Circuit Court for Frederick County
Case No. 10-K-17-0060129

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2137

September Term, 2019

JUSTIN MITCHELL

v.

STATE OF MARYLAND

Fader,
Nazarian,
**Gould,

JJ.

Opinion by Gould, J.

Filed: September 15, 2021

** Steven B. Gould, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a specially assigned member of this Court.

Appellant Justin Mitchell was found guilty of possession of Alprazolam[1] and possession with intent to distribute Alprazolam, possession of marijuana and possession with intent to distribute marijuana, and possession of Methandienone. On appeal, Mr. Mitchell claims error in the circuit court's denial of his motion to suppress evidence obtained in the execution of a search and seizure warrant. Mr. Mitchell also contends that the circuit court abused its discretion in refusing to enforce the State's discovery obligations. Finding no reversible error, we affirm.

BACKGROUND FACTS AND LEGAL PROCEEDINGS

In 2016, Mr. Mitchell began renting a bedroom in a single-family home owned by Kristi and Curtis Hildebrand, located at 10704 Powell Road, Thurmont, Maryland. Mr. Mitchell was working at the time he rented the room, but shortly before June 2017, Ms. Hildebrand noticed changes in Mr. Mitchell's routines and activities. Instead of going to work, Mr. Mitchell stayed in the house for days at a time. Previously, when it was time to pay the rent, he would go to the bank, withdraw cash, and then pay his rent with the cash. In June 2017, Ms. Hildebrand noticed that Mr. Mitchell seemed to have "wads of cash" on him. On June 14, Mr. Mitchell was anxious and said that he was waiting for the delivery of a package. When a package for him arrived that day, he took it to his room, and Ms. Hildebrand subsequently detected a strong odor of marijuana coming from his room. Ms. Hildebrand called her husband at work and told him what had happened.

[1] Alprazolam is commonly known as Xanax.

Ms. Hildebrand testified that Mr. Mitchell received another package on June 20, and the same thing happened: he took the package to the room, she detected a strong odor of marijuana coming from his room, and she called her husband to inform him of what had happened. Mr. Mitchell then left the house.

Mr. Hildebrand came home from work and entered Mr. Mitchell's room, and there he found needles, "Narcan," some rectangular pills, and marijuana. The Hildebrands called the police. Ms. Hildebrand testified that this was not the first time she had seen such pills in his room.

Deputy First Class Mendez of the Frederick County Sheriff's office was the first officer to respond. The Hildebrands relayed what they had observed and stated that Mr. Mitchell possessed a gun. Ms. Hildebrand also told Deputy Mendez that she had seen Mr. Mitchell run out of the house and hand pills and marijuana to people in cars in exchange for money.

Deputy Mendez detected the smell of marijuana in the house, which was strongest outside of Mr. Mitchell's bedroom. He conveyed this information to Sergeant Sadat Caliskan[2] and also to Deputy First Class Daniel Schlosser. Based on this information, Deputy Schlosser prepared an Application and Affidavit for Search and Seizure Warrant for the residence (the "Affidavit"). After being presented with the Affidavit, Judge Nicklas of the Circuit Court for Frederick County issued a search and seizure warrant.

[2] Also on June 20, 2017, Sergeant Caliskan followed Mr. Mitchell in his car, stopped him for a traffic violation, and arrested him on suspicion of being armed. A search of Mr. Mitchell's person yielded just over $2,000 in cash, but no weapon.

That same day, the Frederick County Sheriff's Office Narcotics Unit executed the warrant and collected the following items from Mr. Mitchell's bedroom: a metal spoon, a plunger from a syringe, suspected Xanax bags, a black bag with ammunition, marijuana, a digital scale, packaging and a vacuum sealer, a shotgun, a handgun, ziplock bags containing a steroid, morphine pills, a flip phone, and bags of pills.

