Circuit Court for Baltimore City
Case No. 119238027

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 135

September Term, 2022

LAWRENCE BANKS

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: April 20, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

A Baltimore City grand jury charged Lawrence Banks (also known as Malik Samartaney) with the second-degree murder of his adult daughter, D.F., and the unlawful disposal of her body.

Before trial, Banks requested a "*Franks* hearing" – a hearing, under *Franks v. Delaware*, 438 U.S. 154 (1978), at which "a defendant is permitted to go beyond the four corners of [a search] warrant and cross-examine the affiant to prove [that the affiant] made a materially misleading statement or omission." *Thompson v. State*, 245 Md. App. 450, 468 (2020). The court found that Banks had not met the "rigorous threshold requirements" (*Fitzgerald v. State*, 153 Md. App. 601, 642 (2003), *aff'd*, 384 Md. 484 (2004)) that would entitle him to a *Franks* hearing.

At his trial, the jury convicted Banks of second-degree murder and of unlawfully disposing of the victim's body. The court sentenced Banks to 40 years of incarceration for second-degree murder and a consecutive one-year term of incarceration for the unlawful disposal of a human body. He appealed.

Banks presents one question: "Did the Circuit Court err when it denied Banks's request for a *Franks* hearing?"

For the reasons to follow, we shall affirm the judgments of the circuit court.

BACKGROUND

At the end of May of 2019, the Baltimore City Police Department executed a search warrant at Banks's apartment.

In the affidavit for the warrant, the affiant stated that on May 12, 2019, the police had responded to a call about "a suspicious bag in a shopping cart." The shopping cart

was "next to the trash dumpster in the parking lot" "at the rear of [the] 3900 blk. of Clarks Lane[.]" The bag contained the torso of a female body. "The body consisted of the shoulders and arms, but was missing both hands, both feet, both lower legs, and the head." There were three "distinctive tattoos" on the victim's body. The affiant disseminated a photograph of one of the tattoos in an attempt to get information about the victim's identity.

The affidavit went on to state in relevant part:

> On 5/29/19 this detective received a phone call from a female who resides in North Carolina. The caller stated that the pictures of the tattoo and the body found at the dumpster was [sic] her mother [D.F.] . . . . The caller has not talked [to D.F.] since the early part of May 2019. The caller also told this detective that the person responsible for [D.F.'s] death was Lawrence Banks also known as Marty Banks . . . . The caller said that he [Banks] was also responsible for killing her grandmother and other relatives. It should be noted that this case was confirmed under compalint [sic] #916K40661. I then spoke with another relative who stated that the tattoos shown on the body were identical to that [sic] of [D.F.]. Pictures were shown to this detective of [D.F.'s] tattoo located on her abdomen. It is identical to the tattoo on the recovered torso. Information from the family also revealed that the Mr. Banks resides at 4001 Clarks Manor Road Apt. 214, which is around the corner from where the body was discovered (approximately 30 yards). This location is listed in the name of Lawrence Banks. Further investigation determined that the victim, [D.F.] was staying at the location and was in a sexual relationship with her father, Lawrence Banks.

Banks requested a *Franks* hearing at which he could attack the veracity of the affiant's statements. Banks was entitled to a *Franks* hearing only if he could make "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[.]" *McDonald v. State*, 347 Md. 452, 471 n.11 (1997); *accord Thompson v. State*, 245 Md. App. at 465.

At Banks's request, the court convened a hearing to determine whether he had made the requisite preliminary showing that would entitle him to a *Franks* hearing.

At the hearing, defense counsel argued that the affidavit contained several pieces of false information. First, the affidavit stated that Banks's address was "4001 Clarks Manor Road Apt. 214[,]" but his address was actually 4001 Clarks Lane, Apartment 214. Second, the affidavit specified that the apartment "is listed in the name of Lawrence Banks[,]" but the apartment was actually listed under the name that Banks legally adopted some 30 years ago, Malik Samartaney. Third, the affidavit estimated that the distance between Banks's apartment and the location where the body was found was "approximately 30 yards," but defense counsel asserted that the distance was actually "over 100 yards." Fourth, the affidavit stated that, according to the caller, Banks "was also responsible for killing [the caller's] grandmother and other relatives" and that "this case was confirmed under [complaint] #916K40661." According to defense counsel, however, complaint #916K40661 "stems from an incident in 1991 in which Mr. Banks had pled guilty to the homicide of his son." Defense counsel offered to submit an affidavit from Banks or have him testify "for the limited purpose of this motion," but adduced no evidence other than a copy of a burglary charge that he had filed against D.F.[1]

