Supreme Court No. 98725-4
(COA No. 79638-1-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GARRETT HOOPER,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Garrett Hooper, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review under RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Hooper seeks review of the Court of Appeals decision dated June 8, 2020, which is attached.

C. ISSUES PRESENTED FOR REVIEW

1. Is suppression of evidence seized after the issuance of a warrant required where the warrant lacked the particular cause necessary to issue the warrant?

2. Is suppression of evidence seized on a warrant that lacks the specificity needed to avoid it being overbroad required?

3. Was a *Frank's* hearing required where Mr. Hooper established factual inaccuracies and omissions in the warrant affidavit that were material and made in reckless disregard of the truth?

D. STATEMENT OF THE CASE

Washington State Department of Fish and Wildlife officer John Ludwig received a tip Garrett Hooper was hunting illegally in Idaho. CP 102. He then sought a search warrant for Garrett Hooper's home and car. *Id.* The affidavit I support of the warrant stated the officer believed he would find evidence of unlawful possession of a firearm,[1] unlawful possession of wildlife taken illegally in another state,[2] and unlawful hunting of wild birds.[3] CP 100.

The warrant authorized the officer to seize illegally possessed wildlife, tools and instruments used to process wildlife, photos, videos, cameras, memory cards, and cellular phones, tools capable of killing wildlife, documents showing domicile at the residence, receipts related to wildlife processing, tags, licenses, and permits relating to wildlife killed in Idaho or Washington, preserved wildlife and other

[1] RCW 9.41.040.
[2] RCW 77.15.290(2).
[3] RCW 77.15.400(1).

trophies; computer systems, and any weapons used to kill wildlife. CP 100-101.

At the execution of the warrant, law enforcement seized firearms, game, and Mr. Hooper's cell phone. CP 61. Because Mr. Hooper had a prior conviction, the government charged him with unlawful possession of a firearm. CP 152-53.

Mr. Hooper challenged the warrant, arguing the affidavit in support did not establish probable cause to entitle law enforcement to search his home and seize his property and to believe evidence of the crime would be found at his home. CP 89, 91.

The government did not deny that the officer did not know what he would find at Mr. Hooper's house. CP 64. Nonetheless, the government argued that it was reasonable to infer that because Mr. Hooper was an avid hunter, he would keep the exploits of his hunts at his home. CP 64.

The court denied Mr. Hooper's motion to suppress. 6/27/18 RP 7.[4]

Mr. Hooper also asked the trial court to hold a *Frank's* hearing, due to omissions and mistakes he alleged were made in the search warrant application. CP 89, 94. These errors included not telling the court how many other people with the same or similar name to Mr. Hooper appeared on Instagram, despite having relied on it to obtain the warrant. CP 105, 6/15/18 RP 47. The officer also included a photograph of a home that did not belong to Mr. Hooper and was not the subject of the warrant, and detailed a car that also did not belong to Mr. Hooper. CP 102, 130.

The court denied Mr. Hooper's request for a *Frank's* hearing. 6/27/18 RP 10.

After the ruling of the search warrant, Mr. Hooper waived his right to a jury and stipulated that the police reports were sufficient to find him guilty. 1/30/19 RP 3. The

[4] Because the transcripts are not in sequential order, this brief refers to the date of the hearing, in addition to the page number when referencing the record. *E.g.,* "6/27/18 RP."

trial court found him guilty of unlawful possession of a firearm. CP 25.

E. ARGUMENT

1. **This Court should grant review of whether evidence seized based on a search warrant that lacks probable cause and particularity requires suppression.**

The Court of Appeals held that the search warrant was not defective. App. 3. The Court found that the warrant was based on sufficient probable cause and was not overbroad. *Id.*

The search warrant lacked the specificity required to determine Mr. Hooper was the person who had committed a hunting-related crime and that evidence of criminal conduct would be found at his home. *State v. Lyons*, 174 Wn.2d 354, 361, 275 P.3d 314 (2012).

The warrant also lacked the specificity that both the federal and state constitutions require. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Because the search warrant was defective, the search of Mr. Hooper's home was unconstitutional. Evidence seized from his home should have been suppressed. This Court should accept review.

a. A valid search warrant requires probable cause the defendant committed a crime, and that evidence of the offense will be found at the place to be searched.

