

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1159-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PAUL F. GRAVES, a/k/a
PARRIS GRAVES,
LAVAR GRAVES,
LEVAR W. GRAVES,
PAUL GRAVES,
PAUL GRAVES, JR.,
and PAUL F. GRAVES, JR.,

Defendant-Appellant.

Submitted September 14, 2022 – Decided February 27, 2023

Before Judges Vernoia, Firko, and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Indictment No. 18-08-0469.

Joseph E. Krakora, Public Defender, attorney for
appellant (John P. Flynn, Assistant Deputy Public
Defender, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Sarah D. Brigham, Deputy Attorney General, of counsel and on the brief; Ravipal Singh, on the brief).

PER CURIAM

A jury convicted defendant Paul F. Graves of third-degree unlawful possession of controlled dangerous substances (CDS), N.J.S.A. 2C:35-5, and the court imposed a four-year custodial sentence. Defendant appeals from an order denying his motion to suppress physical evidence — heroin and 4-Fluoroisobutyryl (fentanyl) — seized from a residence on Garfield Avenue in Plainfield pursuant to a search warrant. He argues the court erred by finding the affidavit supporting the search warrant established probable cause for a search of the entire residence and by denying his request for a Franks¹ hearing. Unpersuaded by defendant's arguments, we affirm.

I.

In April 2018, a Superior Court judge granted the State's request for a search warrant for the Garfield Avenue residence. The warrant was supported by the affidavit of Plainfield Police Department Detective Joseph Mulligan. The

¹ Delaware v. Franks, 438 U.S. 154 (1978). "[A] [Franks] hearing is an evidentiary proceeding in which a defendant, upon a certain showing . . . , may challenge the veracity of an affidavit upon which a facially valid search warrant was based." State v. Desir, 245 N.J. 179, 186 n.1 (2021).

affidavit detailed an investigation of defendant that was initiated following a confidential informant's (CI) report defendant sold cocaine and heroin from the residence.

Mulligan's affidavit described three separate purchases of drugs by the CI from defendant, one each in February, March, and April 2018. On each occasion, during phone calls overheard by Mulligan, the CI made arrangements to buy drugs from defendant. The CI then met defendant at an agreed upon location to complete the transaction. In each instance, police observed defendant leave the Garfield Avenue residence, travel to the designated location, and immediately return to the residence after delivering CDS to the CI in exchange for cash.

During the February transaction, police observed defendant leave the residence through its side door, travel to and from the agreed upon location where he delivered cocaine to the CI, and return to the residence and re-enter through the side door. During the March transaction, defendant departed the residence through the side door, delivered heroin to the CI, and returned to the residence, entering through its front door. In the April transaction, defendant exited the front door of the residence and, following his delivery of heroin and fentanyl to the CI, returned to the residence and entered through the front door.

Mulligan's affidavit also described ongoing surveillance of defendant during which police observed defendant leave the residence, have brief meetings with individuals and engage in hand-to-hand transactions, and immediately return to, and re-enter, the residence.

Mulligan represented the "subscriber" for the electric and gas utilities for the residence was Robert Dixon. Mulligan further explained that during the investigation, he responded to the residence on a matter unrelated to defendant's alleged drug dealing and spoke to defendant's mother, Iris Dixon, who said the residence "is a two[-]family house," and that she "has a large family living at the house and they have access to the entire house" and "free reign of the entire residence." Mulligan also represented that Plainfield Police Department records showed defendant had previously identified the residence as his home address.

Mulligan further represented that "[a]lthough" the residence "is listed as a two-family residence, [he] was unable to definitively ascertain how the interior of the residence is partitioned or if it is partitioned at all." Citing to Iris Dixon's statement "her family has free reign of the entire residence[.]" Mulligan stated he did not "believe the residence is . . . separated into two residences[.]" and he noted that during his surveillance he observed defendant enter and exit the residence through "both the front door and side door"

Mulligan requested authorization to search "the interior portions of the residence accessible from [the] two doors." The court issued a search warrant for the residence based solely on the representations in Mulligan's affidavit. The search warrant expressly incorporated by reference the information contained in Mulligan's affidavit.

On April 18, 2018, the police executed the search warrant and located CDS — heroin and fentanyl — in various locations in the residence. Following his arrest for possessory offenses based on the CDS found in the residence, and his indictment by the grand jury, defendant moved to suppress the CDS found in the residence.²

The court conducted a hearing on defendant's motion. The State presented Plainfield Detective Michael Black, who assisted with a stop of a motor vehicle in which defendant was a passenger just prior to the execution of the search warrant. Detective Black spoke with defendant following the motor vehicle stop and then participated in the search of the residence. He testified the "whole

² Defendant also moved to suppress statements he made to the police following his arrest. The court denied the motion. Defendant does not appeal from the order denying his motion to suppress his statements. We therefore do not address any issues pertaining to the court's entry of that order.

house" was "wide open" as he and the other officers moved throughout the house during the execution of the search warrant.

The State also presented Plainfield Police Department lieutenant Christopher Sylvester, who was present with Mulligan at the residence during the investigation of the prior unrelated incident. Lieutenant Sylvester testified that during the investigation of the incident, Iris Dixon was asked if the residence was a "two[-]family house," and she said "oh, no, we have the whole house." Sylvester also testified that during the investigation of the prior incident, Dixon explained there were "a whole lot of people" living in the residence, including "the kids and [her] son and [her] father[.]"

Lieutenant Sylvester also described the search of the residence following the issuance of the search warrant. He explained during the execution of the warrant there were no doors barring his access to any of the rooms within the residence.

Defendant testified on his own behalf about his arrest and his interactions with the police during which he made the statements he sought to have suppressed. He also denied living at the Garfield residence at the time the search warrant was executed.

Iris Dixon also testified. In an affidavit she submitted to the court prior to the hearing, she denied speaking with the police at her residence during their investigation of the prior incident a few weeks before execution of the search warrant. However, after being confronted with recordings of the investigation of the prior incident at the residence, Dixon conceded she may have spoken to the police at that time. She also described the layout of the residence, asserting she resides with defendant, her father, and two children on the first floor and her sister resides on the second floor in what she described as her sister's apartment.

In a detailed written opinion, the motion court made credibility determinations and findings of fact supporting its denial of defendant's motion. More particularly, the court found detective Black and lieutenant Sylvester credible and rejected defendant's and Iris Dixon's testimony as not credible.

The court rejected defendant's claim that although Mulligan was aware the residence was a two-family home, his affidavit supporting the warrant failed to sufficiently identify the subunit in the residence that could be searched. The court also rejected defendant's argument he was entitled to a Franks hearing, finding defendant's claim Mulligan's affidavit included false statements about the occurrence of his discussion with Iris Dixon during the investigation of the

prior incident at the residence was undermined by the recordings played during, and testimony at, the hearing.

The court entered an order denying defendant's suppression motion. And, as noted, following defendant's conviction and sentencing, he appealed from the court's order.

Defendant offers the following arguments for our consideration:

POINT I

THE SUPPRESSION MOTION SHOULD HAVE BEEN GRANTED BECAUSE THE WARRANT AFFIDAVIT FAILED TO ESTABLISH PROBABLE CAUSE TO SEARCH BOTH UNITS OF THE TWO-FAMILY HOUSE, THEREBY FAILING THE PARTICULARITY REQUIREMENT.

POINT II

IN THE ALTERNATIVE, THE MATTER SHOULD BE REMANDED FOR A FRANKS HEARING BECAUSE [DEFENDANT] MADE A SUBSTANTIAL PRELIMINARY SHOWING THAT THE WARRANT AFFIDAVIT CONTAINED FALSEHOODS AND OMITTED MATERIAL FACTS.

II.

Defendant challenges the validity of the search warrant issued for the Garfield Avenue residence. He contends the motion court erred by upholding the warrant's validity because Mulligan's affidavit did not establish probable

cause to search both units of what Mulligan acknowledged was a two-family house.

In nearly identical language, "the Fourth Amendment to the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution provide . . . that 'no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.'" State v. Marshall, 199 N.J. 602, 610 (2009) (quoting N.J. Const. art. I, ¶ 7). "Before issuing a warrant, the judge must be satisfied that there is probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is at the place sought to be searched." State v. Sullivan, 169 N.J. 204, 210 (2001); see also State v. Boone, 232 N.J. 417, 426 (2017) (same).

"Probable cause for the issuance of a search warrant requires 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993)). "[T]he probable cause determination must be . . . based on the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony before

the issuing judge that is recorded contemporaneously.'" Marshall, 199 N.J. at 611 (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)).

A search executed pursuant to a warrant enjoys the presumption of validity. State v. Bivins, 226 N.J. 1, 11 (2016); Marshall, 199 N.J. at 612. The defendant bears the burden of challenging the search and must "prove 'that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" State v. Jones, 179 N.J. 377, 388 (2004) (quoting State v. Valencia, 93 N.J. 126, 133 (1983)).

"[S]ubstantial deference must be paid by a reviewing court to the determination of the judge who has made a finding of probable cause to issue a search warrant." State v. Evers, 175 N.J. 355, 381 (2003). Any "[d]oubt as to the validity of the warrant 'should ordinarily be resolved by sustaining the search.'" State v. Keyes, 184 N.J. 541, 554 (2005) (quoting Jones, 179 N.J. at 389). "[W]hen the adequacy of the facts offered to show probable cause . . . appears to be marginal, the doubt should ordinarily be resolved by sustaining the search." State v. Kasabucki, 52 N.J. 110, 116 (1968) (citing United States v. Ventresca, 380 U.S. 102, 109 (1965); State v. Mark, 46 N.J. 262, 273 (1966)). However, "[c]ourts [must] consider the 'totality of the circumstances' and should sustain the validity of a search only if the finding of

probable cause relies on adequate facts." Boone, 232 N.J. at 427 (quoting Jones, 179 N.J. at 388-89).

Defendant argues the motion court erred by finding Mulligan's affidavit established probable cause to search the entire Garfield Avenue residence. Defendant claims that because Mulligan acknowledged in his affidavit the residence was "listed as a two-family home," the police were required to identify the particular unit within the residence where there was probable cause to believe evidence of a crime — defendant's alleged drug dealing — was located.

In support of his contention, defendant relies on our Supreme Court's observations, "[i]t is widely recognized that when a multi-unit building is involved, the affidavit in support of the search warrant must exclude those units for which police do not have probable cause," Marshall, 199 N.J. at 611, and "the scope of lawful search is 'defined by the object of the search and the places in which there is probable cause to believe it may be found,'" ibid. (quoting Maryland v. Garrison, 480 U.S. 79, 85 (1987)).

Defendant also claims the search warrant violated the particularity requirement of the Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution. The particularity requirement "mandate[es] that the warrant specifically describe the search

location so that an officer can reasonably 'ascertain and identify the place intended' to be searched, as authorized by the magistrate's probable cause finding." Bivins, 226 N.J. at 11 (quoting Marshall, 199 N.J. at 611).

Here, the warrant clearly authorized the search of the entire Garfield Avenue residence. Thus, the warrant did not violate the particularity requirement because it plainly allowed the officers to ascertain the identity of the place to be searched — the entire Garfield Avenue residence. See ibid. Defendant's argument is therefore properly focused on whether Mulligan's affidavit established the requisite probable cause to search the entirety of the residence despite Iris Dixon's declaration it was "a two-family home." State v. Sheehan, 217 N.J. Super. 20, 29-30 (App. Div. 1987); see also Marshall, 199 N.J. at 611 (explaining the proper scope of a search warrant is defined by the search's objects and the locations for which there is probable cause to believe the objects may be found). The motion court determined Mulligan's affidavit established probable cause evidence of defendant's alleged drug dealing may be found in the entire residence, and we agree.

Mulligan's affidavit offered numerous facts supporting a reasonable belief there might be evidence of defendant's alleged drug dealing throughout the entire residence based on his access to the "whole house." See State v.

Schumann, 156 N.J. Super. 563, 567 (App. Div. 1978) (upholding a search warrant for a residence and out-buildings in part because there was probable cause to believe the defendant had access to them). Mulligan's affidavit explained that immediately following phone calls made to defendant over a three-month period, defendant exited the residence and then returned immediately to the residence following his distribution of controlled dangerous substances to the CI. Defendant also entered and exited the home through different doorways.