[1] Defense counsel also asserted that the affidavit was false insofar as it asserted that D.F. was staying with Banks and was in a sexual relationship with him. Perhaps because the State responded to one of his motions in limine by presenting text messages proving, by clear and convincing evidence, that Banks was in a sexual relationship with D.F., he no longer challenges the truth of that assertion. He does, however, argue, almost

The State responded that D.F.'s daughter called the Baltimore Police Department from North Carolina and stated that "she recognized the photograph of the tattoos as those of her mother." D.F.'s daughter, the State asserted, told the detectives that her mother was in Baltimore and was staying with Banks. According to the State, D.F.'s daughter also told the detectives that Banks lived on Clarks Manor Road.

Regarding the detective's review of complaint #916K40661, the State asserted that in 1991 Banks pleaded guilty to murdering his son. The case file indicated that Banks's son had reported him to Child Protective Services for sexually and physically abusing D.F. Banks allegedly murdered his son to prevent him from testifying about the allegation of sexual abuse. The State asserted that the affidavit referred to a sexual relationship between Banks and D.F. because of those prior allegations of sexual abuse.

The State proceeded to recount how the detectives "looked further back" into Banks's history, because the caller had said that he "was responsible for the killing of her grandmother." The State explained:

> Detectives found a 1976 unsolved murder of [D.F.'s] mother . . . . Mr. Banks had been convicted in 1975 or '76 of an assault with intent to murder [D.F.'s mother]. Our victim in this case, [D.F.], . . . was nine months old. He had been accused of and convicted of throwing [D.F.] through a plate glass window and causing about 22 stitches to her at the time.
>
> Shortly after that assault occurred, [D.F.'s] mother, went missing.

in passing, that the affidavit did not detail the "further investigation" that the affiant had performed and, thus, that the information about the sexual relationship cannot count towards a determination of whether there was probable cause to issue a warrant. As discussed below, we conclude that the affidavit was sufficient to establish probable cause even without the assertions that Banks challenged as false.

Although Banks had "never been charged" in the death of D.F.'s mother, the State asserted that "[h]e has always been a suspect in that case." According to the State, the reference to the death of the caller's grandmother was part of "the detective's attempt to corroborate what this caller was telling him."

Lastly, the State responded to defense counsel's argument about the distance from Banks's apartment to the location where D.F.'s body was found. According to the State: "If you were to cut through the wooded path where the video shows that the individual comes from, it's significantly less than [100 yards], because it's a more direct route."

The court concluded that Banks had not met his burden. The court explained that it found no specific mistruths or falsehoods in the affidavit. Even if there were specific mistruths or falsehoods, the court found that they would not have made a difference in whether the affiant could have obtained a search warrant. Accordingly, the court denied the request for a *Franks* hearing.

The case proceeded to a trial, at which the jury found Banks guilty of second-degree murder and of unlawfully disposing of a body. He noted a timely appeal, in which his sole claim concerns the court's decision not to conduct a *Franks* hearing.[2]

STANDARD OF REVIEW

In reviewing the decision to deny a *Franks* hearing, this Court defers to the circuit court's factual findings unless they are clearly erroneous (*Thompson v. State*, 245 Md.

[2] Because Banks does not challenge any of the rulings at his trial, it is unnecessary for us to recount the evidence at the trial, except to say that it was sufficient to support the jury's verdict.

App. at 469), but reviews the court's legal determinations without deference. *See Carter v. State*, 236 Md. App. 456, 467 (2018).

ANALYSIS

Banks claims that the circuit court erred in denying his motion for a *Franks* hearing. He argues that the defense "met its burden of showing that the affidavit included information that demonstrated a reckless disregard for the truth." The State responds that the court correctly concluded that Banks failed to meet his burden under *Franks*.

The Fourth Amendment to the United States Constitution, made applicable to the states via the Fourteenth Amendment, states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"Reasonableness" within the meaning of the Fourth Amendment generally requires that law enforcement officers obtain a judicial warrant before effectuating a search. *See, e.g., State v. Johnson*, 458 Md. 519, 533 (2018). A warrant must be supported by probable cause, which is "a 'practical, nontechnical conception' that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent [individuals], not legal technicians, act.'" *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). "The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *Maryland v. Pringle*, 540 U.S. at 371. However, "'[t]he substance of all the definitions of probable

cause is a reasonable ground for belief of guilt,' . . . and that the belief of guilt must be particularized with respect to the person to be searched or seized[.]" *Id*. (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)).

