

1 long as the probability of a lying or inaccurate informer has  
2 been" -- I'm sorry -- "so long as the probability of a lying or  
3 inaccurate informer has been sufficiently reduced. We apply a  
4 'non-exhaustive list of factors' to examine the affidavit's  
5 probable cause showing, which include, among others: one,  
6 whether the affidavit establishes the probable voracity and  
7 basis of knowledge of persons supplying hearsay information;  
8 two, whether an informant's statements reflect first-hand  
9 knowledge; three, whether some or all of the informant's  
10 factual statements were corroborated wherever reasonable or  
11 practicable, e.g., through police surveillance; and four,  
12 whether a law enforcement affiant assessed, from his  
13 professional standpoint experience and expertise, the probable  
14 significance of the informant's provided information."

15 The First Circuit also addressed the issue of  
16 assessing the reliability of an informant or cooperating  
17 witness in Tanguay, 787 F. 3d 44 at 50. It says that, "Even a  
18 prior conviction for a crime of dishonesty is not always  
19 dispositive of a witness's reliability." There can be  
12:42 20 countervailing indicia of truthfulness. For example, an  
21 informant's trustworthiness may be enhanced in a number of  
22 ways, including by his willingness to reveal his identity, the  
23 level of detail in his account, the basis of his knowledge, and  
24 the extent to which his statements are against interest.

25 In this case, as I said, the affidavit in support of

*Has dishonesty so what he says are relevant*

1 the search warrant is docket number 80-1, beginning at page 4.  
 2 On page 5, the affiant, Hull police officer Craig J. Lepro,  
 3 stated his experience in conducting a marijuana investigation  
 4 and says, among other things, "I have worked alongside Local,  
 5 State and Federal Law Enforcement. Two such properties I have  
 6 investigated as indoor marijuana grows are currently under  
 7 civil forfeiture with the United States Department of Justice."  
 8 This is some of the evidence of his own experience and  
 9 expertise in making an assessment of the relevant information.

12:44

10 On page 8 of 17, Lepro made a statement which the  
 11 government acknowledges, I believe, is false. He wrote in  
 12 discussing the cooperating witness, Albuquerque, that based  
 13 on -- well, the detectives executed a search warrant resulting  
 14 in the discovery of a THC extraction lab, a lab that extracts  
 15 from marijuana which demonstrates the Boston Police were able  
 16 to corroborate information supplied by Albuquerque and the  
 17 seizure of the illegal lab.

12:45

18 "Albuquerque," Lepro wrote, "has provided reliable  
 19 information to law enforcement resulting in . . . discovery of  
 20 a THC lab and the prosecution of the offenders." That I find  
 21 is not true. Rather Albuquerque lived at 130 Grove Street in  
 22 West Roxbury. He was involved in a fight. The police came and  
 23 saw a THC extraction lab in plain view. They, as a result of  
 24 that information, got their search warrant. However, I note  
 25 that if the accurate information about Albuquerque was

1 included, it would have said that he lived at a location with a  
2 THC extraction lab, it can be inferred that it was his lab at  
3 least in part and that he had a reason to want to acquire  
4 marijuana, which in this case, also in paragraph E, he claimed  
5 he had obtained about 13 pounds with which he was caught from  
6 the defendant Mr. Maglio.

7 On page 12 of 17, there is another inaccurate  
8 statement. It says Maglio does not have a medical marijuana  
9 registration. In a police report from Rutland, Massachusetts  
10 that was available to Lepro, Mr. Maglio's mother said she  
11 thought he did have a registration. If the record check had  
12 been run properly, it would have shown he did have a marijuana  
13 registration. However, I believe it's stipulated that the  
14 marijuana registration permitted only the cultivation of 10  
15 ounces for personal use. But I find that this misstatement  
16 about Albuquerque providing information that led to the  
17 discovery of the THC extraction lab in West Roxbury was  
18 knowingly false or, at a minimum, in reckless disregard of the  
19 truth. I find that the statement about Mr. Maglio not having a  
12:47 20 medical marijuana license was false and, I assume for present  
21 purposes, in reckless disregard for the truth.

22 However, these incorrect statements and any other  
23 omissions were not material to whether probable cause exists.  
24 Rather probable cause exists or would have existed even if the  
25 inaccurate statements had been corrected. In Strother, 318 F.