The Fourth Amendment provides that search warrants may only be issued upon a showing of "probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *State v. Scherf*, 192 Wn.2d 350, 363, 429 P.3d 776 (2018); U.S. Const. amend. IV; Const. art. I, § 7. "Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the crime can be found at the place to be searched." *Scherf*, 192 Wn.2d at 363.

Probable cause for a search requires a nexus between criminal activity and the item to be seized, and between items to be seized and the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Mere suspicion is insufficient. *State v. White*, 44 Wn. App. 215, 219, 720 P.2d 873 (1986). Where an affidavit in support of a search warrant

is based on mere suspicion or the personal belief evidence of a crime will be found, suppression is required. *State v. Neth*, 165 Wn.2d 177, 182–83, 196 P.3d 658 (2008).

The purpose of the requirement to describe with particularly "the place to be searched" and the "things to be seized" is to make a general search "impossible and prevent[ ] the seizure of one thing under a warrant describing another." *Marron v. United States*, 275 U.S. 192, 196, 48 S. Ct. 74, 72 L. Ed. 231 (1927). The other purpose of the particularity requirement is to eliminate "the danger of unlimited discretion in the executing officer's determination of what to seize" and to prevent the issuance of a warrant "on loose, vague, or doubtful bases of fact." *State v. Perrone*, 119 Wn.2d 538, 546, 834 P.2d 611 (1992).

b. The search warrant relied on insufficient information that the police would find evidence of criminality at Mr. Hooper's home.

The Court of Appeals recognized that this Court's opinion in *Lyons* controls. App. 5. In *Lyons*, this Court determined that a warrant to search a suspect's home was

insufficient because the affidavit did not provide an adequate time reference. 74 Wn.2d at 363.

The Court distinguished *Lyons* by relying on time-stamped photographs posted to an Instagram account that dated from January 2014 to late November 2015, even though the government did not apply for a search warrant until December 31, 2015. App. 5. These photos were at least a month old when the government applied for the search warrant. Some of them were almost two years old. Additionally, the Court of Appeals may be mistaking the date the photos were posted with the date the photos were taken. Nothing about the pictures suggest they are recent; only that they had been uploaded between January 2014 and November 2015. The images could have been taken at any time before the date they were posted.

Instead, the Court of Appeals should have found that the warrant was based on speculation. This investigation began when the officer received a tip from an unknown informer that Mr. Hooper was hunting illegally in Idaho. CP

102. The officer searched the Idaho databases, which indicated Mr. Hooper had only ever purchased non-resident licenses. CP 102. Mr. Hooper had never purchased elk, deer, or turkey tags in Idaho. CP 103.

The tipster believed Mr. Hooper shot a whitetail deer in Idaho, although when this occurred is not clear. CP 102. The officer was told he would find a picture of the deer on Facebook, but he never did. *Id.* At the suggestion of Idaho Fish and Wildlife, the officer then searched Instagram for evidence of illegal hunting. CP 102.

The officer did not have a user name for Mr. Hooper, instead doing a general search for people named "Garrett Hooper." CP 103. He found an account with photos of a G. Hooper posing with wildlife. *Id.* Several of these photos had hashtags advising that they were taken in Idaho. *Id.* The affidavit how the officer connected this account to Mr. Hooper, other than by name and very generic physical features, including height, weight, and hair color CP 102.

The application for the search warrant had several photographs the officer downloaded from Instagram. CP 103-124. The officer highlighted these photos with the hashtags included either when the photos were posted or in the comments sections. *Id.* The officer did not detail when these photos were taken or otherwise how they were authenticated. *See, e.g., Rosencranz v. United States*, 356 F.2d 310, 315 (1st Cir. 1966) ("Serious defect" in the affidavit where there was an absence of any time frame).

The Court of Appeals holds that posting the photograph in a nearly two year time period a month before the search warrant was secured is sufficient for probable cause. App. 6. This Court should accept review of this matter to hold otherwise. It is not insufficient for the government to fish through an Instagram account and download photographs from it to establish probable cause. Instagram lacks reliability. There is no reason to believe that anything posted to a social media account is true. This evidence did not establish Mr. Hooper was involved in criminal activity, but

instead only created speculation that he might have been involved in illegal hunting. This is not enough. 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 3.7(b) at 392 (4th ed. 2004).

Instead, all the posts on Instagram provided was speculation Mr. Hooper may have committed a crime, at some point in the past. The judicial officer had to speculate Mr. Hooper was the same person identified in the Instagram photos. The judicial officer also had to speculate that Instagram photos were taken at a time when it was not lawful for Mr. Hooper to possess a firearm. *Lyons*, 174 Wn.2d at 361 (Affidavit failed to provide facts sufficient to infer recency of the observations). The judicial officer also had to speculate that any of this illegal conduct occurred in Washington.

