

No. 1-15-0958

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 14 CR 2461
	)	
	)	
JAMES BOSS,	)	Honorable
	)	Carol Howard,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* The trial court erred in granting defendant's motion to quash search warrant.
- ¶ 2     The State appeals from the trial court's order granting defendant, James Boss's, motion to quash a search warrant. The State argues that the trial court improperly granted defendant's motion to quash the search warrant where the issuing judge had probable cause to believe that defendant was engaged in criminal activity at his residence. The State argues, in the alternative, that the trial court erred in failing to apply the good-faith exception to the exclusionary rule.
- ¶ 3     Defendant was charged with two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), one count of possession of cannabis with intent to

deliver (720 ILCS 550/5(d) (West 2012)), and one count of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) after Chicago police executed a search warrant for defendant's first floor apartment at 837 North Karlov, Chicago on January 8, 2014, and recovered weapons, ammunition, cannabis, U.S. currency, and drug packaging.

¶ 4 In the complaint for the search warrant, Officer Williams of the Chicago police department averred that on January 8, 2014, he had a conversation with a registered confidential informant who informed Officer Williams that James Boss resided and distributed crack cocaine from the first floor residence of 837 North Karlov. The informant also informed Officer Williams that within the previous 48 hours, he went to the first floor residence of 837 North Karlov, met James Boss, and asked to purchase a specific amount of crack cocaine. The informant stated that Boss left his field of vision and then returned to the informant with a zip lock freezer bag that contained smaller bags of what appeared to be crack cocaine. Boss then handed a specific amount of crack cocaine to the informant in exchange for U.S. currency. The informant also told Officer Williams that he has gone to the first floor residence of 837 North Karlov several times before to purchase crack cocaine for the purpose of resale and additionally admitted that he has sold crack cocaine for over five years and is familiar with its appearance, texture, and the manner in which it is distributed.

¶ 5 After this conversation, the informant and Officer Williams went to 837 North Karlov where the informant pointed to the first floor residence. Officer Williams stated that the numbers "837" were clearly affixed to the building. Subsequently, Officer Williams performed a Chicago Police Department CLEAR investigation of James Boss. After viewing a photo of Boss, the informant positively indentified Boss as the individual from whom he purchased grams

of crack cocaine inside the apartment at 837 North Karlov. The complaint contained an averment that James Boss had four felony convictions and numerous arrests involving narcotics and firearms.

¶ 6 Also in the complaint for search warrant, Officer Williams averred that the particular informant who provided this information about the location and his purchase of narcotics from Boss, had been registered with the Chicago police department for two years and had provided information that resulted in three narcotic arrests and the issuance of two search warrants that resulted in the recovery of firearms and narcotics.

¶ 7 The complaint for search warrant requested a search warrant for the search of James Boss and the described location, and directed the seizure of cocaine, any documents showing residency, any paraphernalia used in the distribution of illegal drugs, money, and any records of illegal drug transactions. The complaint for search warrant was granted by the judge, the search warrant issued and the residence was searched and defendant was subsequently arrested and charged as a result of the search.

¶ 8 On September 2, 2014, defendant filed a motion to quash search warrant and argued that the complaint for search warrant did not contain sufficient facts to establish probable cause to search, and lacked specificity and corroboration. Additionally, defendant argued that the confidential informant was neither reliable nor credible because he was an admitted drug dealer. Specifically, defense counsel argued "our argument simply is that this is a search warrant based on the words of a registered confidential informant. This person is an admitted drug dealer, so he's inherently unreliable." The trial court then asked defense counsel if he was alleging that the officer lied or acted in reckless disregard of the truth. Defense counsel replied, "[w]ell, there's

nothing in my - - from the four corners, you can't tell if he - - certainly, I'm not saying that he lied, the officer lied, or that the confidential informant either lied, but I think they acted recklessly in following up." After this statement, the trial judge asked defense counsel if his concerns would be "allayed" if the court conducted an *in camera* interview of the informant. Defense counsel agreed.

¶ 9 The State responded that sufficient corroboration for the informant existed. The prosecutor pointed out that when the informant approached Officer Williams with information regarding defendant selling drugs, the informant was able to take police to the exact location where defendant had sold him the drugs. The prosecutor also argued the good-faith exception, stating that the police officers relied on the search warrant that the issuing judge deemed sufficient to establish probable cause. The prosecutor further argued that nowhere within defendant's motion did he claim that Officer Williams lied or presented false information to the judge who issued the warrant. At the conclusion of the arguments, the trial judge ordered the State to produce the confidential informant for an *in camera* interview.

