Circuit Court for Frederick County
Case No. 10-CR-22-000162

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1814

September Term, 2023

DACORA NICOLE ROSS

v.

STATE OF MARYLAND

Graeff,
Arthur,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: May 29, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In March of 2022, Dacora Nicole Ross, the Appellant herein, was indicted in the Circuit Court for Frederick County for possession with intent to distribute cocaine, heroin, and fentanyl in violation of Section 5-602(2) of the Criminal Law Article, Maryland Code, (2002, 2012 Repl. Vol., 2020 Supp.),[1] possession with intent to distribute a controlled dangerous substance containing a mixture of heroin and fentanyl in violation of Section 5-608.1(a) of the Criminal Law Article,[2] possession of cocaine, heroin, and fentanyl in

[1] All statutory references to the Criminal Law Article are to Maryland Code (2002, 2012 Repl. Vol., 2020 Supp.).

Section 5-602 provides:

> Except as otherwise provided in this title, a person may not:
> …
> (2) Possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

[2] Section 5-608.1 Penalties - Distribution of fentanyl and fentanyl mixtures.

> (a) Violation § 5-602 - A person may not knowingly violate Section 5-602 of this subtitle with:
>
> (1) A mixture that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl; or
>
> (2) fentanyl or any analogue of fentanyl

violation of Section 5-601(a)(1) of the Criminal Law Article,[3] and possession of drug paraphernalia, in violation of Section 5-619(c)(2) of the Criminal Law Article.[4]

Prior to trial, Ross filed two motions to suppress evidence, coupled with requests for a hearing for the disclosure of the identity of two confidential informants discussed in a warrant application, under *Franks v. Delaware*, 438 U.S. 154 (1978). Ross's motions for a *Franks* hearing took a circuitous route, but ultimately were denied. Thereafter, Judge Terrence J. McGann, a Senior Judge from the Circuit Court for Montgomery County, presided over a three-day jury trial in August of 2023 in which Ross was convicted.[5]

[3] Section 5-601 provides:

(a) In general. – Except as otherwise provided in this title, a person may not:

(1) Possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice.

[4] Section 5-619(c)(2) provides:

…

(2) Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia.

[5] Ross was sentenced to five years' imprisonment on Count One (CDS: possession with intent to distribute narcotics (cocaine)); five years' imprisonment on Count Two (CDS: possession with intent to distribute narcotics (fentanyl)) to run consecutive with Count One; five years' imprisonment on Count Nine (CDS: possession with intent to distribute (methamphetamine)) to run concurrent with sentences on Count One and Two; five years' imprisonment on Count Ten (possession with intent to Distribute (eutylone)) to run concurrent with sentences on Counts One, Two, and Nine.

At sentencing, Count Five (possession of not marijuana, cocaine) was merged with Count One, Count Six (possession of fentanyl) was merged with Count Two, Count Eleven (possession of methamphetamine) was merged with Count Nine, and Count Twelve (possession of eutylone) was merged with Count Ten.

Counts Three, Four, Seven, and Eight had been nolle prossed.

During jury deliberations, jurors were permitted to keep their phones on their person but were instructed by Judge McGann to turn off their phones, not to engage in any independent research, and not to call anyone.

Ross presents two questions, for our review, which we have restyled:

1. Did the trial court err in denying Ross's motions for a hearing under *Franks v. Delaware*?[6]
2. Did the trial court err by not removing electronic devices from the jurors prior to and during jury deliberations?

We shall affirm the denial of the motion to suppress related to the search of Ross's apartment based upon *Franks v. Delaware* and find that Ross did not properly preserve the challenge to having the jurors keep their cellphones during deliberations.

