Circuit Court for Anne Arundel County
Case No. C-02-CR-23-000302

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 367

September Term, 2023

MATTHEW SHANE FUNKHOUSER

v.

STATE OF MARYLAND

Reed,
Beachley,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 27, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On November 14, 2022, a search warrant was executed at the home of Matthew Shane Funkhouser ("appellant") at 201 Old Denton Road in Federalsburg, Maryland. Police seized a stolen lawnmower and several stolen go-kart parts, and later charged appellant with theft. Before trial, appellant filed a motion to request a hearing, pursuant to *Franks v. Delaware*, asserting that the affiant, Anne Arundel County police detective Keith Doyle ("Detective Doyle"), made materially false statements in support of the search warrant.[1] *Franks v. Delaware,* 438 U.S. 154 (1978) (establishing a procedure for defendants to challenge the validity of a search warrant through a separate hearing).

After a hearing, the motions court denied the request, and appellant later entered a conditional guilty plea, preserving his right to appeal the court's denial of his motion. Appellant noted this timely appeal and presents one question for review: Did the circuit court err in determining that the evidence was insufficient to show that the affiant made a material misstatement of fact, either knowingly, intentionally, or with a reckless disregard for the truth?[2] For the reasons that follow, we shall affirm.

[1] Appellant titled the motion, "Motion to Invalidate Search Warrant and to Suppress Evidence," but structured the motion around the standards set forth in *Franks* and acknowledged at the hearing that "we are here obviously under *Franks* [*v.*] *Delaware*." For clarity, we will refer to the motion as a request for a *Franks* hearing.

[2] Rephrased from the question presented in appellant's brief:

Did the search warrant contain a material misstatement of fact, made either knowingly, intentionally, or with a reckless disregard for the truth, without which the warrant lacked probable cause and was thus invalid, and the items seized pursuant to the warrant should have been suppressed?

FACTS AND PROCEEDINGS

On November 4, 2022, Detective Doyle received an anonymous tip alleging that stolen property was stored at appellant's residence in Federalsburg, Maryland. The caller claimed that appellant had stolen a trailer with two lawnmowers in Anne Arundel County and that one of the lawnmowers was still located at the rear of appellant's property. The caller also stated that appellant possessed stolen go-kart parts in his garage.

On November 14, 2022, Detective Doyle proceeded to Federalsburg to investigate the caller's claims. After confirming appellant's address, Detective Doyle parked at a nearby church and walked on a paved public footpath in his effort to view appellant's property from the rear. Because he could not see appellant's house from the footpath, Detective Doyle left the paved footpath and proceeded toward a tree line. At the tree line, Detective Doyle was able to confirm his position behind appellant's house. Detective Doyle walked further into the tree line when his attention was directed to a "bright green and yellow" item in the woods. He recognized the item as a John Deere lawnmower that matched the description of the stolen lawnmower, and took a photograph from his location.[3] Detective Doyle moved closer to investigate, took additional pictures at the lawnmower's location approximately twenty yards off the footpath, and left to contact its

[3] It is unclear from the record if Detective Doyle was searching for a John Deere lawnmower because of information from the tipster, a conversation with the lawnmower's owner after receiving the tip, or from a police report filed by the owner that Detective Doyle reviewed in his initial investigation of the tipster's claims.

owner. The owner confirmed that the item photographed by Detective Doyle was his stolen lawnmower.

According to Detective Doyle, the lawnmower was "by itself" in the woods, and he testified that he had no reason to believe that he was on private property. Using the information acquired from his investigation, Detective Doyle prepared a search and seizure warrant. Detective Doyle's affidavit in support of the warrant stated, in relevant part: "While walking on public property behind the residence, I noticed a green and yellow stand[-]behind lawnmower behind bushes. I was able to get close enough to take a photo." After the issuance of the warrant by a District Court judge, Detective Doyle returned to appellant's residence to execute the warrant, ultimately seizing the stolen lawnmower and go-kart equipment. Two days later, on November 16, 2022, appellant was charged with two counts of theft between $1,500 and $25,000, and one count of theft between $25,000 and $100,000.