1 3d 64 at 67, the First Circuit wrote, "In determining the  
2 sufficiency of an affidavit supporting a search warrant, we  
3 consider whether the 'totality of the circumstances' stated in  
4 the affidavit demonstrates probable cause to search the  
5 premises . . . we examine the affidavit 'in a practical  
6 commonsense fashion and afford considerable deference to  
7 reasonable inferences the issuing judicial officer may have  
8 drawn from the attested facts.' Among the factors that may  
9 contribute to a probable cause determination are: whether an  
10 affidavit supports the probable veracity or basis of knowledge  
11 of the person supplying hearsay information; whether informant  
12 statements are self-authenticating; whether some or all of the  
13 informant's factual statements were corroborated wherever  
14 reasonable and practicable e.g., through police surveillance;  
15 and whether a law enforcement affiant included a professional  
16 assessment of the probable significance of the facts related by  
17 the informant based on experience or expertise," something that  
18 Lepro did in his affidavit. HWG LUCd

19 With regard to probable cause, the First Circuit wrote  
12:50 20 in Dixon, 787 F. 3d 55 at 59, "A warrant application must  
21 demonstrate probable cause to believe that, one, a crime has  
22 been committed -- the 'commission' element; and two, enumerated  
23 evidence of the offense will be found at this place searched --  
24 the so-called 'nexus' element. Whereas in Dixon "the basis for  
25 the magistrate's probable cause finding was information from an

1 to corroborate, to test and ultimately corroborate the  
2 information that Albuquerque had given the Hull Police,  
3 corroborated Albuquerque's statements by confirming Maglio's  
4 address was as Albuquerque had said, noting a strong smell of  
5 marijuana from a considerable distance outside of Maglio's home  
6 and collecting electricity bills showing abnormally high usage  
7 in Maglio's home.

8 So because the false or inaccurate statements were not  
9 material, and there's been no substantial showing they were,  
01:10 10 there's no process under Franks for an evidentiary hearing or  
11 motion to suppress. If this case was prosecuted in state court  
12 under the standard in Long, the evidence would also not be  
13 suppressed because probable cause exists.

14 And this court doesn't condone, let alone commend, the  
15 false or inaccurate information in the affidavit. But this is  
16 not a case where the federal system has been used to get an  
17 unfair advantage of conviction potentially in Federal Court  
18 that couldn't be obtained in state court. It appears to me  
19 that Mr. Maglio is in Federal Court because of his long record  
01:11 20 and because of the guns. This is not a flagrant case that  
21 would justify the unprecedented suppression of evidence as an  
22 exercise of supervisory powers if that authority exists.

23 So for those reasons, the motion for a Franks hearing  
24 and to dismiss are denied. It's now 1:15. We'll resume at  
25 about 2:30. I have something I have -- I'm meeting with a

1 colleague before then. I'll hear your argument with regard to  
2 detention and the situation with regard to Mr. Maglio's  
3 detention at Plymouth.

4 MR. LEPORE: Just so you have it for your schedule,  
5 we're going to be withdrawing the motion for a District Court  
6 review of the detention order.

7 THE COURT: Okay. And I will say just for the record  
8 that doesn't suggest you're ineffective by any means. You've  
9 been zealous. You've engaged my attention. You've really done  
10 a good job. But given the fact that this evidence is  
11 admissible and, among other things, the case for detention is  
12 strengthened, I would have listened with an open mind, but it's  
13 very likely -- well, I'd be very surprised if I didn't order  
14 his continued detention.

15 Well, what I'll do is I'll have -- come back at 2:30,  
16 but we'll have the marshal come up as well. You still haven't  
17 been able to resolve this issue of him seeing his wife,  
18 correct?

19 MR. LEPORE: We have not.

01:13 20 THE COURT: All right. I believe Kevin Neal, the  
21 marshal, is available. We'll resume at 2:30. We'll address  
22 that issue. And we have a trial date, but I may build in some  
23 interim --

24 MR. LEPORE: I would expect to ask the court to  
25 schedule a Rule 11 hearing as well.

*Maglio is doing  
everything in his power  
to secure the indictment  
and my partner  
and I had*