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2019 IL App (5th) 150442-U
Nos. 5-15-0442 & 5-15-0443 (cons.)
IN THE
APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Montgomery County.
)	
v.)	Nos. 14-CF-82 & 13-CF-137
)	
MACKENZIE R. RHODES,)	Honorable
)	James L. Roberts,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court. Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly refused to suppress evidence obtained pursuant to a search warrant because defendant failed to sustain burden of establishing deliberate falsehood or reckless disregard for truth in search warrant affidavit.

¶ 2 In September 2013, officers executed search warrants at the residence of the defendant, Mackenzie Rhodes, and recovered methamphetamine and stolen property. Relying on *Franks v. Delaware*, 438 U.S. 154 (1978) (recognizing a limited right to attack veracity of warrant affidavit when affiant knowingly and intentionally, or with reckless disregard for the truth, includes a false statement necessary to the finding of probable cause), the defendant moved to suppress the fruits of the search, arguing that the

warrant authorizing the search was invalid because Illinois State Police Sergeant Karen Gordon, of the Central Illinois Drug Task Force, presented the warrant judge with an affidavit that contained false statements and misleading omissions made with reckless disregard for the truth. The circuit court held a *Franks* hearing to test the sufficiency of the warrant, and after hearing testimony, determined that the defendant failed to sustain his burden of establishing Gordon's deliberate falsehood or reckless disregard for truth in the search warrant affidavit.

¶ 3 Following the ensuing stipulated bench trial, the defendant was convicted of theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)) and unlawful use of property (720 ILCS 646/35(a) (West 2012)) and sentenced to concurrent five-year-nine-month terms with the Department of Corrections. On appeal, the defendant argues that the circuit court erred in denying his motion to quash warrant and suppress evidence and that the circuit clerk improperly imposed fines against him. For the reasons that follow, we affirm.

¶ 4 **BACKGROUND**

¶ 5 The record reveals that on September 12, 2013, Katherine Williams became a confidential informant in exchange for assistance with a shoplifting charge by the Drug Enforcement Administration. Williams contacted Illinois State Police Sergeant Greg Cowell and notified him that the defendant, David Rothe, and Janet Dunn had contacted her to provide pseudoephedrine for them, in order to manufacture methamphetamine, and that within the prior four days, she had witnessed Rothe cooking methamphetamine in a blue trailer on the defendant's property.

¶ 6 According to Williams, at approximately 9:30 a.m. on September 12, 2013, she had driven to the defendant's property at Bills Lane in Butler, Illinois, and had parked in the driveway of the defendant's main residence at Bills Lane. Williams testified that while standing in the defendant's driveway, the defendant and Rothe had called her and Dunn, who was staying or working on a blue trailer on Bills Lane, over to the main driveway to request that she and Dunn purchase pseudoephedrine for them. After she relayed this request to officers, Montgomery County Sheriff's Investigator Justin Gonzalez requested that Williams deliver pseudoephedrine to the defendant's Bills Lane property while wearing an eavesdropping device.

¶ 7 After Williams spoke to Gonzalez, Gordon, and the circuit court judge, the officers received authorization for an eavesdropping overhear. Williams made an initial call to Rothe's phone to corroborate the request for pseudoephedrine. Gordon testified that no one answered Rothe's phone but that Williams thereafter advised of a returning call originating from the defendant's home number. Williams testified that Dunn had returned Williams's call on the defendant's home phone line, in order to notify Williams that she still wanted pseudoephedrine. At approximately 6:43 p.m., Williams was wired with an eavesdropping device and returned to the Bills Lane property to deliver two boxes of pseudoephedrine.

¶ 8 Williams testified that she again parked in the defendant's driveway, and Dunn was "tilling or mowing" in front of the blue trailer. Williams explained that she then contacted Gonzalez to ask if he still wanted her to deliver the pseudoephedrine to Dunn, considering that the defendant was not home, and that Gonzalez directed that she

continue. Williams testified that she told Dunn that she had something for her, and they walked into the back bedroom of the blue trailer, where Williams exchanged with Dunn two boxes of pseudoephedrine pills for .2 grams of methamphetamine. At 6:55 p.m., Gordon received confirmation that the exchange was complete, thus corroborating Williams's information. The circuit court judge then reviewed the information and signed a search warrant at 7:02 p.m.