Mulligan's affidavit also disclosed that a resident of the property, Iris Dixon, stated the residence is a "two-family house." However, Mulligan detailed the reason he sought a warrant for the entire premises, explaining Dixon also stated "she ha[d] a large family living at the house and they have access to the entire house" and "free reign of the entire residence." Mulligan's affidavit also stated records showed Dixon is defendant's mother, and defendant had previously provided the Garfield Avenue address as "his place of residence."

Mulligan reasonably interpreted Iris Dixon's statements as declarations that all members of her family, including defendant, whom Mulligan personally observed entering and exiting the house from different doors on numerous occasions over a three-month period, had access to the entirety of the residence

she described as a two-family house. In other words, there was reason to believe that evidence of defendant's drug dealing could be located throughout the entire residence because Dixon's statements supported the reasonable conclusion defendant, as a member of Dixon's family, had access to, and free reign over, the entirety of the residence.

Based on the totality of the circumstances presented within the four corners of Mulligan's affidavit, the State therefore demonstrated "'there [was] a fair probability that contraband or evidence of a crime [would] be found in a particular place[.]" State v. Johnson, 171 N.J. 192, 214 (2002) (citation omitted), the entire Garfield Avenue residence, such that there was probable cause to search the entire premises. Thus, we affirm the court's denial of defendant's suppression motion founded on his challenge to the validity of the search warrant.

III.

Defendant also argues the matter should be remanded for a Franks hearing based on his claim Mulligan's affidavit contained material falsehoods and omitted material facts. More particularly, defendant argues Mulligan's affidavit misrepresented that he spoke with Iris Dixon during the investigation of the prior

incident at the Garfield Avenue residence and that Dixon said her family had access to the entire residence.

Defendant also claims he is entitled to a Franks hearing because: Mulligan's affidavit did not disclose there is an exterior staircase in the rear of the residence leading to the second floor; and he and Iris Dixon testified at the evidentiary hearing he did not live at the residence when the search warrant was executed, and, as such, he did not have access to the entire residence as Mulligan asserted in his affidavit.

We review a trial court's decision denying a Franks hearing for an abuse of discretion. State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009). An abuse of discretion will be found where the "decision [was] made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." U.S. ex rel. USDA v. Scurry, 193 N.J. 492, 504 (2008) (alteration in original) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

When a defendant challenges the veracity of a search warrant affidavit, a Franks hearing is required "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included . . . in the warrant affidavit, and if the

allegedly false statement is necessary to the finding of probable cause." 438 U.S. at 155-56. The defendant "must allege 'deliberate falsehood or reckless disregard for the truth,' pointing out with specificity the portions of the warrant that are claimed to be untrue." State v. Howery, 80 N.J. 563, 567 (1979) (quoting Franks, 438 U.S. at 171). Only where a defendant also establishes "the allegedly false statement [was] necessary to the [issuing judge's] finding of probable cause, [does] the Fourth Amendment require[] that a hearing be held at the defendant's request." Desir, 245 N.J. at 186 n.1 (quoting State v. Robinson, 200 N.J. 1, 7 (2009)).

In making this "substantial preliminary showing . . . the defendant cannot rely on allegations of unintentional falsification in a warrant affidavit. He must allege 'deliberate falsehood or reckless disregard for the truth,' pointing out with specificity the portions of the warrant that are claimed to be untrue." Howery, 80 N.J. at 567. "These allegations should be supported by an offer of proof including reliable statements by witnesses[.]" Ibid. "[N]o hearing is required" where the defendant fails to make this substantial preliminary showing. Franks, 438 U.S. at 172.

A defendant may also challenge a warrant affidavit on grounds the affiant made a material omission in the application. State v. Marshall, 148 N.J. 89, 193

(1997) (stating "[m]aterial omissions in the affidavit may also invalidate the warrant"). The Franks standard "requirements apply where the allegations are that the affidavit, though facially accurate, omits material facts." State v. Stelzner, 257 N.J. Super. 219, 235 (App. Div. 1992).

In considering a material omission, "essentially the same factual predicate must be established [as under the Franks standard,] in order to entitle the defendant to an evidentiary hearing." Sheehan, 217 N.J. Super. at 25. That is, "the defendant must make a substantial preliminary showing that the affiant, either deliberately or with reckless disregard for the truth, failed to apprise the issuing judge of material information." Ibid. The defendant must show that, had that information been included in the affidavit, it "would have militated against issuance of the search warrant." Ibid.