On March 10, 2023, appellant filed a "Motion to Invalidate Warrant and Suppress Evidence." In his supplemental motion, filed March 19, 2023, appellant alleged that Detective Doyle made a "false statement knowingly and intentionally, or with reckless disregard for the truth." Citing *Franks*, appellant requested a hearing to allow him to make a "substantial preliminary showing" that Detective Doyle intentionally or recklessly included false statements in the supporting affidavit for a search warrant, and that the affidavit without the false statement is "insufficient to establish probable cause." *Franks*, 438 U.S. at 155–56.

In support of his motion, appellant argued that Detective Doyle's statement in the affidavit that he was on "public property" during his investigation was a "false statement" made "knowingly and intentionally or with reckless regard for the truth." Appellant alleged that "[t]he mower was located in the middle of a wooded area on private property at the time the photographs were taken[.]" The State, in response, countered that appellant failed to "make a substantial preliminary showing that 1) Det[ective] Doyle was actually on private property, and 2) that Det[ective] Doyle knew that and intentionally and knowingly, or even recklessly, lied in his affidavit."

The circuit court held a hearing on March 20, 2023, to evaluate appellant's request for a *Franks* hearing. Detective Doyle was the only witness to testify at the hearing. Defense counsel introduced several exhibits, including property records, photos, and Google satellite imagery to argue that Detective Doyle knew, or should have known, that he was on appellant's half-acre private property during his investigation, and therefore the Detective's affidavit was materially false. Defense counsel argued that the contrast between the "maintained grass" adjacent to the public footpath and the "overgrown bushes" near appellant's property established that any belief that Detective Doyle was on public property was "unreasonable and . . . reckless." Defense counsel further asserted that Detective Doyle knew that the mower was not on public property because he would not have needed a warrant to seize it if it was on public land.

The State argued that Detective Doyle "had no reason to believe he was on private property" and that his testimony was consistent with his affidavit. The State pointed out

that Detective Doyle testified that, after he left the public footpath and entered the wooded area, he did not see any gate, fence, "no trespassing" or private property sign, or other indicia that the area was private property. The State maintained that Detective Doyle "believed he was still on public property" when he took photos of the mower.

After finding Detective Doyle to be "quite credible," the court ruled that the affidavit did not have a "clear false statement, or a knowingly false statement from the Detective." Whether Detective Doyle made a statement in reckless disregard for the truth presented the court with a "tougher issue." After considering the relatively small size of appellant's property, the lack of demarcation or barriers between public and private property, and the fact that the mower was "in the open" and not in a shed or other structure, the court found that it would be difficult for Detective Doyle to know "when and if he steps off public property and onto private property[.]" Based on this conclusion, the court found that there was no "reckless disregard for the truth" in Detective Doyle's affidavit and denied appellant's motion.

Following the denial of appellant's motion, appellant entered a conditional guilty plea, preserving his right to appeal the denial of his request for a *Franks* hearing. After the court found appellant guilty of one count of theft between $1,500 and $25,000, appellant was sentenced to five years' incarceration. Appellant then noted this timely appeal.

STANDARD OF REVIEW

The standard of review of a denial of a *Franks* hearing requires the appellate court to defer to the motions court's fact findings unless they are clearly erroneous. *Thompson*

v. State, 245 Md. App. 450, 469 (2020). However, we "review the hearing judge's legal conclusions *de novo*[.]" *Carter v. State*, 236 Md. App. 456, 467 (2018) (quoting *Sizer v. State*, 456 Md. 350, 362 (2017)).

DISCUSSION

Appellant argues that the circuit court erred in denying his motion for a *Franks* hearing. Appellant posits that because evidence at the hearing demonstrated that "Detective [Doyle] could not possibly have thought he was on public property[,]" appellant "made a substantial showing that Detective Doyle made material misrepresentations" in his affidavit. In contrast, the State responds that the court "properly determined that [Detective Doyle] had not provided false information and had not acted in a manner that was deliberately misleading or in reckless disregard for the truth."

The Fourth Amendment to the United States Constitution establishes "[t]he right of the people to be secure . . . against unreasonable searches and seizures" and states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation[.]" U.S. CONST. amend. IV. Once a warrant is issued, however, "that warrant is presumed valid," and the defendant then has the "burden of proving the unlawfulness of the search." *Eusebio v. State*, 245 Md. App. 1, 23 (2020) (citing *Wood v. State*, 196 Md. App. 146, 164 (2010)). Ordinarily, when evaluating the lawfulness of the warrant, we "confine our consideration" solely "to the information provided in the warrant and its accompanying application documents." *Greenstreet v. State*, 392 Md. 652, 669 (2006). "This principle is known as the 'four corners rule.'" *Id*.

"There are some occasions where deviations from the four corners rule are appropriate. One instance where evidence outside of the warrant and its affidavit may be considered is where a defendant makes a required showing for a *Franks* hearing." *Id.* Successful attempts to challenge the validity of a warrant through a *Franks* hearing are "rare and extraordinary" and "will not be indulged unless rigorous threshold requirements have been satisfied." *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003). In order to meet that threshold:

> [T]he challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

Franks, 438 U.S. at 171. "The burden on the defendant in requesting a *Franks* hearing is 'a substantial preliminary showing,' not a preponderance of evidence." *Thompson*, 245 Md. App. at 468. We conduct our own assessment whether the facts, as found by the suppression court, are sufficient to constitute "a substantial preliminary showing that the affiant intentionally or recklessly included false statements in the supporting affidavit for a search warrant[.]" *McDonald v. State*, 347 Md. 452, 471 n.11 (1977).

Knowing or Intentional Misstatement

As noted, defense counsel attempted to make the "substantial preliminary showing" required by *Franks* by calling Detective Doyle as a witness and admitting relevant

photographs and documentary evidence as exhibits. Relying primarily on a Google Earth photo that depicted the public footpath, appellant's residence, and the location of the lawnmower, defense counsel argued that Detective Doyle could not have been "walking on public property" when he saw the lawnmower in the bushes as stated in his affidavit.

The court first found that Detective Doyle did not make an intentional or knowing false statement in the affidavit. As previously noted, Detective Doyle wrote: "While walking on public property behind the residence, I noticed a green and yellow stand[-]behind lawnmower behind bushes. I was able to get close enough to take a photo." Although defense counsel argued at the hearing that the "clear implication" of this statement was that Detective Doyle swore he was on public property throughout his investigation, the motions court noted that "it matters somewhat" that these two sentences are separated by a period. The court found that Detective Doyle's affidavit affirmed his location on public property only when he initially identified the lawnmower, which was consistent with his testimony at the motions hearing. The court further found that the detective did not specifically aver that he was on public property when he stated in the affidavit that he "was able to get close enough to take a photo." Moreover, the court accepted as credible Detective Doyle's testimony that he had "no indication" that he was on private property. The court's fact findings are not clearly erroneous and we conclude that the court did not err in determining that the detective did not make an intentional or knowing false statement in his affidavit.

Reckless Disregard for the Truth

Appellant alternatively argues that even if the statements in Detective Doyle's affidavit were not intentionally false, they were made with a reckless disregard for the truth. Again, appellant contends that Detective Doyle "could not possibly have thought he was on public property" once he left the paved footpath and proceeded toward appellant's residence. Quoting *Florida v. Jardines*, 569 U.S. 1 (2013), appellant notes that the delineation between public space and curtilage is important because "[w]hile law enforcement officers need not 'shield their eyes' when passing by the home 'on public thoroughfares,' an officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas." 569 U.S. at 7 (internal citation omitted).

Relying principally on the Google Earth photo, appellant asserts that "Detective Doyle had to leave the well-maintained footpath and traverse through overgrown bushes and trees" to investigate the lawnmower, which should have been a clear indication to Detective Doyle that he had traversed onto appellant's curtilage. Appellant argues that this "[un]welcoming environment" demonstrates the "desire to exclude uninvited guests from his property." Accordingly, appellant contends that, even if not intentional, Detective Doyle's "false assertion that he had been on public property when he photographed the lawn mower" constituted a reckless disregard for the truth.