The same problem existed with the address. *Lyons*, 174 Wn.2d at 368. The warrant does not demonstrate how the officer established Mr. Hooper lived at the house listed in the search warrant. The address listed for the application for an

Idaho hunting license lists a different address. CP 126. His past addresses were also different; one was in Sedro Wooley and the other in Stanwood. *Id.* The search warrant lacked sufficient evidence Mr. Hooper actually lived at the address subject to the search warrant, likewise making it constitutionally infirm. *Lyons*, 174 Wn.2d at 365.

This Court should grant review of whether the search warrant was specific enough, as to time, identity and the place to be searched. After review is granted, this Court should find the search warrant, based on speculation that Mr. Hooper committed a crime in Washington, that there would be evidence of the crime where he lived, and that the address the police sought to search was actually his, requires suppression. *Lyons*, 174 Wn.2d at 365.

2. **This Court should grant review of whether suppression is required when a search warrant lacks the particularity required to prevent a general and overbroad search.**

The Court of Appeals held that the information provided to Washington police by the Idaho officers was sufficient to allow the officers to infer that they would

discover evidence of criminality at Mr. Hooper's home. App. 6-7. This Court should take review of whether this analysis is in error, in light of its holdings that the federal and state constitutions require that a search warrant describe with particularity the place to be searched and the persons or things to be seized. *Perrone*, 119 Wn.2d at 545; U.S. Const. amend. IV; Const. art. I, § 7.

The Court of Appeals holds that it can rely on common sense to assume evidence of criminality would have been found at Mr. Hooper's home. App. 7. This is insufficient for a warrant to issue. If review were granted, this Court would instead see that the warrant to search Mr. Hooper's home was overbroad, largely because the government did not know what it would find in a search of Mr. Hooper's home.

The search warrant was extremely broad. It authorized a search for illegally possessed wildlife; tools and instruments used to process wildlife; photos, videos, cameras, memory cards, and cellular phones; tools capable of killing wildlife; documents showing domicile at the residence; receipts related

to wildlife processing; tags, licenses, and permits relating to wildlife killed in Idaho or Washington; preserved wildlife and other trophies; computer systems; and any weapons used to kill wildlife. CP 100-101.

Given the limited information the officer had, the scope of his request was remarkably broad. All the officer knew was that Mr. Hooper may have illegally hunted in Idaho. CP 102. Instagram suggesting additional hunting, but did not specify when this occurred. CP 103. None of this information suggested evidence of illegal hunting or weapon possession would be found at Mr. Hooper's home.

An intrusion into Mr. Hooper's expectation of privacy should extend no further than is necessary to find particular objects. *Perrone*, 119 Wn.2d at 545-46. The warrant was not carefully tailored or limited to evidence for which there was probable cause. *Maddox*, 116 Wn. App. at 805. It was a blanket search without specific information that any evidence of criminal activity would be found on Mr. Hooper's property.

Thein, 138 Wn.2d at 147-48. To uphold Mr. Hooper's right to privacy, this Court should grant review.

3. This Court should grant review of whether the trial court failure to Mr. Hooper's request for a *Franks* hearing was made in error.

The Court of Appeals determined that a *Franks* hearing was not required where there were factual inaccuracies and omissions in the affidavit. App. 7. This Court should now accept review to examine whether the mistakes and omission made in this matter were material and made in reckless disregard for the truth.

Factual inaccuracies or omissions in a warrant affidavit may invalidate the warrant if the defendant establishes that they are material and made in reckless disregard of the truth. *Franks v. Delaware*. 438 U.S. 154, 154-56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) ; *State v. Chenoweth*, 160 Wn.2d 454, 478-77, 158 P.3d 595 (2007); U. S. Const. amend. IV; Const. art. I, § 7. If the defendant makes a substantial preliminary showing of a misstatement of facts or omission that is intentional or reckless and is material to the question of

probable cause, then the court must hold a Franks hearing. *State v. Ollivier*, 178 Wn.2d 813, 847, 312 P.3d 1 (2013).

The warrant application contained critical omissions. These included incomplete information about the officer's Instagram searches, a photograph of a home that did not belong to Mr. Hooper, and a misidentified car. These mistakes and omissions are detailed below.