"A judicially issued search warrant is presumptively valid, and the burden is allocated to the defendant to rebut that presumed validity." *Wood v. State*, 196 Md. App. 146, 164 (2010). "A mere assertion is not an effective rebuttal." *Id.*

"When reviewing the basis of the issuing judge's probable cause finding, we ordinarily confine our consideration of probable cause solely to the information provided in the warrant and its accompanying application documents." *Greenstreet v. State*, 392 Md. 652, 669 (2006); *accord Whittington v. State*, 474 Md. 1, 33 n.25 (2021); *Patterson v. State*, 401 Md. 76, 90 (2007). "We do not consider evidence that seeks to supplement or controvert the truth of the grounds advanced in the affidavit." *Greenstreet v. State*, 396 Md. at 669; *accord Whittington v. State*, 474 Md. at 33 n.25; *Patterson v. State*, 401 Md. at 90. The "four corners" doctrine is firmly established and rigorously applied. *Fitzgerald v. State*, 153 Md. App. at 639-40.

Franks, however, creates an exception to the "four corners" doctrine:

> [W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Franks v. Delaware, 438 U.S. at 155-56.

This Court has described that threshold as "daunting." *Fitzgerald v. State*, 153 Md. App. at 643. "[T]he challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine." *Franks v. Delaware*, 438 U.S. at 171. "There must be allegations of deliberate falsehood or reckless disregard for the truth, and those allegations must be accompanied by an offer of proof." *Id.* "Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained." *Id.* "Allegations of negligence or innocent mistake are insufficient." *Id.* Moreover, "[t]he deliberate falsity or reckless disregard whose impeachment is permitted . . . is only that of the affiant, not of any nongovernmental informant." *Id.*

"The burden on the defendant in requesting a *Franks* hearing is 'a substantial preliminary showing[.]'" *Thompson v. State*, 245 Md. App. 450, 468 (2020). But even if the movant makes that showing, a hearing is not necessarily required: "if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required." *Franks v. Delaware*, 438 U.S. at 171-72.

Here, Banks argues that there were four falsehoods in the affidavit in support of the warrant application: Banks's address, the name on his lease, the distance between his apartment and the location where D.F.'s body was found, and the representation that the

1991 case involved the murder of D.F.'s mother (and the caller's grandmother). We shall take each one of these alleged falsehoods in turn.

First, the address stated in the affidavit is, as the circuit court recognized, "slightly different" from Banks's actual address: the affidavit states that Banks resided at "4001 Clarks *Manor Road*, Apt. 214," but he actually resided at 4001 Clarks *Lane*, Apt. 214." (Emphasis added.)[3] Thus, the affidavit correctly stated Banks's street number and apartment number, but erroneously recounted part of the name of the street on which he resided. In our judgment, this trivial inaccuracy is akin to a typographical error. "A defendant cannot demonstrate entitlement to a *Franks* hearing by merely identifying typographical errors in the affidavit." *United States v. Frazier*, 423 F.3d 526, 539 (6th Cir. 2005); *accord United States v. Johnson*, 690 F.2d 60, 65 n.3 (3d Cir. 1982).

Second, the affidavit states that Banks's lease was in his name, but it was actually in the name of Malik Samartaney, not Lawrence Banks. Malik Samartaney and Banks are, however, the same person. For that reason, the court correctly determined that the affiant did not make a false statement when he said that the lease was in Banks's name.

Third, the affiant estimated that the distance between Banks's apartment and the location of D.F.'s body was "approximately 30 yards," but Banks claimed that he lived over 100 yards away from that location. Yet, despite the Supreme Court's admonition that "[a]ffidavits or sworn or otherwise reliable statements of witnesses should be

[3] Later in the affidavit, the affiant requested a search and seizure warrant for "4001 Clarks Lane Road Apt. 214," which is still "slightly different" from actual address, but not as different as the initial phrasing.

furnished, or their absence satisfactorily explained[,]"[4] Banks adduced no evidence to support that claim. Moreover, the affiant's assertion was, by its terms, a mere approximation, and did not purport to be a precise calculation. And, in any event, the affidavit also stated that Banks's apartment was "around the corner" from the location where D.F.'s body was found, and Banks did not dispute that assertion. In these circumstances, the circuit court correctly determined that the allegedly inaccurate estimate was not "a material falsehood or misrepresentation in an attempt to obtain a search warrant."