THE REQUEST FOR A *FRANKS* HEARING

Because the motions to suppress in the instant case were brought under *Franks v. Delaware*, 438 U.S. 154 (1978), it is useful to explore the case as well as its federal history and our interpretation. In *Franks v. Delaware*, Jerome Franks was indicted for rape, kidnapping, and burglary after a search of his apartment resulted in the seizure of various

[6] Ross's questions, as presented in her opening brief, are:

1. Whether the trial court was clearly erroneous in denying Defendant's motion to suppress and exclude evidence improperly obtained from [search] of Ivy Way, Apartment 3B pursuant to Md. Rule 4-252(a)-(b) and Request for a *Franks* Hearing?
2. Whether the trial court committed error in refusing to remove electronic devices from the jurors after deliberations began and further failed to voir dire or admonish jurors after the issue was brought to the court[']s attention?

items of clothing and a single-bladed knife. *Id.* at 156-57. The affiant-police officer who wrote the warrant application had included reference to information about Franks' traditional attire provided by Franks' co-workers. *Id.* at 157. Franks filed a motion to suppress, alleging bad faith on the part of the affiant-officer and demanded that his coworkers be produced by the State for cross-examination. *Id.* at 158. He contended that his co-workers would testify that they had not spoken directly with the affiant-officer and that their conversation with another officer differed from what was contained in the affidavit. *Id.*

After the Delaware Supreme Court affirmed the lower court holding, that "no attack upon the veracity of the warrant could be made," the Supreme Court of the United States granted certiorari. *Id.* at 160-61. The Supreme Court acknowledged the "presumption of validity" with respect to the affidavit supporting the search warrant and required that to warrant an evidentiary hearing, a challenger's attack on the validity of the warrant must be more than conclusory and must be supported by more than a mere desire to cross-examine. *Franks*, 438 U.S. at 171. Justice Harry A. Blackmun, writing for the Court, in reversing the Delaware Court's decision, held, nevertheless, that "deliberate falsehood or of reckless disregard for the truth" accompanied by a proffer, would need to be alleged to warrant a hearing to attack the validity of the warrant. *Id.*

Federal courts have subsequently interpreted *Franks v. Delaware* and developed a multiprong test that must be satisfied, in order to a trigger a hearing, in which a defendant may challenge the validity of the warrant:

> Under the first prong—the "intentionality" prong—the defendant must show that "a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." *Id.* Under the second prong—the "materiality" prong—the defendant must show that "with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause.

United States v. Lull, 824 F.3d 109, 114 (4th Cir. 2016).

In a subsequent federal case involving a confidential informant, *United States v. Clark*, 935 F.3d 558, 563 (7th Cir. 2019), the United States Court of Appeals for the Seventh Circuit considered whether Clark "[had made] a substantial preliminary showing (1) that the warrant application contained a material falsity or omission that would alter the issuing judge's probable cause determination, and that (2) the affiant included [a] material falsity or omitted information intentionally or with a reckless disregard for the truth."

Michael Clark was found in the Baywalk Inn in Superior, Wisconsin with more than eighty grams of a mixture containing heroin and fentanyl, a digital scale, and cellophane bags, following the execution of a search warrant for his hotel room. *Id.* 562-64. The affidavit in support of the warrant contained information elicited from a confidential informant, who averred that earlier that day, he had driven another buyer to the Baywalk Inn to purchase heroin from Clark. *Id.* at 562. After indictment, Clark filed a motion for a *Franks* hearing, alleging that the affiant-officer omitted critical information about the confidential informant. The trial court denied Clark's motion, and the jury convicted him of possession with the intent to distribute narcotics. *Id.*

The critical information that Clark alleged was omitted was that the confidential informant "was being paid for his services" and "had two pending charges against him,

fifteen prior convictions, and a history of opiate and cocaine abuse, and he was hoping to receive a reduced sentence in exchange for his cooperation." *Id.* at 564. The Seventh Circuit reversed, positing that:

> The complete omission of the available damaging information about the informant's credibility permits an inference that [the affiant] was not being honest and careful with the issuing court.

Id. at 567. The Court expressed that the omission of some adverse information about an informant's credibility does not always warrant a *Franks* hearing, especially "when police have sufficiently corroborated an informant's tip." *Clark,* 935 F.3d at 566. However, in *Clark*, all adverse information was omitted, and therefore, Clark was entitled to a hearing in which the affiant's "credibility could be addressed with evidence from both sides." *Id.* at 567.

The Court then turned briefly to the other prong of the *Franks* test and addressed whether the alleged material omission would have altered the issuing judge's probable cause determination. *Id.* at 566-67. Because the "informant was the only source of information" and the remaining statements were "meager," the Seventh Circuit determined that the finding of probable cause could have certainly been affected, and thus, Clark was entitled to a *Franks* hearing. *Id.*

Another case, *United States v. Aviles*, 938 F.3d 503, 509 (3rd Cir. 2019), illustrates were a substantial preliminary showing of falsity or misrepresentation made, that a *Franks* hearing is not required if the alleged statements are immaterial to the finding of probable cause. Aviles, who was charged and convicted of federal drug trafficking counts and related offenses, contended that the affidavit supporting the search warrant for his residence

contained two factual errors and several omissions. *Id.* at 508. These falsities pertained to a confidential informant, who conducted eight controlled buys for the Lebanon County Task Force, five of which involved a purchase of narcotics from Aviles. *Id.* at 505-08. Specifically, Aviles averred that the affidavit falsely claimed that police currency was used in every controlled buy, when, in fact, the confidential informant periodically provided prescription drugs as compensation and that the confidential informant had conducted sales outside of the controlled buys that were not disclosed. *Id.* at 506. The trial court allowed Aviles to further develop his claim during an evidentiary hearing, but the judge ultimately denied his request for a *Franks* hearing, and the jury convicted Aviles of all charges. *Id.* at 506-07.

The Third Circuit affirmed, holding that the affiant's extensive experience with the Lebanon County Drug Task Force, as well as other information contained in the affidavit, including the affiant-officer's close surveillance of the confidential informant prior to, during, and after the controlled buys, provided a sufficient basis for a finding of probable cause, regardless of the alleged factual errors and omissions. *Aviles*, 938 F.3d at 508-09. Therefore, because "sufficient content in the warrant affidavit [supported] a finding of probable cause, no hearing [was] required." *Id.* at 509.

The Maryland protocol regarding the standard to evoke a *Franks* hearing was articulated in *McDonald v. State*, 347 Md. 452, 471 n. 11 (1997):

> Under *Franks*, when a defendant makes a substantial preliminary showing that the affiant intentionally or recklessly included false statements in the supporting affidavit for a search warrant, and that the affidavit without the false statement is insufficient to support a finding of probable cause, the defendant is then entitled to a hearing on the matter. The burden is on the

> defendant to establish knowing or reckless falsity by a preponderance of the evidence before the evidence will be suppressed. Negligence or innocent mistake resulting in false statements in the affidavit is not sufficient to establish the defendant's burden.

This Court has iterated that a *Franks* hearing is a "rare and extraordinary exception," and these requests "will not be indulged unless rigorous threshold requirements have been satisfied." *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003), aff'd, 384 Md. 484 (2004).

Because in the instant case Ross requested the disclosure of the confidential informants' identities and contact information, we must also discuss the concept of "the informer's privilege," which was first coined in *Roviaro v. United States*, 353 U.S. 53, 59 (1957).[7] In *Franks v. Delaware*, Justice Blackmun also discussed the challenge of the confidentiality of the informants:

> And because we are faced today with only the question of the integrity of the affiant's representations as to his own activities, we need not decide, and we in no way predetermine, the difficult question whether a reviewing court must ever require the revelation of the identity of an informant once a substantial preliminary showing of falsity has been made.

Franks, 438 U.S. at 170.

Limitations on "the informer's privilege" began in *Roviaro v. United States*. 353 U.S. at 59. Roviaro had been indicted for selling and transporting heroin in violation of the Narcotic Drugs Import and Export Act, 21 U.S.C. § 174. *Id.* at 54-55. Law enforcement officers had orchestrated a controlled buy between Roviaro and a confidential informant, which was the basis for Rovario's indictment. *Id.* at 55. At Roviaro's trial, the

[7] In *Roviaro v. United States*, "the informer's privilege" is defined as "the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." 353 U.S. 53, 59 (1957).

trial court refused to permit the disclosure and cross-examination of the confidential informant, who was described by the Supreme Court as the "sole participant, other than the accused, in the transaction charged [and] . . . the only witness in a position to amplify or contradict the testimony of government witnesses." *Id.* at 64. The United States Court of Appeals for the Seventh Circuit upheld his convictions, holding the trial court did not abuse its discretion in denying Roviaro's requests for disclosure. *United States v. Roviaro*, 229 F.2d 812, 816 (7th Cir. 1956).