The court conceded that whether the detective made a statement in reckless disregard of the truth was a "tougher issue." In resolving its concern, the court examined

the Google Earth photo, which clearly depicts the public footpath and appellant's residence. Significantly, the Google Earth photo shows a relatively large, wooded area extending from the rear of appellant's house toward the public footpath. A State Department of Assessments and Taxation plat entered into evidence corroborates that a portion of the woods is public land. Detective Doyle testified that he left the public footpath and walked "20 yards maybe" into the woodline when he took photographs next to the lawnmower. Apparently referring to the Google Earth photo, the court noted that appellant's one-half acre property was relatively small within the context of the photo, thus making it difficult for the detective to know "when and if he steps off public property and onto private property." Moreover, the Google Earth photo clearly shows a wooded area that spans most of the intervening space between appellant's house and the footpath, corroborating the court's finding that the detective would not be able to discern when and where he left public property as he entered the woods.[4] While contrasts in vegetative care can certainly be one indication of the boundary between public space and private curtilage, the court noted that such maintenance is not dispositive as the level of care for property owned or maintained by public entities "often varies a great deal."

In addition to the lack of clear boundary lines evidenced by vegetation or maintenance, Detective Doyle provided the following testimony related to the lack of other indicia of property lines within the wooded area:

[4] Detective Doyle testified that he did not "look up where the property lines were" for appellant's property.

[PROSECUTOR]: [T]here was no gate that you had to pass at that point?

[DETECTIVE DOYLE]: No.

[PROSECUTOR]: Was there a gate at all?

[DETECTIVE DOYLE]: No.

[PROSECUTOR]: There was no fence?

[DETECTIVE DOYLE]: Fence? No.

[PROSECUTOR]: There was no private property sign?

[DETECTIVE DOYLE]: No.

[PROSECUTOR]: There was no [“]no trespassing[”] sign?

[DETECTIVE DOYLE]: No.

[PROSECUTOR]: There was no indication that you, that this was private property?

[DETECTIVE DOYLE]: No.

Furthermore, the mower was not located in a shed or other outbuilding, but instead sat among bushes "in the open." Although we have no quarrel with appellant's assertion that the overgrowth in the woods appears uninviting, it is undisputed that there were no boundary markers or other indicia of property lines in the area traversed by Detective Doyle. Despite defense counsel's protestations in both her written papers and during argument on the motion that "[t]he location of the John Deere mower at that time was on the property of 201 Old Denton Road," appellant simply failed to produce convincing evidence that the mower was, in fact, located within the physical boundary of his property. And though we acknowledge that Detective Doyle may have actually entered onto

appellant's property, we shall not disturb the court's factual finding that the detective could not have reasonably known whether he left public lands as he entered the woodline a mere 20 yards off the footpath. The court's fact findings on this point are supported by the evidence and we conclude that the court did not err in determining that Detective Doyle did not make a statement in reckless disregard for the truth.[5]

Finally, we reject appellant's argument that Detective Doyle's decision to get a warrant meant that he knew the mower was located on private property. On this issue, Detective Doyle did not testify directly to his mindset other than acknowledging that "there are certain occasions" where a warrant is necessary, and that on this occasion he "believed that it was better" to obtain a warrant. Absent a direct explanation from Detective Doyle as to why he believed it necessary to obtain a warrant in this instance, we are left to view the record in the "light most favorable to the prevailing party," here, the State. *McDonnell*, 484 at 78 (citing *Richardson v. State*, 481 Md. 423, 445 (2022)). We agree with the State that a reasonable inference may be deduced from the facts that Detective Doyle chose not to immediately seize the mower because such action would put appellant "on notice that he was a suspect and would have given him the opportunity to dispose of other evidence." This prudence in seeking a warrant is highly plausible given that Detective Doyle was

[5] We note that negligent or innocent mistakes do not pass the "daunting threshold" for a *Franks* hearing. *Fitzgerald*, 153 Md. App. at 643 ("*Allegations of negligence or innocent mistake are insufficient*." (emphasis in original) (quoting *Franks*, 438 U.S. at 171)). Appellant's submission, at most, established that the detective negligently traversed onto appellant's property.

simultaneously investigating the stolen go-kart parts, which he identified in the affidavit as being unreachable absent a warrant due to their "location on the property."[6]

We affirm the Circuit Court for Anne Arundel County's decision to deny appellant's motion for a *Franks* hearing.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[6] Appellant argues that Detective Doyle made a material misrepresentation because the "Report and Return with the Affidavit and Search Warrant listed that the lawnmower was located on [appellant's] property." We note that the inventory report was created after the warrant was executed, and thus has little bearing on statements contained in the affidavit.