¶ 9 In the affidavit and complaint for the search warrant, Gordon stated that through the course of the investigation she had learned of the possible clandestine methamphetamine laboratory on Bills Lane. In the caption of the affidavit and complaint for search warrant, the property at issue was described as follows:

“A single family, slate blue metal house, with a white roof, and the east end of the residence with an attached shed, with no visible numbers on the residence, with the front door, white in color, facing south towards Bills Lane, with detached trailers and any and [a]ll outbuildings, commonly known as 53 Bills Lane, Butler, Montgomery County, Illinois.”

¶ 10 In the affidavit and complaint for search warrant, Gordon further stated as follows:

“That on Thursday, September 12, 2013, [Gordon] interviewed [a] [c]onfidential [s]ource *** who informed [Gordon] that [the confidential source] was asked to purchase 2 boxes of pseudoephedrine pills on [September 12, 2013] by David Rothe, for the purpose of cooking methamphetamine. This conversation occurred at 53 Bills Lane, in front of Janet Dunn and [the defendant].

That [the confidential source] advised four nights ago [that] the [confidential source] observed *** Rothe shaking a glass jar up and down that had a cloudy substance inside of it and advised he was starting a 'batch' which the [confidential source] [knew] to mean cooking methamphetamine. [The confidential source] also observed an empty box of pseudoephedrine pills inside a blue trailer on the property.

That [Gordon] was advised by [the confidential source] that *** Rothe and *** Dunn have been staying at 53 Bills Lane, Butler, Illinois since *** Dunn left a residence in Gillespie, Illinois where a clandestine methamphetamine laboratory was located and *** Dunn and *** Rothe are suspects in this case.

That on Thursday, September 12, 2013, [Gordon] conducted a covert narcotics investigation that utilized an electronic eavesdropping device signed by the Honorable Judge Long. [Gordon] utilized [the confidential source, who] was provided with 2 boxes of 20 count 120 mg, 12 Hour Decongestant pseudoephedrine pills. The [confidential source] gave the pills to *** Dunn at 53 Bills Lane, Butler, Montgomery County, Illinois. This successful pill transaction occurred between 6:45 p.m. and 6:55 p.m. at the above referenced location.

[The confidential source] received methamphetamine from *** Dunn for the 2 boxes of pseudoephedrine, which was transferred to Inspector Gonzalez.

That [Gordon] believes the possibility of a clandestine methamphetamine lab [was] present at 53 Bills [L]ane, Montgomery County, Illinois.

WHEREFORE, [Gordon] requests that a search warrant issue for the above-referenced residence, outbuildings, vehicles, campers, trailers and persons located at 53 Bills Lane, Butler, Montgomery county, Illinois for any pseudoephedrine, acids, lyes, hydrogen gas generators, [etc.]”

¶ 11 Prior to execution of the search warrant, Retired Master Sergeant Todd Dowdy, the previous director of the South Central Illinois Drug Task Force, drove by the defendant’s property. He observed a bluish, metal-sided residence where the defendant was believed to have resided, along with four trailers and a septic truck on the property. Dowdy noticed that the nearby trailers had missing windows and doors and did not look inhabitable. Dowdy testified that he did not take any photos because the property was located at a dead end road that did not experience much traffic. Dowdy explained that he conducted the site survey quickly “[b]ecause it [was] a dead end[,] the actual lane, and they are pretty familiar with all the vehicles that go in and out of there.”

¶ 12 When executing the search warrant at approximately 9 p.m., the officers searched all of the buildings on the Bills Lane property, including the trailers. Gonzalez noticed that “one of the trailers was run with an extension cord from what [was] identified as the main house on the property.” Dowdy and Gordon also noticed a long extension cord running to the blue trailer.