Mr. Mitchell was indicted by a grand jury and charged with, among other crimes, possession of Alprazolam and possession with intent to distribute Alprazolam; possession of marijuana and possession with intent to distribute marijuana; and possession of Methandienone.[3]

Mr. Mitchell moved to suppress the evidence seized pursuant to the warrant, arguing that the warrant was not supported by probable cause. He also requested a *Franks* hearing.[4] The court denied his motion, ruling:

> All right. At this point, I have reviewed the application upon which Judge Nicklas made his decision to issue the warrant. And that is more than sufficient to justify the warranted issued by Judge Nicklas. At this point, then we get to whether Mr. Mitchell is entitled to a Franks hearing as to the facts in that warrant; whether they are material omissions or not or if they are false statements or not.
>
> Beginning with do you get a hearing and have you made sufficient proffers to get a hearing and that's difficult. It has to be a very substantial

[3] Mr. Mitchell was charged with a total of 12 crimes: two counts of possession of controlled dangerous substance ("CDS") equipment, one count of possession of marijuana, one count of possession of marijuana with intent to distribute, four separate counts for possession of CDS--one for Alprazolam, one for methadone, one for morphine, and one for Metandienone, and three counts for possession with intent to distribute CDS--one for Alprazolam, one for methadone, and one for Metandienone, and one count for possessing a firearm under sufficient circumstances to constitute a nexus to a drug trafficking crime.

[4] A *Franks* hearing is a hearing to examine an affiant on statements made in a search warrant affidavit. *See Franks v. Delaware*, 438 U.S. 154 (1978).

> before - - a substantial basis before you actually get to that Franks hearing. Now, the fact that there were other tenants living in there, even if you put that in the warrant, that would not have affected the validity or changed whether Judge Nicklas issued it.
>
> It is for the house, not for you. Not for your room. It's for the house. So whether it's you or 20 people living there, it doesn't affect the validity of the application for the warrant. Also, the odor whether it is coming from your room or from the entire house which as you proffered could only be from the house and not from your room they couldn't specify that was from your room. But, again, the warrant is not for your room. It's for the house, admitting your room is part of the house.
>
> And the notice of eviction which you have sometimes referred to as a lease because I'm going to take it that you always meant the notice of eviction. Whenever you spoke or wrote you meant that. That omission is not material to Judge Nicklas issuing a warrant for the search of the house. And the fact that that your usual practice was to leave the bag in the kitchen or take it to the kitchen that was in the . . . application.
>
> That was actually put in there so Judge Nicklas knew about that. And the fact that it was found under other bags was also put in there. You have not reached the very substantial burden necessary for the threshold for a hearing - - a Franks hearing - - in your motion. Your motion for a Franks hearing is denied and the motion to suppress is denied. Okay.

After a two-day trial, a jury convicted Mr. Mitchell of possession of Alprazolam and possession with intent to distribute Alprazolam; possession of marijuana and possession with intent to distribute marijuana, and possession of Methandienone.[5] He was sentenced to five years' imprisonment on the possession with intent to distribute marijuana, a concurrent five years for the possession with intent to distribute Alprazolam, and a concurrent one year for the possession with intent to distribute Methandienone. The possession convictions merged into the possession with intent to distribute convictions.

[5] Prior to trial, the State nolle prossed six of the counts: two counts for possession of CDS equipment, one count for possession of methadone, one count for possession of morphine, one count for possession with intent to distribute methadone, and one count for possession with intent to distribute Metandienone.

The court suspended all time other than time served, and placed Mr. Mitchell on two years' probation.

Mr. Mitchell timely appealed.

On appeal, Mr. Mitchell raises two questions, which we have slightly rephrased, as follows:[6]

1. Did the trial court err in denying the motion to suppress?
2. Did the trial court err in not requiring disclosure of witness statements?

DISCUSSION

I.

THE MOTION TO SUPPRESS

A.

STANDARD OF REVIEW

When reviewing a magistrate's determination that there was sufficient probable cause to support a warrant, a "*de novo* determination is not the appropriate standard." *Fitzgerald v. State*, 153 Md. App. 601, 628 (2003). We are not "permitted to make [our] own independent determination as to probable cause." *Id.*; *see also State v. Johnson*, 208 Md. Ap. 573, 584 (2012) (quoting *Illinois v. Gates*, 462 U.S. 213, 236 (1983)) ("We have

[6] Mr. Mitchell's original questions were:

1. Did the lower court err in denying the motion to suppress?
    a. Did the lower court err in finding substantial basis for probable cause for the issuance of the warrant?
    b. Did the lower court err in denying the request for a "*Franks*" hearing?
2. Did the lower court err in failing to require disclosure of witness statements and information?

repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review."); *State v. Jenkins*, 178 Md. App. 156, 164 (2008) (quotation and emphasis omitted) ("The issue is no longer the familiar one of whether probable cause exists; that has already been determined by someone else.").

