

Circuit Court for Baltimore City
Case No.: 123160015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2501

September Term, 2023

CALVIN DORSEY

v.

STATE OF MARYLAND

Arthur,
Shaw,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: March 10, 2025

*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 May 11, 2023, detectives with the Baltimore City Police Department executed two search warrants. A grand jury in the Circuit Court for Baltimore City indicted Appellant on charges of possession with intent to distribute fentanyl, cocaine, and heroin, as well as firearm charges. He filed a pretrial motion to suppress the evidence seized in the searches, arguing under *Franks v. Delaware*, 438 U.S. 154 (1978), that the affiant on the search warrant applications made materially false statements that, once excised from the affidavit, vitiated the probable cause supporting the warrants. The circuit court held a hearing, took testimony, and denied the motion to suppress. Thereafter, Appellant entered a conditional guilty plea to possession with intent to distribute fentanyl and possession of a firearm after a disqualifying conviction, preserving his right to appeal the denial of his suppression motion. He poses a single question:

- I. Did the motions court err in denying [Appellant]’s motion to suppress evidence where he met his burden to prove that the affiant included statements in the affidavit that were intentionally false or were made with reckless disregard for the truth?

For the following reasons, we affirm the judgments of the circuit court.

BACKGROUND

In April 2023, Detective Elvin Cruz was assigned to the Northeast District Action Team of the Baltimore Police Department (“BPD”). He received information from a confidential informant (“CI”) that a Black male known as “Ant”, who later was identified as Appellant, was selling cocaine and heroin “around and from his apartment.” According to the CI, Appellant traveled from his apartment in his Honda Accord to meet buyers for narcotics sales.

As a result of that information, Detective Cruz set up two controlled buys between the CI and Appellant. On May 10, 2023, Detective Cruz applied for search warrants for Appellant’s apartment and vehicle. In the affidavits in support of the search warrants, which were identical, Detective Cruz averred in pertinent part:

The following facts are either known to Your Affiant through personal observation or have been obtained through reliable confidential sources, law enforcement reports and/or directly from other law enforcement officers and/or community complaints.

On a confidential date and time *during the third week of April* your Affiant met with CI # 7962 to coordinate a controlled purchase from 5912 Arizona Ave. Your Affiant searched CI prior to this operation and found no forms of currency or contraband on their person. CI was given a confidential amount of departmental currency and sent by a predetermined route to meet with Appellant in an undisclosed location. Few minutes later Your Affiant observed [Appellant] in a 2018 Honda Accord MD Tags of 1FF6906, meet with CI. CI conversed with [Appellant] for several seconds. Once the conversation was over, CI then exchanged U.S departmental funds for small items consistent with shape and size to street level sale. [Appellant] drove away from the area where he headed back to his residence 5912 Arizona Ave apartment A, while CI traveled back from the location on the predetermined route and met back with Your Affiant at an undisclosed location, CI was observed by your affiant and involved Detectives during their route of travel and made sure that, CI never stopped or met with any other persons on their way back to our meeting spot. Upon meeting with your affiant, CI handed your affiant a confidential amount of narcotics which was package for street level distribution. CI provided your affiant with a confidential amount of suspected narcotics and was then researched and found to have no other forms of narcotics or currency on their person.

On a confidential date and time *during the first week of May* your Affiant met with CI # 7962 to coordinate a second controlled purchase from 5912 Arizona Ave. Your Affiant search CI prior to this operation and found no forms of currency or contraband on their person. CI was given a confidential amount of departmental currency and sent by a predetermined route to meet

with [Appellant] in an undisclosed location. *Your Affiant observed [Appellant] leave his residence 5912 Arizona Ave again in the same silver 2018 Honda Accord MD Tags of 1FF6906, and met with CI. CI approached the driver’s side door and conversed with Appellant for several seconds. Once the conversation was over, CI then exchanged U.S departmental funds for small items consistent with shape and size to street level sale. [Appellant] drove away from the area, while CI traveled back from the location on the predetermined route and met back with Your Affiant at an undisclosed location. CI was observed by your affiant and involved Detectives during their route of travel and made sure that CI never stopped or met with any other persons on their way back to our meeting spot. Upon meeting with your affiant, CI handed your affiant a confidential amount of narcotics which was package for street level distribution. CI provided your affiant with a confidential amount of suspected narcotics and was then researched and found to have no other forms of narcotics or currency on their person.*

(Emphasis added). The warrants were issued on May 10 and 11, 2023.

After he was indicted, Appellant moved to suppress the evidence seized from his apartment and vehicle. He requested a hearing to examine Detective Cruz about certain averments in his affidavits, which Appellant alleged were deliberately false and/or made with reckless disregard for the truth. Specifically, he alleged that the averment that the first controlled purchase occurred during the “third week in April” 2023 was false because Appellant was in Miami, Florida, from April 21, 2023, through April 25, 2023.¹ With respect to the second controlled buy, he alleged that it could not have occurred during the “first week of May” 2023, because Appellant was “seriously ill” that week. Appellant attached an affidavit in which he averred to his travel out of the state and his illness. Appellant further alleged that Detective Cruz did not submit the drugs allegedly purchased

¹ We note that the third week of April began on Sunday, April 16, and ended on Saturday, April 22, 2023. Thus, Appellant’s alleged travel beginning on April 21, 2023, did not negate the averment in the affidavit.

by the CI to the evidence control unit for several days after each controlled buy was alleged to have occurred.

On February 2, 2024, the court held a hearing on the motion to suppress. As a threshold matter, it ruled that Appellant made a substantial preliminary showing of material falsehoods in the affidavits, entitling him to a *Franks* hearing.

Detective Cruz testified that he could not recall the precise dates of the two controlled buys, but by reference to the property sheets he completed for submission of the narcotics purchased by the CI to the evidence control unit, he testified that the first sale was on April 28, 2023, and the second sale was on May 10, 2023. We take judicial notice of the fact that April 28, 2023, was at the end of the fourth week in April and May 10, 2023, was in the middle of the second week in May.

Detective Cruz testified that he observed both controlled buys. Appellant was a “mobile dealer,” meaning that he drove to a location to meet his buyer. On April 28, 2023, Detective Cruz “observed [Appellant] coming to the area where he met the [CI]” and observed the CI give Appellant money in exchange for narcotics. The sales occurred inside a vehicle. When Appellant and the CI left the area, Appellant went home, and the CI went to a prearranged location to meet with Detective Cruz. He had a “clear view of [Appellant]’s face” and identified him in the courtroom. On May 10, 2023, he observed the “[s]ame exact thing.”

Defense counsel queried whether Appellant was surveilled before the controlled buys. The detective responded that his role was to have “eyes” on the CI “at all times” and that “different units” watched Appellant.

Defense counsel argued that Detective Cruz’s testimony demonstrated two clear misstatements, namely that there was not a controlled buy in the third week of April or in the first week of May. He argued that the misstatements went “beyond sloppiness” and amounted to “false and misleading” statements. Defense counsel further argued that Detective Cruz’s averment that he “observed [Appellant] leave his residence” prior to the second controlled buy was false because he testified at the hearing that he stayed with the CI the entire time. This false statement cast doubt upon whether Appellant came from his apartment or returned to his apartment after the controlled buys, which eliminated a nexus between the sales and one of the places to be searched. Defense counsel maintained that the court should “strike out any reference to [those] sale[s]” from the affidavits, which would eliminate the probable cause supporting the warrant applications.

The State responded that the discrepancy between the dates was not an intentionally false statement, or a statement made in reckless disregard of the truth, but rather an inadvertent mistake. Accepting that the controlled buys occurred slightly later than Detective Cruz averred did not alter the basis for probable cause. With respect to the averment in the affidavit that Detective Cruz observed Appellant leave his apartment prior to the May 2023 controlled buy, the State argued that his testimony that he remained with his CI the entire time did not preclude the possibility that he also observed Appellant leave his residence.

The court ruled that Appellant did not make a showing that Detective Cruz made intentionally or recklessly false material statements in the affidavits. The “errors . . . with respect to the dates [were] essentially [s]crivener’s errors, sloppy perhaps.” The court was

not persuaded that Detective Cruz was attempting to mislead the court. The court further found that the evidence did not establish that Detective Cruz could not have personally observed Appellant leave his residence prior to the May 2023 controlled buy. Rather, his testimony that he remained with the CI the entire time was not inconsistent with him also observing Appellant leave his residence. The court emphasized that the issues raised by Appellant appropriately would be fodder for cross-examination at trial but were not intentional or reckless misrepresentations of fact under *Franks*. For those reasons, the court denied the motion to suppress.

STANDARD OF REVIEW

We review a trial court’s denial of a motion to suppress based solely upon the information contained in the record of the suppression hearing. *Trott v. State*, 473 Md. 245, 253–54 (2021). We consider the facts found by the trial court in the light most favorable to the prevailing party, here the State. *Id.* at 254. “We accept facts found by the trial court during the suppression hearing unless clearly erroneous.” *Washington v. State*, 482 Md. 395, 420 (2022). “Findings cannot be clearly erroneous ‘[i]f there is any competent material evidence to support the factual findings of the trial court[.]’” *Small v. State*, 464 Md. 68, 88 (2019) (quoting *YIVO Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)).

We review *de novo* the trial court’s application of law to those facts. *Washington*, 482 Md. at 420. “When a party raises a constitutional challenge to a search or seizure, we undertake an ‘independent constitutional evaluation by reviewing the relevant law and

applying it to the unique facts and circumstances of the case.” *Trott*, 473 Md. at 254 (quoting *Grant v. State*, 449 Md. 1, 14–15 (2016)).