¶ 13 Gordon testified that when the officers executed the search warrant, Dunn was in the living room of the main house on the property, and her son, Nicholas Dunn, was in the far trailer. Gordon testified that she recovered numerous items located in the trailer: mason jars with liquid, which later lab tested positive for methamphetamine, in addition

to lye, coffee filters, Coleman fuel, and tubing, which are used in the manufacture of methamphetamine. Gordon testified that the mason jars and suspected methamphetamine were located in the drawer of the television stand in the trailer. Gordon testified that 0.2 gram of finished methamphetamine, found in a Pringle's jar on a top kitchen shelf, was recovered from the main residence of Bills Lane. Gordon testified that the defendant and Rothe arrived on the property shortly after the officers had executed the search warrant.

¶ 14 On September 13, 2013, because items consistent with methamphetamine production and finished methamphetamine product were recovered during the execution of the search warrant, the defendant was charged by information in circuit court case number 13-CF-137 with unlawful possession of methamphetamine (720 ILCS 646/60(b)(4) (West 2012)), participation in methamphetamine manufacturing (*id.* § 15(a)(2)(C)), unlawful use of property (*id.* § 35(a)), and methamphetamine conspiracy (*id.* § 65).

¶ 15 During the execution of the search warrant, Montgomery County Sheriff's Investigator Rick Furlong also located in the garage and grassy area of the main residence a mower, a boat trailer, and a power washer that were believed to have been stolen, pursuant to burglary and theft reports previously filed with the sheriff's office. Furlong applied for and received another search warrant, executed on September 16, 2013. Accordingly, on May 8, 2014, in circuit court case number 14-CF-82, the defendant was charged by information with four counts of theft over \$500 but less than \$10,000. 720 ILCS 5/16-1(a)(1)(A), (a)(4)(A) (West 2012). On October 19, 2015, the defendant was charged in an amended information with extended term eligibility, in that having

previously been convicted of theft, the defendant committed the offense of theft over \$500 but less than \$10,000 on September 16, 2013. *Id.* § 16-1(a)(1)(A).

¶ 16 The parties thereafter conceded that the 53 Bills Lane property had been subdivided into three addresses prior to 2000 and that the pseudoephedrine exchange occurred either on 55 or 57 Bills Lane, not 53 Bills Lane. Accordingly, on August 22, 2014, the defendant filed a motion to quash search warrant and suppress evidence alleging, *inter alia*, that the September 13, 2013, search of the defendant's main residence at 53 Bills Lane was improper because in the affidavit and complaint for search warrant for 53 Bills Lane, Gordon made "allegations of deliberate falsehood or reckless disregard for the truth."

¶ 17 Likewise, on February 20, 2015, the defendant filed a motion requesting a *Franks* hearing. See *Franks*, 438 U.S. at 155-56. In the motion, the defendant alleged that the three Bills Lane addresses were identified for tax purposes as one parcel of property owned by the defendant's mother, Sara A. Rhodes. The defendant described the property as follows:

"On the eastern edge of the parcel sits 53 Bills L[ane] which is a slate blue metal house. To the west approximately 130 feet sits a brown mobile home with green shutters with an address of 55 Bills Lane. Another approximately 130 feet west from there sits a blue mobile home with an address of 57 Bills Lane. A white residential trailer with blue trim sits behind the mobile home at 57 Bills Lane."

The defendant alleged that county records and the Montgomery County, Illinois, 9-1-1 Road Atlas listed the properties as 53, 55, and 57 Bills Lane. The defendant alleged that

Gordon “reckless[ly] disregard[ed] the fact that there were three separate residences on Rhodes’ property on Bills Lane, the pseudoephedrine/methamphetamine exchange occurred at 57 Bills Lane, and [the] [d]efendant and *** Rothe were not present during the transaction and exchange of pills for methamphetamine.” The defendant thereafter supplemented his motion requesting a *Franks* hearing with a citation issued to him in October 2007 by Montgomery County Sheriff’s Deputy Mark Brazel for committing the offense of residential burglary of 57 Bills Lane. On March 11, 2015, the circuit court granted the defendant’s request for a *Franks* hearing.

¶ 18 At the *Franks* hearing held on May 14, 2015, and May 21, 2015, Williams testified that in September 2013, Dunn lived with Rothe in a trailer on the defendant’s property but that she was unsure of the address. Williams testified that “[t]hey were remodeling it” either “for [the defendant] or *** for them to live there.” Williams acknowledged that she previously referenced the blue trailer as the defendant’s property and considered the entire property the defendant’s property. Williams testified that “[i]t’s all [the defendant’s] property *** [n]o doubt about it.” Williams acknowledged that she did not know any of the addresses of the property.