¶ 10 On December 22, 2014, the State informed the trial court that the confidential informant would not be produced. The prosecutor requested that the court rule on the motion to quash the search warrant without an *in camera* interview of the informant. The prosecutor acknowledged that the judge who issued the search warrant did not meet with the informant, but met with the affiant Officer Williams, and found the complaint for the search warrant sufficient to establish probable cause to search defendant and his residence. Additionally, the prosecutor argued that an *in camera* interview of the informant would result in going beyond the four corners of the search

warrant. In response, the trial court stated that the motion to quash the search warrant would be granted if the State failed to produce the informant.

¶ 11 On January 21, 2015, the trial court granted defendant's motion to quash the search warrant stating that the court felt an *in camera* interview of the confidential informant was necessary to its ruling. On March 13, 2015, upon the State's motion to reconsider in regards to the defendant's motion, the prosecutor argued that the issue presented in defendant's motion required the court to only examine the information within the four corners of the search warrant. The prosecutor emphasized that the defendant was not seeking a *Franks* hearing, which would be the proper procedural mechanism to request the presence of the confidential informant in court. Instead, the prosecutor argued, the defendant was only seeking to quash the search warrant because it did not contain sufficient facts to establish probable cause.

¶ 12 The trial court denied the State's motion to reconsider and found that the search warrant was "lacking" and in an attempt to cure the deficiency, the State said that additional information regarding the informant's criminal background had been given to the judge that issued the warrant, and acknowledged that the informant never appeared in front of the judge that issued the warrant. The trial court further explained that it offered the State an opportunity to resolve the deficiency in the search warrant by producing the confidential informant for an *in camera* interview. The trial court did not make a finding that probable cause was lacking. On the record, the trial court denied the State's motion to reconsider.

¶ 13 The State filed a certificate of substantial impairment (see Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014)) and a timely notice of appeal.

¶ 14

#### ANALYSIS

¶ 15 The State argues that the trial court’s decision to grant defendant’s motion to quash the search warrant should be reversed for two reasons. First, the State argues that the trial court improperly granted defendant’s motion to quash the search warrant where the issuing judge had probable cause to believe that the defendant was engaged in criminal activity at his residence. Second, the State argues, in the alternative, that even if the warrant was not supported by probable cause, the good faith exception applies.

¶ 16 Defendant responds and argues that the trial court’s ruling on the motion to quash the search warrant was correct because the trial judge had discretion to order the State to produce the informant for an in camera interview because the complaint for search warrant lacked probable cause. Defendant additionally argues that the good faith exception does not apply.

¶ 17 In assessing whether a particular affidavit establishes probable cause, “great deference” should be applied to the issuing judge’s determination. *United States v. Leon*, 468 U.S. 897, 914 (1984). This deferential standard should be employed by reviewing courts, as well as fellow trial judges. *People v. Bryant*, 389 Ill. App. 3d 500, 514, 523 (2009). “After-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate’s determination of probable cause should be paid great deference.” *U.S. v. Gates*, 462 U.S. 213, 236 (1983).

¶ 18 In assessing whether it was correct for the trial court to compel the State to produce an informant, it is essential to first examine the law surrounding defendant’s challenge to the affidavit for the search warrant. In *Franks v. Delaware*, 438 U.S. 154 (1978), the United States Supreme Court recognized that although there is a presumption of validity with respect to an affidavit supporting a search warrant, a defendant has a limited right to challenge the veracity of

the factual allegations made in a search warrant affidavit. The court held that "where 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." *Id.* at 155-56. The court also found that the defendant's challenge must be to the representations of the affiant, and not to those of the informant. *Id.* at 171.

¶ 19 In order to initiate a *Franks* hearing, it is required that the defendant's preliminary showing be more than a mere request and more than an unsubstantiated denial. *People v. Lucente*, 116 Ill. 2d 133, 151 (1987). Because the defendant's burden at the *Franks* hearing itself is a preponderance of the evidence, the preliminary showing "may be something less." *Id.* at 151-52.

¶ 20 In this case, defendant did not request a *Franks* hearing. The State argues that the request for a *Franks* hearing is a prerequisite to ordering the production of a confidential informant and cites to *People v. Vauzanges*, 158 Ill. 2d 509, 514 (1994) for support. In *Vauzanges*, the defendant alleged in his motion to quash a search warrant that the information contained in the affidavit pertaining to the existence of the informant and the purchase of the cocaine at his home, was false. In support of these allegations, the defendant submitted three affidavits attesting to specific allegations of the location and activities of the defendant that directly contradicted the affidavit for search warrant submitted by the officer. *Id.* In ruling on the issue, our supreme court expanded upon *Franks*, holding that if a *Franks* hearing has been granted, the trial court may

require the production of the informant, “if under all the circumstances the trial court doubts the credibility of the police officer/affiant with respect to the existence of the informant.” *Id.*

¶ 21 Defendant attempts to expand the holding in *Vauzanges* to support his position that a formal request for a *Franks* hearing is unnecessary; the trial court has the discretion to order the State to produce an informant *in camera* where the court believed the complaint lacked probable cause. We disagree.

¶ 22 Here, during the hearing on the motion to quash the search warrant, defense counsel stated that defendant’s argument was based upon the fact that the search warrant was based upon information from the informant, an admitted drug dealer, and therefore was “inherently unreliable.” Unlike *Vauzanges*, defendant did not submit an affidavit that made specific allegations to contradict the attestations made by the officer in the affidavit for search warrant. When the trial court asked defense counsel if there was anything about the investigation that indicated that the affiant officer lied or acted in reckless disregard of the truth, defense counsel replied, “Well, there’s nothing in my - - from the four corners, you can’t tell if he - - certainly, I’m not saying that he lied, the officer lied, or that the confidential informant either lied, but I think they acted recklessly in following up.” Clearly, defendant made no claim that either the affiant or the confidential information lied so there can be no argument that the warrant was founded on deceit.

¶ 23 Based upon these facts, the trial court’s *sua sponte* request for the State to produce the informant for an *in camera* examination was improper when the credibility of the affiant police officer was not specifically questioned. Defense counsel clearly stated that his only issue was with the reliability of the informant. Even when the trial court directly asked defense counsel if



there was a reason to question the credibility of the affiant police officer, defense counsel denied that the affiant had lied.

¶ 24 Because the veracity of the affiant police officer was not directly challenged with specific allegations, a *Franks* hearing was not warranted. While defendant is correct that *Vauzanges* gives the trial court the discretion to compel an *in camera* examination of the informant, this discretion is triggered only when the defendant makes a specific challenge to the credibility of the affiant which would implicate whether a *Franks* hearing was necessary. *Id.* at 516. When a defendant fails to show he is entitled to a *Franks* hearing, the defendant is not entitled to an *in camera* examination of the informant. *People v. Creal*, 391 Ill. App. 3d 937, 946 (2009).

¶ 25 Defendant additionally contends that the production of the informant was necessary because the informant failed to appear before the issuing judge. Defendant relies upon *People v. Dinger*, 106 Ill App. 3d 662 (1982). The State accurately points out that in *Dinger*, the probable cause statement in the complaint for search warrant was purportedly made by the informant, but not sworn by him, and the affiant failed to show in his affidavit that the information given to him was given by the informant to the affiant. *Id.* at 65. This court held that the informant's statement should have played no role in the court's determination of probable cause, causing the complaint to be insufficient.

¶ 26 Here, unlike *Dinger*, the informant was not the affiant and the informant was only used to provide information in support of the complaint for the search warrant. Additionally, Officer Williams clearly stated in his affidavit for the search warrant that the information he attested to was based upon his conversations with the informant. Therefore, the informant's personal appearance before the issuing judge was unnecessary.

¶ 27 Accordingly, because the record does not establish that defendant made sufficient claims specifically challenging the credibility of Officer Williams, the affiant, we cannot conclude that a valid request for a *Franks* hearing was initiated. Furthermore, because defendant did not request a valid *Franks* hearing, the trial court did not have discretion to compel the State to produce the informant.

¶ 28 As we stated earlier, in granting defendant's motion to quash the search warrant, the trial court made no findings with respect to probable cause, although the issuing judge clearly found that there was sufficient probable cause to warrant a person of reasonable caution to believe that an offense had been committed and that evidence of that offense occurred at the place to be searched. The trial court was required to give deference to the issuing judge's determination that the affiant, who appeared before him, established a strong probability that contraband or evidence of a crime would be found in a particular place as set forth in the complaint for the search warrant. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Furthermore, the trial court should have "merely decided whether the judge had a 'substantial basis' for concluding that probable cause existed." *People v. McCarthy*, 223 Ill. 2d 109, 153 (2006).

¶ 29 The search warrant at issue contained the requisite facts supporting probable cause and was based on reliable information. The complaint for the search warrant established that Officer Williams had a conversation with a registered confidential informant about defendant. That registered confidential informant had known defendant for over two years and the informant had been to defendant's apartment and had purchased crack cocaine from him within 48 hours prior to the issuance and execution of the search warrant. The complaint alleged that Officer Williams verified defendant's residence by taking the registered confidential informant to that location.

The complaint contained a physical description of defendant and information that defendant was a convicted felon. The complaint revealed that when Officer Williams showed a picture of “James Boss” to the registered confidential informant, the informant positively identified “James Boss” as the person who sold him crack cocaine 48 hours earlier. Officer Williams appeared before the issuing judge with the complaint and signed the complaint while under oath before the issuing judge. Consequently, we give deference to the issuing judge’s determination that probable cause existed for the search warrant in this case.

¶ 30

#### CONCLUSION

¶ 31 In light of the foregoing, we reverse the trial court's order granting the defendant's motion to quash the search warrant, and remand for further proceedings consistent with this order.

¶ 32 Reversed; remanded with directions.