Instead, we "pay 'great deference'" to the magistrate's determination. *West v. State*, 137 Md. App. 314, 322 (2001). As the Supreme Court explained:

> Because a search warrant provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime, we have expressed a strong preference for warrants and declared that in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall. Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause, and we have thus concluded that the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination.

United States v. Leon, 468 U.S. 897, 913-14 (1984).

"[T]he traditional standard for review of an issuing magistrate's probable cause determination has been that, *as long as the magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more.*" *West*, 137 Md. App. at 322. "The substantial basis standard involves something less than finding the existence of probable cause and is less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial factfinding in a trial setting." *State v. Faulkner*, 190 Md. App. 37, 47 (2010) (emphasis removed).

Our analysis proceeds under the assumption that the warrant was valid, and the defendant has the burden of rebutting that presumption. *Volkomer v. State*, 168 Md. App. 470, 486 (2006). To encourage police to utilize search warrants instead of conducting warrantless searches, the benefit of the doubt is resolved in favor of validity. *State v. Jenkins*, 178 Md. App. 156, 164-65 (2008).

B.

THE PARTICULARITY CHALLENGE

Mr. Mitchell argues that the warrant was invalid because it lacked the necessary particularity. He contends that because the Affidavit listed the location to search as "10704 Powell Road, Thurmont, Maryland 21788, Frederick County, Maryland," the warrant failed the "particularity requirement *vis-à-vis* Mr. Mitchell's rented room and was, in effect, a general warrant." Mr. Mitchell further argues:

> No *Leon*[7] good-faith exception can rescue the Fourth Amendment violation where the warrant was so facially deficient as to particularity of place and where the officers were clearly in possession of information that made Mr. Mitchell's rented bedroom a specific residence among others within the property at the address, rendering the warrant an impermissible general warrant.

As a threshold matter, we were unable to find any indication in the record that Mr. Mitchell made a particularity objection in the circuit court. That being the case, it appears that Mr. Mitchell failed to preserve the issue for appellate review. *See* Md. Rule 8-131(a).

[7] Mr. Mitchell is referring to *United States v. Leon*, 468 U.S. 897 (1984).

Even if he had preserved the particularity objection, we are not persuaded on the merits of Mr. Mitchell's argument. In addressing a particularity challenge, "[t]he cardinal consideration is that the premises be described with such particularity or sufficiency, 'that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended.'" *Harris v. State*, 17 Md. App. 484, 488 (1973). "A description of a place to be searched is ordinarily sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended." *Frey v. State*, 3 Md. App. 38, 46-47 (1968). On the other hand:

> A general warrant, broadly defined, is one which fails to sufficiently specify the place or person to be searched or the things to be seized, and is illegal since, in effect, it authorizes a random or blanket search in the discretion of the police in violation of the Fourth Amendment to the Federal Constitution, Article 26 of the Maryland Declaration of Rights, and Section 551 of Article 27 of the Maryland Code (1967 Repl. Vol.), all of which require that search warrants particularly describe the place to be searched and the things to be seized, so as to prevent the search of one place, or the seizure of one thing, under a warrant authorizing search of another place, or the seizure of another thing.

Id. at 46.

In *Frey*, in analyzing whether a warrant had the requisite particularity, we stated:

> we think that the command of the search warrant to enter and search the two-story brick building at 2008 East Pratt Street, "the said premises being an apartment house," did not purport to authorize the search of the entire apartment house since the affidavit accompanying the warrant, and made a part thereof, particularly specified that the apartments to be searched were those occupied by the appellants … There is, of course, no formula which can be used to measure the particularity with which premises must be described in a search warrant, the adequacy of such description in every case necessarily depending on the facts and circumstances there presented. A description of a place to be searched is ordinarily sufficient if the office with the warrant can, with reasonable effort, ascertain and identify the place intended. In determining whether the description of the place to be searched

> meets these standards, it is permissible to look to the affidavit as well as the warrant since the affidavit is a part of the warrant and incorporated by reference therein.