¶ 19 Rhodes, the defendant’s mother, testified that she owned 53 Bills Lane, 55 Bills Lane, and 57 Bills Lane. Rhodes testified that the defendant built a grayish “shed-type thing” at 53 Bills Lane and that another shed was located “on the line” between 55 and 57 Bills Lane. Rhodes testified that no one lived in the brown trailer located at 55 Bills Lane. Rhodes testified that a blue trailer, with a yard measuring 50 feet by 50 feet and “a storage trailer in the back,” was located at 57 Bills Lane. Rhodes testified that the

defendant was in charge of all three properties and that she did not receive any rental income from the trailers in 2013.

¶ 20 Brazel testified that approximately eight years prior to the hearing, he received a call for a reported burglary incident on Bills Lane. Brazel testified that Ashley Adams reported that someone had kicked the door in to her residence and that she was missing some electronic items. Brazel testified that the defendant lived in a block-type building on the west side of the road and that there were two additional trailers on the property. Brazel testified that because Adams had alleged that the defendant had kicked in the door to 57 Bills Lane, the defendant was thereafter charged with residential burglary. Brazel testified that according to his 2007 report, the defendant lived at 53 Bills Lane, and he leased trailers located at 55 and 57 Bills Lane.

¶ 21 Brazel testified, however, that he had returned to the property since 2007 and that one of the trailers was “in pretty bad disarray” with missing doors and windows. In reviewing more recent photos of the property, Brazel acknowledged that the trailer at 55 Bills Lane did not look habitable “with the door and everything missing off of it.” Brazel testified that he did not share any of his knowledge of the Bills Lane property, or that there were three separate addresses, with Gonzalez, Gordon, or Cowell.

¶ 22 Cowell testified that during the overheard exchange, when Williams exchanged the pseudoephedrine for methamphetamine, he was located nearby the blue trailer on Bills Lane and that he entered the blue trailer during the execution of the search warrant. Cowell testified that if electricity were available to the blue trailer, it would have had to have been supplied by an extension cord from the main residence because he did not

identify another power supply to the trailer. Cowell testified that in executing the search warrant, neither he nor any of the other officers were confused regarding the buildings to be searched. Cowell testified that no other trailers were located in the vicinity other than this group of trailers on Bills Lane. Cowell testified that he was unaware of the 53, 55, and 57 Bills Lane addresses.

¶ 23 Gonzalez testified that the investigation encompassed the defendant, Rothe, and Dunn and that the description of the target location included a group of buildings commonly known to be utilized by the defendant for his sanitation service and included a metal-sided residence with multiple trailers to the north. Gonzalez testified that prior to the execution of the search warrant, he did not know that the property was subdivided into three different addresses or that Dunn or Rothe maintained a residence on the property. Gonzalez testified that neither he nor the other officers were confused regarding what buildings to search.

¶ 24 Dowdy testified that in August 2013, he was called to a residence in Gillespie, where officers found evidence of methamphetamine being cooked at the residence. Dowdy testified that Dunn lived at that Gillespie residence, that Rothe was present during the encounter, and that he believed Rothe was residing in Gillespie. Dowdy testified that he had no knowledge that Rothe or Dunn had established a residence at 55 or 57 Bills Lane.

¶ 25 Dowdy testified that he had no contact with the property at issue until September 12, 2013, before the search warrant was executed, when he drove by the Bills Lane property for surveillance. Dowdy testified that it did not seem as if anyone was living in

the trailers on the property and that Gonzalez had confirmed that the entire property belonged to the defendant. Dowdy identified the Montgomery County 9-1-1 road atlas but testified that he did not know during his drive-by on September 12, 2013, that there were three addresses to the property or that 55 and 57 Bills Lane existed. Dowdy testified that all of the buildings on the property, including the trailers, were searched.

¶ 26 Gordon testified that she had viewed the methamphetamine lab located in Dunn's residence in Gillespie, Illinois, and later learned from Williams, acting as a confidential source, that Dunn was living at the defendant's house, fixing up a trailer on the property. Gordon testified that before the search warrant was issued, she had requested that Dowdy drive by the residence to acquire a property description for the search warrant.

¶ 27 Gordon testified that at the briefing, prior to the deal, the officers identified the main house and three other trailers on the property. Gordon testified that she did not identify the other trailers on the defendant's property as rental units and that one did not have windows and looked like it was completely uninhabitable. Gordon testified that she understood that one was being improved to live in, but at that time, no electricity had been run to it. Gordon testified that the officers discussed that the blue trailer was the one that was used to manufacture methamphetamine and that Rothe and Dunn were working on the trailer to eventually live in it. Gordon testified that she understood that Dunn, Rothe, and the defendant were involved in the manufacture of methamphetamine.

¶ 28 Gordon acknowledged that she did not verify the address in question in the Montgomery County 9-1-1 road atlas or in any records prior to applying for the search warrant. She testified that the deputies had confirmed that the property belonged to the

defendant and that it was her understanding that the area to be searched involved one address. Gordon testified that prior to execution of the search warrant, she did not know that the trailers were located at 55 and 57 Bills Lane. Gordon contended that if she had known that the property involved three different addresses, and that the exchange occurred on 57 Bills Lane, she would have requested a search warrant for 53 Bills Lane and the other two trailers on Bills Lane. Gordon testified that neither she nor any of the officers whom she was supervising were confused regarding which trailers and what property they would be searching.

¶ 29 On August 24, 2015, the circuit court denied the defendant's motion to suppress. The circuit court found that when the affidavit and complaint for search warrant were submitted, the facts and circumstances as known to the officers revealed that the defendant's property was under the defendant's control and dominion as a whole and was being used and treated as a single and common property at that time. The circuit court found that the evidence did not support the conclusion that Dunn and Rothe were tenants with separate and distinct rights. The court found that the circumstances began with a request for exchange in the defendant's driveway at 53 Bills Lane, while Dunn, Rothe, and the defendant were present. The circuit court noted that Williams, as the confidential source, presented firsthand knowledge that she witnessed these actions at 53 Bills Lane, and this tip was corroborated with the overhear and the ultimate pseudoephedrine/methamphetamine exchange.

¶ 30 The circuit court found the evidence insufficient to show that Dunn and Rothe were living at 57 Bills Lane as a separate residence. The circuit court further found that it

would not have been readily apparent to officers that the properties were inhabited as residences. The circuit court noted evidence that the defendant's tanker truck was parked at the 57 Bills Lane address and that there was no suggestion of a tenant-landlord relationship between the defendant and Dunn or Rothe. The circuit court thus denied the defendant's request to suppress the search warrant and the resulting evidence.

¶ 31 On October 15, 2015, in circuit court case number 14-CF-82, the defendant filed a motion for a *Franks* hearing to suppress search and its fruits, noting that the charges in case number 14-CF-82 derived from evidence obtained through the execution of the search warrant at issue in the *Franks* hearing in case number 13-CF-137. The defendant requested the court to consider two additional affidavits, police reports from 2010 and 2012 respectively, relating to the properties at 53, 55, and 57 Bills Lane. The reports showed that between October 2007 and July 2012, officers responded to calls at 53, 55, and 57 Bills Lane from residents other than the defendant. The circuit court confirmed its previous ruling and denied the defendant's *Franks* motion.

¶ 32 The parties proceeded to a stipulated bench trial. With regard to case number 13-CF-137, the defendant and the State stipulated that the State would present, among other things, Gordon's testimony that items consistent with methamphetamine production were found at 57 Bills Lane, including 40 pseudoephedrine pills consistent with what was delivered to Dunn that evening, that finished methamphetamine product was located at 53 Bills Lane, and that Rothe and Dunn were manufacturing methamphetamine at 57 Bills Lane. In exchange for the stipulated bench trial as to unlawful use of property, the State dismissed the remaining counts. The circuit court found the defendant guilty of unlawful

use of property (720 ILCS 646/35(a) (West 2012)) and sentenced the defendant to five years, nine months with the Illinois Department of Corrections.

