

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1164

September Term, 2016

RUPERT STAMPS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 5, 2017

*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.

In 2015, Rupert Stamps, appellant, was convicted by a jury in the Circuit Court for Montgomery County of four counts of conspiracy to commit armed robbery. This Court affirmed his convictions on direct appeal. *See Stamps v. State*, No. 2260, Sept. Term 2015 (filed February 22, 2017).

While his direct appeal was pending, Stamps filed a pleading entitled “Motion for a *Franks* Hearing.”¹ In that motion, Stamps claimed that prior to being charged in this case, he was arrested pursuant to a warrant in another case that was supported by an affidavit containing materially false statements of fact. He further asserted that when he was arrested on that warrant, some of his personal belongings were improperly seized and that one of those items, a cell phone, was introduced as evidence at his trial in this case. The trial court denied Stamps’s motion without a hearing. On appeal, Stamps raises three issues that reduce to one: whether the trial court erred in denying his “Motion for a *Franks* Hearing.” For the reasons that follow, we affirm.²

Stamps waived his right to request a *Franks* hearing, or to claim on appeal that such a hearing was required, because he did not request a hearing prior to trial. *See Sinclair v.*

¹ *See Franks v. Delaware*, 438 U.S. 154 (U.S. 1978) (holding that in certain defined circumstances the trial court may hold a hearing to determine whether a police officer’s affidavit used to obtain warrant that yields incriminating evidence was based on false statements by the police officer).

² We also deny the State’s motion to dismiss the appeal. Because the circuit court’s order conclusively resolved the issue of whether Stamps was entitled to a *Franks* hearing, leaving him with no further avenue to obtain the relief he requested, we find that it constituted a final judgment and was therefore appealable. *See generally In re Katherine L.*, 220 Md. App. 426, 437 (2014) (“In determining whether a particular court order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case.” (citation omitted)).

State, 444 Md. 16, 35 (2015) (holding that the failure to file a motion to suppress prior to trial constitutes a waiver of that motion). And the fact that his *Franks* claim was raised in a post-trial motion does not warrant a different conclusion, as a “post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for non-preservation.” *Torres v. State*, 95 Md. App. 126, 134 (1993). Consequently, we need not consider the merits of Stamps’s claim on appeal.

But even if we assume that Stamps had not waived this claim, his motion was denied properly because it failed to meet the threshold requirement for obtaining a *Franks* hearing. *See Franks v. Delaware*, 438 U.S. 154, 171 (1978) (“To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory . . . [T]here must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.”).

**MOTION TO DISMISS DENIED.
JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT**