a reasonable officer would believe “the arrestee had committed, was committing or, and was about to commit a crime.” *See Abbott v. Sangamon Cnty.*, 705 F.3d 706, 714 (7th Cir. 2013) (citations omitted). Here, Rainey cannot dispute that on four separate occasions, Rose turned over cocaine to Lewis after she left Rainey's residence. These episodes—where Rose was monitored and recorded on video and audio, as well as searched by Drug Unit agents to ensure she did not already possess illicit drugs—gave Lewis the reasonable belief that Rainey possessed cocaine and was selling it out of his house. This undisputed account of a controlled buy establishes probable cause as a matter of law. *See, e.g., United States v. Sidwell*, 440 F.3d 865, 869 (7th Cir. 2006) (“the confidential informant entered the building without contraband; exiting moments later, he produced cocaine, indicating the probable—if not likely—presence of illegal drug activity in the apartment.”).

Rainey's remaining arguments lack merit. First, he argues that Lewis did not witness the drug sales. But the absence of eyewitness testimony does not invalidate probable cause. Probable cause does not require absolute certainty—only a “fair probability”—of a crime. *See United States v. Bacon*, 991 F.3d 835, 839–40 (7th Cir. 2021); *Sidwell*, 440 F.3d at 869. Here the circumstances of the controlled buy reliably establish probable cause. *See Sidwell*, 440 F.3d at 869. Rainey also asserts that these controlled buys occurred only because of an alleged conspiracy between Rose and Lewis to frame

Rainey. But this argument is not supported by any evidence, and mere assertions are not sufficient to defeat summary judgment. *See Johnson v. Myers*, 53 F.4th 1063, 1068 (7th Cir. 2022).

AFFIRMED