- Incomplete information on the officer's search of Instagram.

The he officer stated he searched for Garrett Hooper on Instagram. CP 105. He did not list how many people named Garrett Hooper were on Instagram. But defense counsel demonstrated that at least eleven other people shared this name when she conducted a search. 6/15/18 RP 47. Yet in reading the affidavit, it would appear that no other person could match the description provided by the tipster or that only one person named Garrett Hooper could have an Instagram account. In addition, the affidavit contained no information about how the chosen account was selected or any of the other users with this name were excluded.

- Photograph of a home that did was not belong to Mr. Hooper.

The affidavit included a photograph of a home. This would lead the judicial officer to believe that the home belonged to Mr. Hooper. CP 102. But this was not Mr. Hooper's home. At the hearing requesting a Frank's hearing, defense counsel supplied the court with a picture of Mr. Hooper's home, with him in front of it. CP 130. There was no evidence of where the officer found his photo, but it was not of Mr. Hooper's home.

- Mistake about Mr. Hooper's car.

The affidavit stated Mr. Hooper owned a Chevrolet Avalanche. CP 102. This was not true. CP 68. The prosecution stated this was a clerical error, but this mistake adds an additional reason for why the court should have ordered a hearing. CP 68-69.

The errors and omissions in the affidavit were substantial and constituted sufficient evidence to warrant a Franks hearing. *Ollivier*, 178 Wn.2d at 847. This Court should grant review of whether the trial court erred in

refusing to hold a *Franks* hearing, to provide Mr. Hooper with the opportunity to establish that the warrant should be held void. *Franks*, 438 U.S. at 156.

F. CONCLUSION

Based on the preceding, Mr. Hooper respectfully requests that review be granted pursuant to RAP 13.4 (b).

DATED this 6th day of July 2020.

Respectfully submitted,

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent/Cross-Appellant, v. GARRETT ADAM HOOPER, DOB: 9/15/1985 Appellant/Cross-Respondent.	)	No. 79638-1-I DIVISION ONE UNPUBLISHED OPINION

MANN, C.J. — Garrett Hooper appeals his conviction for unlawful possession of a firearm in the second degree. He contends that the evidence retrieved from his home should have been suppressed because the search warrant lacked probable cause and specificity, and was overbroad in its scope. He also argues that he was entitled to a Franks hearing. Franks v. Delaware, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676-77, 57 L. Ed. 2d 667 (1978). We disagree, and affirm.

I.

Washington State Department of Fish and Wildlife Officer John Ludwig investigated Hooper for illegal hunting and poaching after receiving a tip that Hooper

was purchasing Idaho resident hunting licenses although he was a Washington resident. Ludwig spoke with Idaho Fish and Game Officer Tony Imthum, who informed Ludwig that Hooper had not been purchasing Idaho resident licenses, but that Hooper had killed an elk and a whitetail deer in Idaho without a license. Imthum directed Ludwig to Hooper's public Instagram[1] account, which pictured Hooper posing with a whitetail buck, an elk, other game, and mounted deer and elk racks. Hooper indicated in the captions that he hunted these animals in Idaho. Hooper was posing with firearms in many of the photos. Because Ludwig discovered that Hooper was a convicted felon during his investigation, the pictures of him with firearms triggered Ludwig to investigate Hooper for unlawful firearm possession.

Ludwig prepared a search warrant and affidavit to search Hooper's residence for evidence of crimes of unlawful possession of a firearm, unlawful possession of wildlife taken illegally in another state, and unlawful hunting of wild birds. Upon execution of the warrant, officers recovered four firearms from Hooper's residence. Officers found mounted deer and elk racks, deer and elk antlers, turkey fans, packaged game meats, and a rotting deer skull. Officers also seized Hooper's cellphone.

Hooper was charged with one count of unlawful possession of a firearm in the second degree. Hooper moved to suppress all the evidence, contending that the warrant did not provide probable cause to entitle officers to search his home for the evidence of a crime. He also argued that he was entitled to a Franks hearing because of material omissions in the affidavit for the search warrant that were made in reckless disregard for the truth.

[1] Instagram is a social media platform used for sharing photos.

The trial court held a CrR 3.5 and CrR 3.6 suppression hearing, where it determined that the search warrant on its face sufficiently established probable cause for the crimes of illegal hunting and unlawful possession of firearms. The court noted that the initial tip was irrelevant because Hooper posted photos of himself engaged in illegal activity to a public Instagram account, stating "once it's on Instagram, it goes out to the public, and that destroys the privacy." The court denied Hooper's request for a Franks hearing, concluding that the affidavit did not contain false statements or material omissions made with reckless disregard for the truth.