Id. at 46-47; *see also Thomas v. State*, 50 Md. App. 286, 293 (1981) (police identified unit in apartment building).

Unlike *Frey v. State*, 3 Md. App. 38 (1968), the main case relied upon by Mr. Mitchell, Mr. Mitchell did not rent a unit in a multi-unit building; he rented a bedroom within a single-family home, which means that in addition to the bedroom in which he slept, he had access to the common areas of the residence. Thus, the identification of the premises to be searched was appropriately tailored to the dwelling—i.e., the home—in which Mr. Mitchell lived.

We stated in *Peters v. State*, 224 Md. App. 306, 343 n. 11 (2015) (quoting *United States v. Gilman*, 684 F.2d 616, 618 (9th Cir. 1982)), that the "[g]eneral rule [that the specific unit of a multi-unit building must be specified] does not apply, however, if 'the defendant was in control of the whole premises or they were occupied in common[;] if the entire premises were suspect[;] or if the multiunit character of the premises was not known to the officers.'" Although this point was expressed in *dicta*, we find persuasive the notion that the identification of a home that is occupied in common with other people and in which the residents have access to the common areas is sufficiently particular. For these reasons, we hold that the search warrant satisfied the particularity test.[8]

[8] In any event, although the warrant listed the house address, both the Affidavit and the warrant specifically referenced Mr. Mitchell's bedroom. *See Wood v. State*, 196 Md. App. 146, 166 (2010) (finding that the affidavit is part of the warrant and may be considered

C.

THE PROBABLE CAUSE CHALLENGE

Mr. Mitchell argues that the warrant lacked probable cause because it "was based upon unreliable second-hand information related via hearsay assertions from the Hildebrands." Although he acknowledges that an affidavit may be based on hearsay, Mr. Mitchell nonetheless contends that "Deputy Schlosser did not make valid conclusions based on reliable hearsay but, rather, merely asserted as fact what amounted to the mere conclusory unreliable assertions made by Curtis Hildebrand to Officers Keefer and Mendez . . . ." Mr. Mitchell further argues that the Affidavit was deficient because the information was not personally observed and because it failed to disclose that the Hildebrands were motivated to lie because they were attempting to evict him. Thus, according to Mr. Mitchell , "[t]here was no reliable basis upon which any magistrate could make a determination that there was probable cause[,]" and the warrant should have been suppressed along with all of the evidence obtained therefrom.

The Fourth Amendment to the United States Constitution prohibits the issuance of a search warrant except "upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

in the particularity analysis). As the State points out, the Affidavit stated: "The top floor of the residence has four bedrooms and a bathroom in the main hallway. The bedroom identified as belonging to Justin Godrey Mitchell is the front left side of the residence. The door is a standard white bedroom door." Similarly, the Affidavit and warrant identified the bedroom rented by Mr. Mitchell as the location within the home to which suspicious packages were delivered, from which the odor of marijuana emanated and suspicious garbage was removed, and in which Mr. Hildebrand discovered drugs and drug paraphernalia.

U.S. Const., amend. IV, cl. 2. We have previously discussed what is necessary to show probable cause:

> To demonstrate probable cause, the affidavit that accompanies a request for a search warrant must show that 'the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found' in a particular place. *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). The test does not require that the affidavit establish a *prima facie* showing of criminal activity or that the police have personal knowledge or direct evidence that contraband will be found in the location to be searched, but only that there is a nexus between the objects to be seized and the place to be searched from which a person of reasonable caution would believe that the articles sought might be found there.

Moats v. State, 230 Md. App. 374, 389 (2016).

In determining whether probable cause exists, "the issuing court and any reviewing court [look] at all of the relevant information lawfully included in the application and its attachments." *Holmes v. State*, 368 Md. 506, 519 (2002). "A warrant-issuing judge is tasked with reaching 'a practical and common-sense decision, given all of the circumstances set forth in the affidavit, as to whether there exists a fair probability that contraband or evidence of a crime will be found in a particular search." *Moats*, 230 Md. App. at 390 (quotation omitted). "The judge is permitted to accept and rely upon statements made by the affiant regarding information gained through his or her knowledge, training, and experience." *Id.*

Our review "is confined to the averments contained in the search warrant application," *Ferguson v. State*, 157 Md. App. 580, 592 (2004), and "great deference" is accorded to the trial court's decision. *Stevenson v. State*, 455 Md. 709, 723 (2017) (quoting *Leon*, 468 U.S. at 914 (in turn quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969))).