¶ 33 With regard to case number 14-CF-82, the defendant and the State stipulated that Furlong would testify that he had participated in the execution of the September 12, 2013, search warrant at 53 Bills Lane and had observed stolen items on the property, which were later seized. The State also submitted the defendant's prior conviction for theft. Accordingly, the circuit court found the defendant guilty of theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)) and sentenced the defendant to the Illinois Department of Corrections for five years and nine months, to run concurrent with his sentence of five years and nine months in case number 13-CF-137, and consecutive to another Montgomery County case.

¶ 34 On October 20, 2015, the defendant filed a motion for a new trial arguing, among other things, that the circuit court erred in denying his motion to suppress search after the *Franks* hearing. On the same date, the circuit court denied the defendant's motion, and the defendant filed a timely notice of appeal.

¶ 35 ANALYSIS

¶ 36 On appeal, the defendant argues that the circuit court erred in denying his motion to quash warrant and suppress evidence because Gordon's search warrant affidavit contained false statements and omissions that were included with a reckless disregard for the truth. We note that we will reverse the circuit court's ruling on the merits after a full *Franks* hearing only if it is against the manifest weight of the evidence. *People v. Chambers*, 2016 IL 117911, ¶ 78.

¶ 37 The warrant clause of the fourth amendment, made applicable to the states by the fourteenth amendment, provides that “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.” U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. I, § 6; *Franks*, 438 U.S. at 164. “ ‘[W]hen the Fourth Amendment demands a factual showing sufficient to comprise “probable cause,” the obvious assumption is that there will be a *truthful* showing” (emphasis in original).’ ” *Franks*, 438 U.S. at 164-65 (quoting *United States v. Halsey*, 257 F. Supp. 1002, 1005 (S.D.N.Y. 1966)). “This does not mean ‘truthful’ in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant’s own knowledge that sometimes must be garnered hastily.” *Id.* at 165. “But surely it is to be ‘truthful’ in the sense that the information put forth is believed or appropriately accepted by the affiant as true.” *Id.*

¶ 38 In *Franks*, 438 U.S. at 165, 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 factual allegations made in a search warrant affidavit. The Court held that when a defendant makes a substantial preliminary showing that the police procured the warrant to search his property with intentional or reckless misrepresentations in the warrant affidavit, and these statements were necessary to the finding of probable cause, the fourth amendment entitles him to an evidentiary hearing during which he may challenge the constitutionality of the

search. *Id.* Where a hearing has been granted, as in this case, *Franks* instructs that if “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.” *Id.* at 156.

¶ 39 Accordingly, pursuant to *Franks*, a search warrant that appears sufficient may be attacked if the defendant can demonstrate that the issuing judge was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. *Id.* at 155-56. Not all false statements are relevant: there must be allegations of deliberate falsehood or of reckless disregard for the truth. *People v. Bryant*, 389 Ill. App. 3d 500, 528 (2009). Negligent police miscommunications in the course of acquiring a warrant do not provide a basis to rescind a warrant and render a search invalid. See *id.*; see also *United States v. Williams*, 718 F.3d 644, 649 (7th Cir. 2013) (showing of reckless disregard requires more than a showing of negligence). Affidavits must be viewed in a commonsense, not a hypertechnical, manner. *People v. Sutherland*, 223 Ill. 2d 187, 210 (2006).

¶ 40 In the context of a *Franks* hearing, to prove reckless disregard for the truth, the defendant must prove that the affiant entertained serious doubts as to the truth of his allegations or that the surrounding circumstances provided obvious reasons for doubting the affiant’s veracity. *People v. Holmes*, 175 Ill. App. 3d 495, 503 (1988). This approach recognizes that law enforcement officers gather information at the scene from a variety of sources, that warrants are issued on the basis of nontechnical, commonsense judgments

rather than the technical rules associated with the introduction of evidence in legal proceedings, and that the use of hearsay in the affidavit is legally sufficient if corroborated by matters within the affiant's knowledge. *Id.* In this regard, the task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.*; *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983).