DISCUSSION

The Fourth Amendment, made applicable to the States through the Fourteenth Amendment, protects the right of the people to be free from “unreasonable searches and seizures.” *Williamson v. State*, 398 Md. 489, 501 (2007) (citing *United States v. Sharpe*, 470 U.S. 675, 682 (1985)). As a means of ensuring that reasonableness, the Warrant Clause of the Fourth Amendment requires that police obtain a warrant supported by probable cause. *Walls v. State*, 179 Md. App. 234, 246 (2008).

Ordinarily, a warrant is presumed valid and the court’s assessment of whether it was supported by probable cause is confined to the four corners of the warrant. *Ferguson v. State*, 157 Md. App. 580, 592–93 (2004). In *Franks v. Delaware*, however, the United States Supreme Court recognized that the Warrant Clause “would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause” and thereby “misle[a]d the magistrate” in order to obtain a warrant. 438 U.S. at 168. It created an exception to the “four corners” doctrine to allow a defendant to challenge the veracity of an affidavit supporting a warrant:

Franks v. Delaware set out a procedure, requiring a detailed proffer from the defense before the defendant is even entitled to a hearing to go behind the four corners of the warrant. Under *Franks*, when a defendant makes a substantial preliminary showing that the affiant 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 support a finding of probable cause, the defendant is then entitled to a hearing on the matter. The burden is on the defendant to establish knowing or reckless falsity by a preponderance of the evidence before the evidence will be

suppressed. Negligence or innocent mistake resulting in false statements in the affidavit is not sufficient to establish the defendant’s burden.

McDonald v. State, 347 Md. 452, 471 n.11 (1997) (citing *Franks*, 438 U.S. at 171–72).

In this case, the trial court ruled that Appellant made a substantial preliminary showing that false statements were included in the warrant affidavit and that, with the alleged false statements excised, the affidavit would not support a finding of probable cause. Appellant contends that the motions court clearly erred by finding that Detective Cruz did not make knowing or reckless false statements in the warrant applications concerning the dates of the controlled buys and whether he observed Appellant leave his home prior to the May 2023 controlled buy. He maintains that if the false information were stricken, the averments of the affidavits would not support a finding of probable cause and, thus, the court erred as a matter of law by not suppressing the evidence seized.

The State responds that the motions court did not clearly err by finding that Detective Cruz was, at most, sloppy, when he described the period during which the controlled buys occurred. It also did not err by finding that Detective Cruz’s testimony that he remained with the CI throughout the controlled buy did not exclude the possibility that he also observed Appellant leave his apartment prior to the May 2023 controlled buy. Further, the State emphasized that the prefatory language in the affidavit establishes that Detective Cruz relied upon both his personal observations and information supplied by other law enforcement officers.

We begin with the dates of the controlled buys. The motions court found that the erroneous designations in the warrant affidavits of the week when each drug sale occurred

were negligent but did not rise to the level of intentionality or recklessness. The motions court did not clearly err in making this finding. Detective Cruz’s testimony established that the first controlled purchase occurred in the fourth week of April, rather than in the third week of April, and that the second controlled purchase occurred in the second week of May, rather than the first week of May. Given that Detective Cruz did not include exact dates so as to protect the identity of the CI, it was reasonable for the court to infer that he was merely mistaken in describing the date ranges, not that he sought to mislead the magistrate. *See McDonald*, 347 Md. at 471 n.11 (emphasizing that mere negligence “resulting in false statements in the affidavit is not sufficient to establish the defendant’s burden” under *Franks*).

We turn to Detective Cruz’s averment that he “observed [Appellant] leave his residence” before Appellant met with the CI on May 10, 2023. Detective Cruz testified that his role was to stay with the CI throughout the controlled purchase and that “different units” watched Appellant. Detective Cruz had “eyes on [the CI] until the control[ed] purchase was conducted.” Neither the State nor defense counsel asked Detective Cruz directly whether he observed Appellant leave his residence. Given the absence of evidence to the contrary, the court did not clearly err by drawing a reasonable inference in favor of the State that Detective Cruz could have observed Appellant leave his residence and also maintained surveillance of the CI.²

² We agree with the State that the prefatory language in the affidavit also permitted an inference that other officers observed Appellant leave his residence and that Detective Cruz negligently ascribed that observation to himself in the affidavit. *See Hounshell v.* (continued)

**JUDGMENTS OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

State, 61 Md. App. 364, 379–80 (1985) (search warrant affiant’s negligence in suggesting that he personally interviewed witnesses when, in fact, they were interviewed by other officers was not an intentional or reckless falsehood justifying relief under *Franks*). We limit our analysis to the findings made by the motions court, however.