We must "not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common-sense, manner." *United States v. Ventresca*, 380 U.S. 102, 109 (1965).

Probable cause is defined as:

> a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Thus, the *quanta* of proof appropriate in ordinary judicial proceedings are inapplicable to the decision to issue a warrant. Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the probable cause decision.

Stevenson, 455 Md. at 722 (quotation omitted; cleaned up). "Probable cause is a fluid concept incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *Id.* at 723 (quotation omitted; cleaned up).

As the Court of Appeals stated:

> The judge issuing the warrant must make a practical common-sense decision whether, given all the circumstances set forth in the affidavit before him or her, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Patterson v. State, 401 Md. 76, 92 (2007) (cleaned up). Further, as we stated in *Johnson v. State*, 14 Md. App. 721, 724-25 (1972) (quotation omitted and cleaned up):

> [P]robable cause may be shown in the affidavit by a statement by the affiant 1) of his direct observations, or 2) of information furnished the affiant by someone else, named or unnamed, or 3) of a combination of the direct observations of the affiant and hearsay information furnished him. In each instance the issuing judge must have before him enough circumstances to enable him to determine the trustworthiness of the information, for he must not only evaluate the adequacy to show probable cause of the facts and circumstances set out in the affidavit but he must also evaluate the

> truthfulness of the source of the information comprising those facts and circumstances.

Thus, an "affidavit may be based on hearsay information, even from an unidentified informant, and need not reflect the direct observations of the affiant. But, it must contain some of the underlying circumstances from which the affiant could be reasonably justified in a belief that the hearsay information was reliable or the informant was credible." *Moore v. State*, 13 Md. App. 711, 715 (1971).

Here, the Affidavit was not based on a solitary hearsay statement and did not "merely assert[] as fact what amounted to the mere conclusory unreliable assertions" as argued by Mr. Mitchell. Rather, the Affidavit stated that:

- There were multiple incidents of Mr. Mitchell receiving suspicious packages;
- There were multiple incidents of Ms. Hildebrand detecting the odor of marijuana coming from Mr. Mitchell's bedroom;
- The Hildebrands knew that Mr. Mitchell owned a gun;
- Mr. Hildebrand observed drugs and drug paraphernalia in Mr. Mitchell's bedroom;
- A sheriff's deputy recognized the odor of marijuana coming from Mr. Mitchell's bedroom;
- The Hildebrands showed the officers what they contended was garbage that Mr. Mitchell had thrown out, which included syringes, cotton swabs containing white powder and a small plastic bag with the odor of marijuana; and
- Mr. Mitchell had a prior criminal history, including two arrests for possession with intent to distribute a CDS and CDS paraphernalia.

Under these circumstances, the circuit court had an ample basis, any hearsay notwithstanding, to support its finding of probable cause.

Mr. Mitchell contends that the Hildebrands had an ulterior motive because they were in the process of trying to evict him. Mr. Mitchell argues that "[c]ommon sense indicates that all of the information gleaned from the Hildebrands was tainted with the prospect of

mischief-making by them as an interested party doing damage to the subject of the warrant: Mr. Mitchell." However, Mr. Mitchell provides no reason to conclude that, without manufacturing a criminal case against him, the Hildebrands would not have had a legitimate and lawful basis to seek his eviction.[9] Thus, we do not believe that the fact of the Hildebrands' desire to evict him leads to the "common sense" conclusion that they were trying to frame him. And we find reasonable the court's conclusion that the omission in the Affidavit of his impending eviction was not material to Judge Nicklas's decision to issue the warrant.

D.

***FRANKS* HEARING**

Mr. Mitchell next argues that the court erred in denying him a *Franks* hearing. According to Mr. Mitchell, "Deputy Schlosser's omissions from the instant affidavit and application for the search warrant strongly suggest an intentional design to mislead the issuing judge about the quantity and quality of the evidence for a probable cause determination." Mr. Mitchell further argues that he "made the requisite showing for a *Franks* hearing that the affiant 'knowingly and intentionally, or with reckless disregard for the truth' made a false statement (or omission that was misleading) that was 'necessary to the finding of probable cause.'"