Fourth and finally, the affiant wrote that Banks's responsibility for killing the caller's grandmother "and other relatives" was "confirmed" by a review of [complaint] #916K40661," but that case actually concerns Banks's conviction (via an *Alford* plea[5]) for murdering his son (D.F.'s brother), and not his responsibility for killing the caller's grandmother (D.F.'s mother). According to the State, however, Banks "had always been a suspect" in the death of the caller's grandmother, who had been found dead in her apartment in 1976, after she had accused Banks of assaulting her and of throwing D.F., who was then an infant, through a plate-glass window. Consequently, one can reasonably infer that the case file for the 1991 murder of Banks's son would probably contain

[4] *Franks v. Delaware*, 438 U.S. at 171.

[5] *See North Carolina v. Alford*, 400 U.S. 25, 26 (1970). In an *Alford* plea, criminal defendants assert their innocence and do not admit guilt, but acknowledge that the prosecution has evidence sufficient to convince a factfinder of their guilt beyond a reasonable doubt.

information about other crimes that Banks was suspected of committing, such as the 1976 murder of the child's mother.[6] Because Banks virtually produced no evidence, and thus did not produce the file that the affiant claimed to have reviewed, the court did not err in finding that this aspect of the affidavit was not false.

In summary, Banks failed to make the "substantial preliminary showing of falsity" that is a prerequisite for a *Franks* hearing. Consequently, the circuit court did not err in denying his request for such a hearing.

Even if any of the statements were false, however, Banks's request for a *Frank*s hearing would fail, because he made no attempt to show that the affiant intentionally or recklessly made a false statement. In fact, he produced virtually no evidence at all. On this record, therefore, the circuit court had no basis to infer that any of the alleged inaccuracies were anything more than innocent or negligent mistakes, which do not suffice to justify a *Franks* hearing. *See, e.g., Wilson v. State*, 87 Md. App. 659, 667-68 (1991).

Finally, even if any of the statements were false, and even if Banks had showed that the affiant intentionally or recklessly made a false statement, his request for a *Frank*s hearing would still fail, because the affidavit established a substantial basis to find

[6] In support of this contention, the State cites a newspaper article from 1992, which reports that, at Banks's plea hearing, the prosecutor mentioned the discovery of the body of the child's mother in 1976. Jay Apperson, Father Faces Sentence in Son's Death, 17-Year-Old was Shot in Nov., *Baltimore Sun* (Sept. 19, 1992), at 1B, 1992 WLNR 709435. According to the article, the prosecutor asserted that "the case remains open." *Id.*

probable cause without the challenged statements.[7] If the court completely disregarded the challenged assertions, the affidavit still contained the following assertions:

- The police found the dismembered body of a woman in a shopping cart next to a dumpster at 3900 Clarks Lane in Baltimore.
- The body had three distinctive tattoos on its torso.
- The police disseminated photographs of the tattoos to the public.
- After seeing the photographs, D.F.'s daughter informed the police that her mother had the "identical" tattoos.
- Another relative also informed the police that tattoos on the victim's body were "identical" to those of D.F.
- The police had found the dismembered body a little less than three weeks earlier, and D.F.'s daughter said that she had not spoken to her mother for about that same length of time ("since the early part" of the month).
- D.F.'s family reported that Banks "resided around the corner" from where the body was found.
- The investigation revealed that D.F. had been "staying" with Banks, that she "was in a sexual relationship with" him, and that he was her father.
- Finally, the investigation also revealed that Banks had previously been convicted of murdering his son and was suspected of murdering the mother of his son (and of D.F.).

In view of these unchallenged allegations, the warrant application, in our judgment, would have established probable cause (and would certainly have established a

[7] A reviewing court determines not whether there *was* probable cause (that is, whether the court itself would find probable cause), but "whether *the issuing judge had a substantial basis* for concluding that the warrant was supported by probable cause." *Patterson v. State*, 401 Md. 76, 89 (2007) (emphasis added).

substantial basis to find probable cause) if all of the allegedly false assertions had been deleted. For this additional reason, therefore, the circuit court did not err in denying Banks's request for a *Franks* hearing.[8]

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

[8] Banks argues that the circuit court erred in allegedly relying on the prosecutor's account of information that went beyond the four corners of the affidavit. In our view, the error, if any, is immaterial. Banks failed to make a preliminary showing that the affidavit contained any false statements, that the affiant intentionally or recklessly made any false statements, and that any of the allegedly false statements were essential to a finding of probable cause. In these circumstances, it makes no difference whether the court heard or entertained information that went beyond the four corners of the affidavit. The court could have (and may well have) denied the motion even without that information.