Here, defendant's claim the matter should be remanded for a Franks hearing is not supported by any showing Mulligan's affidavit contained material misstatements of fact or any omissions of material facts. In addition, some of the purported misrepresentations and omissions about which defendant complains were addressed and found to be unsupported by competent evidence at the evidentiary hearing.

Defendant sought a Franks hearing based on the claim Mulligan's affidavit misrepresented that he spoke with Iris Dixon during the prior investigation at the residence, and, at that time, Dixon said her family had access to the whole house. In support of the claim, defendant relied on Dixon's affidavit submitted prior to the evidentiary hearing in which she stated she did "not recall speaking with . . . Mulligan and [did] not recall any occasion in which he came to [her] residence" during the months preceding the execution of the search warrant.

Iris Dixon's vague assertion the conversation with Mulligan did not occur was undermined at the evidentiary hearing, where: Dixon retreated from her claim the conversation did not occur; recordings confirmed Mulligan spoke with defendant at her residence during the investigation of the prior incident; Sylvester independently confirmed Mulligan's conversation with Dixon; and the motion court found as fact the conversation between Mulligan and Dixon, during which she said her family shares the "whole house," took place. Thus, the record lacks any evidence Mulligan's representation his conversation with Dixon took place constituted a "'deliberate falsehood or reckless disregard for the truth,'" such that a Franks hearing, or any hearing beyond the one already conducted, is warranted. Howery, 80 N.J. at 567.

Defendant also claims he was entitled to a Franks hearing because Mulligan's affidavit omitted the rear of the residence includes an exterior staircase leading to the second floor. Defendant argues disclosure of the exterior staircase in the search warrant affidavit would have supported a finding "the residence was actually being used as a two[-]family house."

We reject defendant's argument for two separate, but equally dispositive, reasons. First, defendant did not, and does not, make any showing that Mulligan "either deliberately or with reckless disregard for the truth, failed to apprise the issuing judge of" the staircase. Sheehan, 217 N.J. Super. at 25. Second, defendant similarly failed to demonstrate that, had the existence of the staircase been disclosed in the affidavit, it "would have militated against issuance of the search warrant." Ibid.

Indeed, although defendant argues disclosure of the staircase would have established the house was being "used" as a two-family house, there is nothing about the existence of the staircase that warrants any conclusion about the manner in which the house was being "used," and Mulligan's affidavit otherwise disclosed the home was listed as a two-family house. As we have discussed, the information Mulligan relied on to establish probable cause to search the entire residence was contained in Iris Dixon's statement that her family had full use of

the entire house. The mere existence of the rear staircase is not in any manner inconsistent with Dixon's statements to the police. We therefore conclude defendant failed to sustain his burden of making a substantial showing there was any omission related to the staircase warranting a further evidentiary hearing.

Defendant last claims he is entitled to a Franks hearing because he and Iris Dixon testified at the evidentiary hearing that he did not live at the residence when the search warrant was executed. He claims that evidence supports a finding he did not have access to the entire residence. We reject the argument because Mulligan's affidavit did not assert defendant resided at the residence at the time the search warrant was sought. Mulligan represented only that Plainfield Police Department records showed defendant had previously listed the Garfield Avenue address as his residence. Neither defendant nor Dixon asserted that was untrue. Thus, defendant did not sustain his burden of showing Mulligan's affidavit contained a "'deliberate falsehood[,]" or any falsehood, warranting the requested Franks hearing. Howery, 80 N.J. at 567.

We further note that although the evidentiary hearing conducted by the court was not denominated a Franks hearing, the evidence presented, and the court's findings, addressed in part some of the claims supporting defendant's request for a Franks hearing. In any event, based solely on defendant's

submissions in support of his request for a Franks hearing, and even without regard to the evidentiary hearing record, we conclude defendant failed to satisfy his burden of making a substantial preliminary showing Mulligan's affidavit contained materially false representations or material omissions such that defendant was entitled to the requested hearing. The motion court therefore correctly denied defendant's request.

To the extent we have not expressly addressed any arguments asserted on defendant's behalf, we have determined they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION