

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RODERIC MARTEZ ROOKS,

Defendant-Appellant.

UNPUBLISHED

April 18, 2013

No. 307810

Oakland Circuit Court

LC No. 2011-235719-FC

Before: MARKEY, P.J., and TALBOT and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of delivery or manufacture of 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i), two counts of delivery or manufacture of 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), delivery or manufacture of 5 or more but less than 45 kilograms of marijuana, MCL 333.7401(2)(d)(ii), and three counts of possession of a firearm during the commission of a felony, MCL 750.227b. Because the trial court did not abuse its discretion by denying defendant's request for a *Franks*¹ hearing and properly determined that the search warrant affidavit for the search of defendant's apartment supported a finding of probable cause even without the alleged false information or the information provided by an unnamed individual, we affirm.

Defendant's convictions arise from the discovery of cocaine, marijuana, and firearms during police searches of his house and separate apartment in Southfield. Both searches were conducted pursuant to search warrants. Before the warrants were issued, the police conducted surveillance of defendant at his apartment complex. During that surveillance, Detective Paul Kinal observed defendant engage in a hand-to-hand transaction in the parking lot. According to Kinal, defendant handed a brown paper bag to Edward Sims, who was inside a vehicle, and Sims then left in his vehicle. Kinal followed Sims's vehicle and arranged for another officer to stop the vehicle. Following the stop, a search of Sims led to the discovery of a brown paper bag inside Sims's coat pocket. The bag contained a substance that field-tested positive for cocaine. The police thereafter obtained a search warrant for defendant's apartment, where they discovered various quantities of cocaine and a firearm. The police then obtained a search warrant for

¹ *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978).

defendant's house, where they discovered additional quantities of cocaine and marijuana along with additional firearms.

Defendant filed a motion to suppress the evidence recovered during the searches, arguing that the search warrants were invalid because they were based on false or tainted information. Defendant primarily attacked the validity of the original search warrant for the apartment, and argued that all the evidence discovered during the searches of both his apartment and his house was required to be suppressed as the fruit of the poisonous tree. Defendant argued that the search warrant for his apartment was improperly based on information supplied by an unnamed person without any basis for believing that the person was credible or that the information provided was reliable. Defendant also questioned whether the unnamed person actually existed. In addition, defendant argued that the search warrant affidavit falsely stated that, after Sims was arrested, he made statements implicating defendant in drug trafficking. According to defendant, Sims denied making any statements regarding defendant. Defendant also argued that it was improper to consider allegations relating to the search of Sims after the police stopped Sims's vehicle because, in the separate criminal case against Sims, the court determined that the search was unconstitutional. Defendant argued that after removing all of the tainted allegations in Kinal's search warrant affidavit for the apartment, the remaining allegations were insufficient to support a finding of probable cause to search the apartment and, therefore, the resulting search warrant was invalid.

The trial court denied defendant's motion to suppress, concluding that the search warrants were properly based on probable cause. Although defendant had requested an evidentiary hearing pursuant to *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978), to determine whether false information was improperly included in the search warrant affidavits, the trial court denied the request because it determined that the allegedly false information was not necessary to support a finding of probable cause.

Defendant argues on appeal that the trial court erred by denying his motion to suppress, particularly without holding an evidentiary hearing. We review the trial court's ultimate decision on a motion to suppress and any questions of law de novo. *People v Keller*, 479 Mich 467, 473, 476; 739 NW2d 505 (2007); *People v Malone*, 287 Mich App 648, 662-663; 792 NW2d 7 (2010). "Whether to hold an evidentiary hearing based upon a challenge to the validity of a search warrant's affidavit is committed to the discretion of the trial court." *People v Martin*, 271 Mich App 280, 309; 721 NW2d 815 (2006). "However, this Court reviews the facts supporting the denial of the evidentiary hearing for clear error and reviews the application of those facts to the law de novo." *Id.*

Probable cause to search must exist at the time that a search warrant is issued. *People v Stumpf*, 196 Mich App 218, 227; 492 NW2d 795 (1992). "Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct could be found in a stated place to be searched." *Id.* When reviewing a decision to issue a search warrant, the reviewing court must read the search warrant and the underlying affidavit in a common-sense and realistic manner. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Deference is afforded the magistrate's decision because of the preference for searches conducted pursuant to warrants. *Id.* at 604. Such deference simply requires that a reviewing court insure that there is a substantial basis for the magistrate's determination that there exists a

fair probability that contraband or evidence of a crime will be found in a particular place before issuing the warrant. *Id.*

False statements may not be used to support a finding of probable cause. As explained in *Stumpf*, 196 Mich App at 224:

Franks v Delaware, 438 US 154, 155-156; 98 S Ct 2674; 57 L Ed 2d 667 (1978), requires that if false statements are made in an affidavit in support of a search warrant, evidence obtained pursuant to the warrant must be suppressed if the false information was necessary to a finding of probable cause. In order to prevail on a motion to suppress the evidence obtained pursuant to a search warrant procured with alleged false information, the defendant must show by a preponderance of the evidence that the affiant had knowingly and intentionally, or with reckless disregard for the truth, inserted false material into the affidavit and that the false material was necessary to a finding of probable cause.

If an affidavit contains false information, the search warrant may nevertheless be valid and evidence obtained pursuant to the warrant need not be suppressed if probable cause exists without considering the misinformation. *People v Griffin*, 235 Mich App 27, 42; 597 NW2d 176 (1999), overruled on other grounds *People v Thompson*, 477 Mich 146, 148; 730 NW2d 708 (2007). A trial court is obligated to conduct a *Franks* hearing only if the defendant makes a preliminary showing that the affiant knowingly and intentionally, or with reckless disregard for the truth, included a false statement in the warrant affidavit and that the allegedly false statement was necessary to a finding of probable cause. *People v Mullen*, 282 Mich App 14, 22; 762 NW2d 170 (2008).

Initially, we reject defendant's argument that the search warrant for the apartment was improperly based on information supplied by an unnamed person without a basis for believing that the person was credible or that the information supplied was reliable. MCL 780.653 provides:

The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

(a) If the person is named, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information.

(b) *If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.* [Emphasis added.]

"A warrant may issue on probable cause if the police have conducted an independent investigation to confirm the accuracy and reliability of the information regardless of the knowledge and reliability of the source." *People v Waclawski*, 286 Mich App 634, 699; 780

NW2d 321 (2009) (brackets omitted), quoting *People v Sellars*, 153 Mich App 22, 27; 394 NW2d 133 (1986).

In this case, the only information in the search warrant affidavit attributable to the unnamed person was that “a subject by the name of Roderick Martez Rooks BM 1-8-71 was involved in trafficking large quantities of cocaine” and “that Rooks resided in Southfield.” Kinal’s affidavit indicated that he used a law enforcement database to confirm that a person with defendant’s name resided at an apartment in Southfield and that he further confirmed with the apartment management that defendant resided in the apartment complex and drove a GMC pickup truck. Kinal’s affidavit also indicated that Kinal conducted independent surveillance of defendant’s apartment to confirm the information that he received from the unnamed person. The affidavit recounted that Kinal observed defendant at the apartment complex, that Kinal observed defendant engage in a hand-to-hand transaction with the occupant of a vehicle in the parking lot during which defendant handed the occupant a brown paper bag, and that that vehicle was subsequently stopped and the occupant was found to be in possession of a brown paper bag containing a substance that field-tested positive for cocaine. Thus, the affidavit contained facts from which the magistrate could conclude that the police conducted an independent investigation to confirm the accuracy and reliability of the information that the unnamed person supplied. Those facts independently provided probable cause to believe that evidence of drug trafficking would be found at defendant’s apartment. Thus, the limited information provided by the unnamed person was not essential to a finding of probable cause.

Defendant also argues that the search warrant for the apartment was improperly based on Sims’s false statements that implicated defendant in drug trafficking and that the trial court erred by denying his request for an evidentiary hearing to determine the veracity of Sims’s statements. Defendant’s arguments are unavailing.

Kinal averred in his search warrant affidavit that Sims was interviewed after his arrest and stated that someone named “Rod” had offered to pay him \$300 to deliver an unspecified quantity of cocaine to a location in Detroit, and that “Rod” met Sims at the Southfield apartment and handed him a brown paper bag containing the cocaine. Defendant argues that Kinal’s assertions were false and that Sims denied making those statements. The trial court correctly determined that the statements attributable to Sims were not necessary to a finding of probable cause. Sims’s statements merely provided additional details about where he was taking the cocaine and how much he was paid. Moreover, Sims only stated that he met with someone named “Rod.” It was Kinal’s independent observations identifying defendant as the person who handed the paper bag to Sims that provided probable cause to believe that defendant was the supplier of the substance in the brown paper bag. Sims was thereafter stopped by the police and found to be in possession of a brown paper bag that contained a substance that field-tested positive for cocaine. Even without Sims’s statements, the information in Kinal’s affidavit describing Kinal’s observations of defendant handing Sims the brown paper bag and the subsequent discovery of a brown paper bag in Sims’s possession that contained cocaine was sufficient to provide probable cause to search defendant’s apartment for evidence of drug trafficking. Further, because Sims’s statements were not necessary to a finding of probable cause, the trial court did not err by denying defendant’s request for an evidentiary hearing to determine the veracity of the purported statements.

Defendant also argues that any facts related to the police search of Sims cannot be considered in determining whether there was probable cause to issue a search warrant because the court in Sims's separate criminal case determined that Sims's search was unconstitutional. Again, defendant's argument is unavailing. "Fourth Amendment rights are personal in nature and cannot be asserted vicariously." *People v Butler*, 193 Mich App 63, 70; 483 NW2d 430 (1992), abrogated on other grounds *People v Reese*, 491 Mich 127; 815 NW2d 85 (2012). Thus, standing to challenge a search is personal to the individual whose rights were violated. *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008). "For an individual to assert standing to challenge a search, the individual must have had a legitimate expectation of privacy in the place or location searched, which expectation society recognizes as reasonable." *Id.* Defendant does not dispute that he did not have an expectation of privacy in either Sims's vehicle or person. Thus, defendant lacks standing to challenge Sims's search. Accordingly, defendant may not rely on the suppression ruling in Sims's case as a basis for precluding consideration of the facts relating to Sims's search for purposes of determining whether Kinal's affidavit supported a finding of probable cause that evidence of drug trafficking could be found in defendant's apartment.

In sum, the untainted information in Kinal's search warrant affidavit for the apartment provided a substantial basis for the magistrate's conclusion that there was a fair probability that contraband or evidence of a crime would be found in the apartment. Thus, the trial court did not err by denying defendant's motion to suppress. Further, because the allegations regarding the existence of the unnamed person and Sims's statements to the police were not essential to a finding of probable cause, the trial court did not err by determining that an evidentiary hearing was unnecessary.² Defendant's challenge to the validity of the search of his house is based on his contention that the search of his apartment was invalid. Because we have concluded that the

² Defendant also argues that, if this Court concludes that he is not entitled to an evidentiary hearing because defense counsel failed to properly preserve that issue by filing an interlocutory appeal from the trial court's denial of his request for an evidentiary hearing, defense counsel was ineffective for failing to do so. As we have concluded, the trial court properly determined that an evidentiary hearing was not necessary. Thus, we did not resolve that issue on preservation grounds. Indeed, we note that defense counsel properly preserved the issue by repeatedly requesting an evidentiary hearing in the trial court. Counsel was not required to further file an interlocutory appeal to preserve that issue for appellate review. See *Attorney Gen v Pub Serv Comm*, 237 Mich App 27, 39-40; 602 NW2d 207 (1999). Accordingly, defendant is not entitled to relief under the alternative theory of ineffective assistance of counsel.

apartment search was based on a search warrant properly supported by probable cause, defendant's challenge to the validity of the search of his house cannot succeed.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Pat M. Donofrio