Hooper then waived his right to a jury trial, and proceeded to a stipulated bench trial. The trial court convicted Hooper as charged. Hooper appeals.

II.

Hooper argues that the trial court erred when it denied his motion to suppress because the search warrant was defective. Hooper argues that the affidavit to support the search warrant lacked the specificity required to determine that Hooper was the person who had committed a crime and that evidence of criminal conduct would be found in his residence. He contends that Officer Ludwig's investigation only established a level of suspicion that Hooper committed the crimes. He argues that before seeking the search warrant, Officer Ludwig did not confirm that the Instagram account belonged to Hooper, requiring the issuing court to speculate that Hooper was the person in the Instagram photos, that the photos were taken when Hooper could not lawfully possess a firearm, and that the illegal conduct occurred in Washington. He also contends that the warrant was overbroad. We disagree.

The issuance of a search warrant is reviewed for abuse of discretion, with great deference given to the issuing judge. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The trial court's determination of probable cause is a legal conclusion which we review de novo. Neth, 165 Wn.2d at 182.

The Fourth Amendment provides that warrants may be issued only upon a showing of "probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." State v. Scherf, 192 Wn.2d 350, 363, 429 P.3d 776 (2018); U.S. Const. amend. IV. "Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the crime can be found at the place to be searched." Scherf, 192 Wn.2d at 363.

The affidavit to support the search warrant must be read in a commonsense, practical manner. Neth, 165 Wn.2d at 182. The affidavit must be based on more than mere suspicion or personal belief that evidence of a crime will be found. Neth, 165 Wn.2d at 182. "The support for issuance of a search warrant is sufficient if, on reading the affidavits, an ordinary person would understand that a violation existed and was continuing at the time of the application." State v. Fisher, 96 Wn.2d 962, 965, 639 P.2d 743 (1982).

A search warrant must sufficiently describe the items to be seized so that the officer can identify the property with reasonable certainty. State v. Hatt, 11 Wn. App. 2d 113, 452 P.3d 577 (2019), review denied, 195 Wn.2d 1011, 460 P.3d 176 (2020). A description of items to be seized is valid if it is "as specific as the circumstances and the nature of the activity under investigation permits." State v. Perrone, 119 Wn.2d 538,

547, 834 P.2d 611 (1992). A generic description is sufficient if probable cause is shown and a more precise identification is impossible. Perrone, 119 Wn.2d at 547. A magistrate is entitled to draw commonsense and reasonable inferences about items to be seized from the facts and circumstances set out in the warrant. State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975) (court held the magistrate could reasonable infer that additional marijuana beyond the growing marijuana plants identified in the search warrant might be present on the premises searched).

Hooper relies on State v. Lyons, 174 Wn.2d 354, 363, 275 P.3d 314 (2012) to assert that, because Officer Ludwig did not indicate when he received the tip of Hooper's activities, there was insufficient information to establish that Hooper was involved in illegal activity at the time of the search warrant application.

In Lyons, our Supreme Court determined that a warrant to search the defendant's home for a marijuana growing operation was insufficient because the affidavit did not provide an adequate time reference. Lyons, 174 Wn.2d at 363. Probable cause for the warrant was based only on information from a confidential informant, and the affidavit stated only when the officer received the tip, not when the informant observed the illegal activity. Lyons, 174 Wn.2d at 357. Because it was impossible for the magistrate to determine how much time had passed between the police's receipt of the tip from the confidential informant and the execution of the warrant, the affidavit lacked sufficient support to the magistrate's finding of probable cause. Lyons, 174 Wn.2d 354, 368.

Unlike Lyons, here, the trial court correctly indicated that when Officer Ludwig received the tip is irrelevant because Hooper posted dozens of time-stamped photos to

social media depicting him holding a variety of guns. The time stamps on the photos ranged from January 2014 to late November 2015. The search warrant application is dated December 31, 2015. The issuing magistrate did not need to know when Ludwig received the original tip because the photographic evidence Ludwig provided included specific dates on which Hooper used a gun to kill the game depicted in the photos.

The affidavit notified the issuing magistrate that Hooper had a 2010 felony conviction. And it provided ample evidence that Hooper was in possession of guns over an extended period of time between 2014 and 2015. This evidence supported probable cause for the search warrant because Officer Ludwig's investigation supported a reasonable inference that Hooper had engaged in criminal activity. After receiving the tip, Officer Ludwig consulted with Officer Imthum in Idaho about the status of Hooper's licenses. Officer Ludwig discovered that Hooper posted numerous photos of the wildlife he killed and indicated that he killed these animals in Idaho on his public Instagram page. He found that Hooper also posted numerous photos of himself holding firearms on Instagram. The affidavit for the search warrant identified Hooper by his full name, his address, and his wildlife licensing history. The warrant included the photos of Hooper with both the game animals and the firearms from his Instagram page. The support for the warrant goes beyond mere suspicion as a reasonable person would understand that a crime had been committed and that evidence of that crime could be recovered from Hooper's home.

Although Hooper contends that list of items to be seized was overbroad, we disagree. Ludwig used the photos that Hooper shared on social media to describe the specific wildlife to be seized and as well as tools that were used to mount the game

animals. The magistrate is entitled to make reasonable inferences from the facts set out in the affidavit. Similar to Helmka, the fact that Hooper had hunted deer and elk in Idaho allowed the magistrate to appropriately infer that officers would discover evidence of hunting equipment and trophies in Hooper's home.

Viewed in a common sense matter, the affidavit contained sufficient facts to support the search warrant, and the items to be seized were described with sufficient particularity. Because the warrant was proper, the trial court did not err when it denied the motion to suppress.

III.

Hooper also contends that the trial court erred when it denied his request for a Franks hearing. Hooper argues that he was entitled to a Franks hearing because there are 11 other Instagram users named Garrett Hooper. He also contends that the photograph of the home in the affidavit was not his home, and that the affidavit misidentified the type of car that Hooper drove. We disagree.

If the defendant makes a preliminary showing that false statements in the affidavit were made knowingly and intentionally, or in reckless disregard of the truth, and the allegedly false statement is necessary to the finding of probable cause, the defendant is entitled to a Franks hearing. Franks, 438 U.S. at 155-56; State v. Thetford, 109 Wn.2d 392, 398, 745 P.2d 496 (1987). If the defendant establishes by a preponderance of the evidence that statements made in the affidavit were false or made with reckless disregard of the truth, and if the remaining material in the affidavit is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded. State v. Wilke, 55 Wn. App. 470, 480, 778 P.2d 1054

(1989); Franks, 438 U.S. at 155-56. Recklessness is established where the affiant has serious doubts to the truth of the facts or statements in the affidavit. Wilke, 55 Wn. App. at 480. "Negligent or innocent mistakes are not sufficient to void a warrant." Wilke, 55 Wn. App. at 480. We review the trial court's conclusions under a clearly erroneous standard. State v. Chenoweth, 160 Wn.2d 454, 484, 158 P.3d 595 (2007).

Hooper contends that there were critical omissions of how many people sharing his name were on Instagram, that there was an incorrect photo of his residence, and that the make of his Chevy automobile was incorrect. The trial court rejected these assertions and concluded that the affidavit contained no false statements and no omissions made with reckless disregard for the truth.

The trial court noted that wildlife officers had specific knowledge that the Garret Hooper in the Instagram account was the correct age, with comments on the account from his wife whose identity they knew, and referenced hunting in Idaho and Washington consistent with Hooper and the person sought. The court determined that an ordinary prudent person would infer this was Hooper's Instagram account.

The court also noted that there was no evidence before it proving that the photo attached of the house was incorrect. The photo was not determined to be material, given the substantial information in the affidavit about Hooper's address. The house searched was in fact his current residence, it was listed as his current residence, and the parcel number was corroborated through the county assessor's office as his residence.

Finally, the court noted that Hooper's Chevy Avalanche was mislabeled a Chevy Aero. The court, who observed the hearing testimony and reviewed the affidavit,

concluded that the mistake was a scrivener's error and not a deliberate false statement. The court correctly noted that the actual search was limited to the house regardless. Because the Chevy was not searched, there was no evidence recovered from it to suppress.

The trial court's denial of a Franks hearing was not clearly erroneous. The court gave specific and concrete reasons to determine that Hooper failed to make a substantial showing of any false statements or omissions made with reckless disregard for the truth in the affidavit. Hooper was not entitled to a Franks hearing.

Affirmed.

Mann, C.J.

WE CONCUR:

Andrus, A.C.J.

Leach, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 79638-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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