¶ 41 “The deliberate falsity or reckless disregard whose impeachment is permitted [in a *Franks* hearing] *** is only that of the affiant, not of any nongovernmental informant.” *Franks*, 438 U.S. at 171; *People v. Friend*, 177 Ill. App. 3d 1002, 1013 (1988). “[T]he [judge issuing the warrant] is concerned, not with whether the informant lied, but with whether the affiant is truthful in his recitation of what he was told.” *McCray v. Illinois*, 386 U.S. 300, 307 (1967); *Friend*, 177 Ill. App. 3d at 1013.

¶ 42 In the present case, the defendant failed to establish by a preponderance of the evidence that Gordon engaged in intentional perjury or acted with reckless disregard for the truth. In Gordon's warrant affidavit, she incorrectly stated that Williams had delivered the pseudoephedrine pills to Dunn at 53 Bills Lane. The defendant argues that Gordon acted with reckless disregard for the truth where a basic investigation into Bills Lane would have revealed that the property was subdivided into three different properties. The defendant argues that Gordon's failure to conduct an inquiry into Bills Lane, other than her reliance on Gonzalez's inaccurate representation and Dowdy's hasty site survey, indicates that she acted with a reckless disregard for the truth or falsity of the information

provided to her. The defendant argues that even if Gordon did not know Bills Lane was separated into three different properties, she should have distinguished between the main residence, 53 Bills Lane, and the blue trailer in the warrant affidavit to apprise the court of the possibility of two different properties and residences at issue.

¶ 43 As noted by the circuit court, the evidence revealed that the three Bills Lane properties were owned by the defendant's mother and were under the control and dominion of the defendant, being used and treated as a single and common property at the time. The evidence revealed that the trailers did not have electricity, that an extension cord from the main residence supplied power to the blue trailer, and that the trailers on the property were not readily habitable. Thus, nothing on the property itself revealed to Gordon that it included three separate addresses. Moreover, Gordon took precautionary steps to ensure Williams's reliability prior to obtaining a search warrant by taking her before the circuit court judge to acquire an overheard and to execute an exchange prior to executing the search warrant. Gordon maintained that she did not know that Bills Lane contained three separate addresses, that she believed that Dunn and Rothe were living in the main house with the defendant, and that she had confirmed with the officers that the property was the defendant's and that he lived at 53 Bills Lane. Accordingly, the circuit court concluded that the defendant had failed to sufficiently prove by a preponderance of the evidence that Gordon had included deliberate falsehoods or acted in reckless disregard of the truth in preparing the warrant affidavit. We conclude that this finding is not against the manifest weight of the evidence.

¶ 44 The defendant also contends that Gordon deprived the issuing court of information necessary to the determination of probable cause as to 53 Bills Lane when she omitted the fact that the defendant was not present during the pseudoephedrine exchange.

¶ 45 “The principles underlying the *Franks* decision also apply where information, necessary to a determination of probable cause, is intentionally or recklessly omitted from the affidavit.” *Sutherland*, 223 Ill. 2d at 218. However, we reject the defendant’s argument that Gordon recklessly disregarded the truth in omitting a statement that the defendant was not present for the pseudoephedrine exchange. In the affidavit, Gordon plainly stated that the conversation regarding the purchase of the pseudoephedrine occurred in front of Rothe, Dunn, and the defendant and that the pseudoephedrine/methamphetamine exchange, executed pursuant to the overhear, occurred between the confidential source and Dunn. The circuit court thus properly concluded that the defendant had failed to prove by a preponderance of the evidence that Gordon had intentionally or in reckless disregard of the truth omitted information, included deliberate falsehoods, or otherwise acted in reckless disregard of the truth in preparing the warrant affidavit. Accordingly, the circuit court properly denied the defendant’s motion to quash the warrant.

¶ 46 The defendant argues that the circuit clerk improperly imposed an additional finance assessment in his cases. Specifically, the defendant seeks relief as to fines that were recorded by the circuit clerk but were not referenced by the circuit court. In *People v. Vara*, 2018 IL 121823, ¶ 23, our supreme court held that although the circuit clerk has no authority to levy fines against the defendant, the improper recording of a fine is not

subject to direct review by the appellate court. Accordingly, we lack jurisdiction to review the clerk's recording of fines that were not included as part of the circuit court's final judgment.

¶ 47

CONCLUSION

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Montgomery County.

¶ 49 Affirmed.