[9] In the circuit court, the State advanced an alternative argument in support of the warrant that even if the warrant was defective, the good faith exception to the exclusionary rule articulated in *Leon* would apply. The circuit court did not reach this issue because it determined that the warrant was valid. For the same reason, we need not address that issue here.

As we explained in *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003), "a *Franks* hearing is a rare and extraordinary exception 1) that must be expressly requested and 2) that will not be indulged unless rigorous threshold requirements have been satisfied." As to its requirements, we stated:

> Before a defendant may have a hearing, that defendant must make a substantial preliminarily showing that the warrant affidavit included a false statement, made either knowingly or unintentionally or with reckless disregard for the truth. For this showing, "[a]ffidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained."

Young v. State, 234 Md. App. 720, 738 (2017) (citing *Fitzgerald*, 153 Md. App. at 643 & quoting *Franks*, 438 U.S. at 171).

In the circuit court, Mr. Mitchell's proffer in support of his request for a *Franks* hearing was, in relevant part,[10] that (1) an eviction notice had been issued to him and that if "the police and obtained a knowledge of the admitted eviction notice as combined with the totality of circumstances this revelation would destroy the veracity of the affidavit"; (2) there were "three are other tenants and people living in the other bedrooms of the house" and "the front door [of the house] is completely manifold to the rest of the house"; and (3) "the affidavit consciously omitted material information and included false information subtly in the form of Curtis and Kristi's own subjective suspicions" about the trash that Mr. Mitchell took out.

On appeal, Mr. Mitchell confines his argument to his assertion that the omission of the Hildebrands' eviction attempts amounted to the concealment of the Hildebrands'

[10] Mr. Mitchell appeared *pro se* and read his motion to the court.

motive to fabricate evidence against him and therefore misled the judge. Again, as noted above, in the circuit court Mr. Mitchell did not proffer any facts suggesting that the Hildebrands were not entitled to evict Mr. Mitchell or were doing so for an ill-founded purpose.[11] In fact, Mr. Mitchell's proffer did not indicate that he even intended to oppose the eviction. In sum, Mr. Mitchell's proffer did not establish that the Hildebrands needed to concoct a criminal case against him to succeed, or enhance their chances of success, in their plan to evict him.

On its face, therefore, Mr. Mitchell's proffer did not establish a connection between the Hildebrands' effort to evict him and a motive for the Hildebrands to lie. *See Young*, 234 Md. App. at 739 (finding that a *Franks* hearing was not warranted because defendant "never even claim[ed] intentional or reckless falsehood" and made only bare allegations that the evidence was stale and that the affiant was lying); *Edwards v. State*, 350 Md. 433, 450 (1998) (finding no right to a *Franks* hearing where petitioner's assertion that the affidavit was false "rested entirely on his assumption that [a particular person] was the informant," and his argument was "wholly conclusory, devoid of supporting facts"). On this record, therefore, the circuit court was within its discretion to deny the request for a *Franks* hearing.

[11] Absent any evidence to the contrary, it would be only logical for the Hildebrands to seek his eviction if they believed he was engaged in nefarious or illegal activities.

II.

MR. MITCHELL'S DISCOVERY REQUESTS

Mr. Mitchell maintains on appeal that the State failed to turn over written reports or statements by the State's witnesses. He contends that prior to trial, he requested:

> any and all statements from others living at 10704 Powell Road; any agreements regarding witness testimony; any police officer knowledge of the notice of eviction; any evidence of character for untruthfulness of the police officer witnesses and/or any evidence for impeachment by prior conduct (i.e., any police officer "liars list" and/or relevant personnel records), with specific requests that the prosecutor look into relevant files for any such exculpatory Brady[] information, as well as a concomitant request for in camera review thereof if necessary.

Mr. Mitchell also argues that during his trial he:

> repeatedly sought or requested information, pursuant to *Jencks*,[] regarding any notes from Deputy Mendez and other officers (*i.e.*, Officer Keefer's email to Sergeant Schlosser regarding the warrant), any grand jury testimony, any information regarding the prosecutor's witness preparation sessions with Kristi Hildebrand, and any information about Curtis Hildebrand.

Mr. Mitchell asserts on appeal that the police "apparently refused" to turn over:

> any of Mendez's notes, Keefer's email to Schlosser, any information regarding the police officers' knowledge of the eviction, and any oral or written statements of other residents of 10704 Powell Road (to include that which made its way into the affidavit in application for the search warrant).

Citing to Maryland Rule 4-263(d)(3), *Jencks v. United States*, 353 U.S. 657 (1957), *Brady v. Maryland*, 373 U.S. 83 (1963), *Carr v. State*, 284 Md. 455 (1978), and *Robinson v. State*, 354 Md. 287 (1999), Mr. Mitchell argues that the court "abused its discretion by failing to order disclosure of the statements and information at issue."

Maryland Rule 4-263(d)(3) provides that the State must provide to the defense:

> As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-934, the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged.

In *Jencks v. United States*, the Supreme Court held that after a prosecution's witness testifies, the prosecution must produce copies of statements or reports by the witness concerning the subject of the testimony. 353 U.S. at 672. The holding was animated by the Supreme Court's acknowledgement of the importance to an effective cross-examination of the ability to impeach a witness with prior inconsistent statements. *Id*. at 667.

The Court of Appeals followed suit in *Carr v. State*. There, the Court stated:

> Every skilled trial advocate knows the crucial importance in such situations of cross-examination. Effective cross-examination here made it necessary that defense counsel be permitted to directly confront the witness with his inconsistent prior statement. To deny to defense counsel the tool necessary for such adequate cross-examination under these circumstances amounts in our view to a denial to the defendant of due process of law. Hence, a new trial is mandated.

284 Md. at 472–73.

In *Robinson v. State*, 354 Md. 287 (1999), the Court of Appeals adopted the explanation provided in *State v. Leonard*, 46 Md. App. 631, 637-38 (1980), *aff'd*, 290 Md. 295 (1981), in which Judge Wilner, speaking for this Court, stated:

> Carr makes clear beyond question that a defendant's right, at trial, to inspect the prior statement of a State's witness who has testified is not necessarily limited (1) by the rules pertaining to pretrial discovery, or (2) to statements that are merely exculpatory. When confronted with the actual testimony of a critical witness and the knowledge that the witness has given a prior statement bearing on a material issue in the case, counsel is not engaged in a

> mere "fishing expedition" in seeking access to the prior statement. At that point, it becomes more than a matter of casting a seine over the State's files to see what turns up, but of directly confronting the witness; and the statement thus assumes a specific importance and relevance beyond its general value for trial preparation. *See Carr*, 284 Md. at 472, 397 A.2d 606. The test clearly is whether the statement is, or may be, inconsistent with the witness' trial testimony, and thus usable in cross-examination.

Robinson, 354 Md. at 302 (quoting *Leonard*, 46 Md. App. at 637–38).

We are not persuaded that Mr. Mitchell was denied any information to which he was entitled under *Carr* and its progeny. The State proffered that it had provided complete discovery to Mr. Mitchell. The court accepted that proffer and our review of the record has unearthed no reason to second guess the court in doing so.

Moreover, we are not aware of any prior statements or reports of any of the State's witnesses. In addition to Ms. Hildebrand, the State called only three other witnesses: Sergeant Caliskan, Charles Miller, a forensic scientist working for the police, and Chad Marshall, a detective. Sergeant Caliskan testified that Deputy Schosser prepared the search warrant, that he assisted in the execution of the warrant, and that he conducted surveillance of Mr. Mitchell that culminated in his arrest. Mr. Miller testified about the process for analyzing evidence, how evidence is identified, the drugs that were tested, and the drugs that were found. Detective Marshall testified that he was involved with seizing and collecting the evidence obtained as a result of executing the search warrant and he described the warrant, how the warrant was executed, and the evidence that was seized.

Mr. Mitchell has not argued, let alone demonstrated, that he was denied any prior statements or reports of Sergeant Caliskan, Mr. Miller, or Deputy Marshall. And, the Court of Appeals has held that a defendant is not entitled under *Carr* to an officer's notes and/or

summaries of conversations with witnesses unless the same were adopted by the witnesses as their own. *Jones v. State*, 310 Md. 569, 586 (1987). Put simply, Mr. Mitchell has not directed us to any witness statement or summary that the State was duty-bound under *Carr* to produce.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.