While the Supreme Court iterated the importance of "the informer's privilege" in "the furtherance and protection of the public interest in effective law enforcement," the Court reversed Roviaro's conviction, recognizing that "the informer's privilege" is limited by the fundamental requirement of fairness. *Roviaro*, 353 U.S. at 59. Justice Blackmun, writing for the majority, explained that the disclosure of a confidential informant's identity may be appropriate when the disclosure is "relevant or helpful to the defense of an accused, or is essential to a fair determination of a cause" and, therefore, concluded that the trial court erred in withholding the identity of a confidential informant, who was critical to Roviaro's defense.[8] *Id.* at 60-61.

In *Rugendorf v. United States*, 376 U.S. 528, 529 (1964), a Special Agent with the FBI applied for a search warrant for Rugendorf's basement, alleging that, concealed within

[8] In *McCray v. the State of Illinois*, 360 U.S. 300, 301 (1967), Justice Potter Stewart, writing for the Court, emphasized that the Court in *Roviaro*, while requiring disclosure in that case, "was unwilling to impose any absolute rule requiring disclosure of an informer's identity even in formulating evidentiary rules for federal criminal trials." *Id.* 311.

his residence, there were dozens of stolen furs, according to two confidential informants. *Id.* at 530. After a search of Rugendorf's residence resulted in the seizure of eighty-one stolen furs, some of which had been transported across state lines, Rugendorf was arrested. *Id.* at 530-31.

During Rugendorf's trial, the federal district court denied both his motion to disclose the names of the confidential informants related to his investigation and his motion to suppress evidence found in his basement. *Id.* at 531. The United States Court of Appeals for the Seventh Circuit upheld Rugendorf's conviction. *United States v. Rugendorf*, 316 F.2d 589, 593 (7th Cir. 1963). The Supreme Court affirmed, holding that Rugendorf had failed to carry his burden of proof and had failed to establish that the disclosure of the informants was necessary to his defense. Instead, he was attacking the validity of the affidavit supporting the search warrant. *Rugendorf*, 376 U.S. at 535.

Writing for the majority, Justice Thomas Campbell Clark stated that "hearsay alone does not render an affidavit insufficient … so long as there was substantial basis for crediting the hearsay." *Id.* at 533 (citing *Jones v. United States*, 362 U.S. 257, 272 (1960)). Justice Clark also noted that any factual inaccuracies in the affidavit "were of only peripheral relevancy to the showing of probable cause, and, not being within the personal knowledge of the affiant, did not go to the integrity of the affidavit." *Rugendorf*, 376 U.S. at 532.

In *Illinois v. Gates*, 462 U.S. 213, 245-46 (1983), the Bloomingdale Police Department received an anonymous letter, which alleged that Gates and his wife were engaged in the interstate transportation of narcotics. The letter asserted that on May 3, Sue

Gates was supposed to drive to Florida to meet with drug suppliers and would fly back to Illinois, a couple of days later, after leaving the car with her husband. Lance Gates was supposed to fly to Florida, and after loading the car with narcotics, would return to their Illinois condominium in the same car, with more than $100,000 worth of drugs in the trunk. *Id.* at 225.

Following a collaborative investigation with several law enforcement agencies including DEA agents in West Palm Beach, Florida, a search warrant, asserting the foregoing facts was executed, and marijuana and additional contraband were found in both Gates' home and car. *Id.* at 216. Prior to their trial, Lane and Sue Gates filed a motion to suppress evidence, asserting that the underlying affidavit for the search warrant for their condominium and car was unreliable. *People v. Gates*, 82 Ill. App. 3d 749, 752-53 (Ill. App. Ct. 1980). The Illinois trial court held that the affidavit, which was supported in part by the anonymous letter, lacked probable cause, and the Illinois Supreme Court affirmed. *People v. Gates*, 85 Ill.2d 376, 390 (Ill. 1981).

The United States Supreme Court granted certiorari "to consider the application of the Fourth Amendment to a magistrate's issuance of a search warrant on the basis of a partially corroborated anonymous informant's tip" and reversed. *Gates*, 462 U.S. at 217. The Supreme Court held that the search warrant supported by an affidavit based upon information provided by an anonymous tipster, which has been corroborated by independent police work, was valid. *Gates*, 462 U.S. at 246. Justice William H. Rehnquist, writing for the majority, emphasized the importance of a "totality of the circumstances"

approach toward probable cause determinations and that "rigid legal rules are ill-suited" to informants' tips due to the variety in their value and reliability. *Id.* at 232-43.

The takeaway regarding the impact of the informer's privilege in a case in which a *Franks* violation is alleged, therefore, takes on a greater meaning. That meaning was explored in *United States v. Brown*, 3 F.3d 673, 679-80 (3rd Cir. 1993), in which the Third Circuit Court of Appeals emphasized that a strict adherence to the *Franks* standard would be required in order to disclose an informant's identity.

Pursuant to a search warrant, police searched Brown's home and seized felonious quantities of narcotics and related drug paraphernalia. *Id.* at 675. A confidential informer, who had been within Brown's home within the last 48 hours, had observed Brown, among others, cutting and packaging heroin and cocaine for distribution. *Id.* Brown asserted that the information provided by the confidential informant was false and that the affiant-officer intentionally and recklessly included this known false information in his affidavit for the search warrant. The federal district court concluded that Brown "failed to show the *affiant's* deliberate or reckless untruthfulness but simply impeached the veracity of the *informant,"* which does not warrant a *Franks* hearing. *Id.* at 677.

On appeal, the Third Circuit addressed Brown's attempt to "seek disclosure of the informant's identity in the hope that disclosing the identity of the informant will lead to evidence that will help them make a *Franks* showing" despite having failed to establish intentional wrongdoing by the affiant officer. *Id.* at 679. The court expressed that:

> A defendant who merely hopes (without showing a likelihood) that disclosure will lead to evidence supporting suppression has not shown that disclosure will be "relevant and helpful to the defense ... or is essential to a

> fair determination" of the case… In *Franks,* the Court left open "the difficult question whether a reviewing court must ever require the revelation of the identity of an informant *once a substantial preliminary showing of [the affiant's] falsity has been made.*" 438 U.S. at 170, 98 S. Ct. at 2684 (emphasis added). While expressly not reaching the issue, the Court's statement suggests that *if* revelation of the identity of an informant is ever required in the context of a motion for a *Franks* hearing, it would only be *after* the defendant made a substantial preliminary showing of the affiant's reckless or intentional disregard for the truth. . . [W]e hold here that, because the defendants' offer of proof failed to show that the affiant was untruthful, the district court did not abuse its discretion in refusing to order disclosure of the informant.

Brown, 3 F.3d, at 679. *See also United States v. Williams*, 576 F.3d 1149, 1161 (10th Cir. 2009) (iterating that "a defendant cannot demand the production and questioning, *in camera* or otherwise, of a confidential informant whose statements are relied upon in a warrant affidavit until the defendant has made the required substantial preliminary showing under *Franks*.").

In the present case, because Ross has not met her burden under the *Franks* test to show intentional falsity or omission on behalf of the affiant-officer, we shall hold that Ross was not entitled to a *Franks* hearing.

THE FRANKS CHALLENGE

In the present case, Ross filed her initial motion requesting a *Franks* Hearing, to challenge the seizure of evidence found in her car, in which she alleged "a warrantless seizure of 3 cell phones and an I-Pad from her vehicle on 3/14/2022 and subsequent use of said unlawfully seized items in warrant applications for search warrants of said devices." After briefing by the State regarding the traffic stop, during a pre-trial hearing, Ross's

counsel conceded that "[t]he first motion involves the vehicle . . . I don't believe a *Franks* hearing is appropriate for that motion to suppress."[9]

Thereafter, Ross filed another motion focused on suppressing the drug paraphernalia, the cocaine, methamphetamine, and fentanyl found in Ross's apartment pursuant to a search warrant. Detective Daniel Schlosser ("Det. Schlosser") of the Frederick County Sherriff's Office was the affiant on the warrant, which is presented here in detail because of the nature of Ross's challenge:[10]

> During the month of February 2022, your affiant had the opportunity to debrief an informant who provided information about a drug dealer who is selling crack cocaine along with Heroin/Fentanyl in and throughout Frederick County, Maryland. This informant has been used for approximately 1 month and their information has been proven reliable and can be verified. This informant does not yet know the drug dealers name [sic] but has been referenced for selling cocaine and heroin and is known to be a black female who always drives a white in color Infiniti sedan with Maryland registration. This informant has driven drug buyers to meet with the driver of the white in color Infiniti sedan . . . on multiple occasions as recently as the second week of February 2022 however the informant has not bought from the driver themselves. From these interactions, informant was able to provide your affiant with the registration and description of the vehicle.
>
> Your affiant ran the registration through the Motor Vehicle Administration and noted that vehicle is co-registered to a Coral Ross and Dacora Ross. Your affiant obtained an MVA photo of Dacora Ross noted that she was a younger black female who matched the description provided by the informant of the drug dealer. Through the investigation your affiant identified a current address for Coral Ross and Dacora Ross . . . This information was verified by providing the Sunset Apartments management with a subpoena for current renter information.

[9] The seizure of the three cellphones and iPad from the car are not the subject of this appeal, and we shall not address that issue.

[10] All personal identifying information related to Ross and the extensive description of Det. Schlosser's training and experience have been omitted.

> On February 14, 2022, your affiant went to . . . [Ross's apartment] and observed the white in color Infiniti sedan . . . parked in the parking lot . . . At approximately 1620 hours on the same day, your affiant observed who he knows to be Dacora Ross via her MVA photo, leave the [apartment] building and get into the . . . Infiniti sedan . . . and drive away out of the area.
>
> On February 15, 2022, Cpl. Welsh [11] with the Frederick County Sheriff's Office P.A.C.E. Team (Pro-Active Criminal Enforcement) was on patrol in an unmarked patrol vehicle when he observed what he recognized from his training and experience to be a hand-to-hand drug deal between the occupants of 2 different vehicles. This occurred on Schley Avenue on the side of the roadway. Cpl. Welsh observed a female get out of a Chevrolet Silverado and get into the front passenger seat of the Infiniti sedan . . . which was also parked on the side of the roadway nearby. After a brief time of approximately 20 seconds, the same female got out of the … Infiniti sedan . . . and got back into her original vehicle which was the Chevrolet Silverado truck.
>
> Cpl. Welsh then followed the Chevrolet Silverado away which the female was in, and conducted a traffic stop on that vehicle identifying the female as Cassandra Summers. Cpl. Welsh was familiar with Summers from previous drug interactions with the agency and Summers also had an open warrant for her arrest from drug charges filed by your affiant at an earlier date.
>
> Cpl. Welsh detained Summers and located an amount of controlled dangerous substance which he identified through his training and experience as Heroin/Fentanyl which are schedule II narcotics. Although Summers did not provide any additional information, Cpl. Welsh believes that through his observations of the interaction, and based on his training and experience of observing previous drug deals, that Summers arranged and met with the driver of the. . . Infiniti sedan . . . in order to buy Fentanyl from the operator.
>
> Additionally, the informant advised that they know from people who have bought drugs from the operator of . . . the Infiniti sedan . . ., that she would only meet near her residence which is unknown to the informant. The informant provided a common location of Trail Avenue where they typically meet with the operator of the white in color Infiniti sedan . . . The informant met with the operator of the white in color Infiniti . . . as recent as the second week of February 2022. Trail Avenue is less than a mile away from . . . [Ross's apartment]. Based on this information, your affiant authored a GPS warrant for the white in color Infiniti sedan . . . which was signed by the Honorable Judge Bartgis on February 18, 2022. The GPS unit was then

[11] In the application, Det. Schlosser refers to Corporal Walsh when in fact Corporal Welsh testified that he spelled his name with an e. We shall use the correct spelling.

installed on the . . . Infiniti sedan . . . on February 21, 2022, by your affiant. The GPS unit was then installed on the . . . Infiniti sedan . . ..

Once the GPS unit was applied, your affiant created a geofence which is an electronic border created to notify a user when the GPS unit leaves a specific area. For this geo-fence, your affiant created an area around [Ross's apartment] and was notified whenever the. . . Infiniti sedan . . . would leave or enter that area.

During the course of this investigation your affiant had opportunity to debrief a second confidential informant whose information was corroborated by the investigation into Ross. This informant provided information about a drug dealer in Frederick County Maryland selling cocaine, Heroin, and Fentanyl and that she is a younger black female who drove a white vehicle. The informant also knew the drug dealer's name to be Dacora Ross. Your affiant was able to show this informant an MVA photo of Ross, and the informant confirmed the drug dealer who drove the white vehicle in fact to be Dacora Ross. With this information, your affiant utilized the informant to conduct a controlled purchase from Ross.

During the first week of March 2022, your affiant along with Ofc. Jesson of the Brunswick Police Department, met with this informant at an undisclosed location. All assisting units were shown surveillance photos of Ross and her vehicle to assure they could recognize her. The informant and the vehicle utilized were both searched, and both found to be clear of illegal contraband. Your affiant provided the informant with an amount of marked US currency and was then instructed to contact Ross to buy an amount of drugs from her. Ross eventually answered the informant and stated that she was ready to meet at a pre-determined location.

Your affiant followed the informant to the location with unbroken surveillance. Once the informant was in the area, assisting surveillance units maintained constant surveillance on the informant. Simultaneously Det. Crouse, also of the Frederick County Sheriff's Office Narcotics Investigative Section, conducted surveillance at [Ross's apartment.] Detective Crouse was able to see Ross step out of [her apartment and into the Infiniti sedan] . . .. Surveillance units were able to follow from that location to meet the informant with unbroken surveillance. Once Ross got in the area of the informant, both parties met in the manner which your affiant knows from his training and experience to be a hand-to-hand drug transaction. Ross and the informant then parted ways and surveillance units followed the informant back to the undisclosed location. Your affiant met with the informant who provided your affiant with a clear plastic bag knotted at the top which contained a white powdery substance consistent with what your affiant knows through his training, and experience, and previous drug investigations to be cocaine. The informant and vehicle utilized were both searched again, and no illegal contraband was located. Your affiant placed the baggie

> containing cocaine on property at Frederick County Sheriff's Office Headquarters. It is the current policy of the Frederick County Sheriff's Office to not field test powdery substances due to the possible dangers of inhalation or absorption of Fentanyl . . .

The other affidavit that was under scrutiny is a probable cause statement written by Cpl. Welsh for the traffic stop, search, seizure, and arrest of Cassandra Summers, who was alleged to have purchased fentanyl from Ross. In relevant part, the probable cause statement written by Corporal Welsh, which was also part of the record, states:

> On 2/15/2022 at 4:37 p.m., I, Corporal Brett Welsh, was operating my unmarked patrol vehicle in the area of Homestead Avenue and Schley Avenue. While in the area, I observed a blue Chevrolet Silverado fail to come to a complete stop as it proceeded to make a right hand turn from Homestead Avenue to Schley Avenue. At this interaction, there is a posted stop sign with a white stop line on the pavement where vehicles are supposed to stop at. I observed that when the Silverado approached the intersection and proceeded to make the turn, the wheels on the vehicle never stopped rolling at any point. In addition to the stop sign and stop sign violation, I observed that the rear assembly did not have any section for turn signals. It appeared to me that the taillight assembly was makeshift or after market and not intended to be on a vehicle. Due to the aforementioned violations, I conducted a traffic stop on the Silverado . . . I approached the Silverado from the passenger side and advised the driver, later identified as Troy Rice, the reason for the traffic stop. I immediately recognized Rice from recent police related involvement and know that he has a history of drug-related offenses. I requested Rice provide his license and registration which caused him to look for the requested documents. While Rice was looking for the documents, I observed a front seat passenger as Cassandra Summers and believed that she was wanted for felony drug related charges. I asked Summers if she was willing to provide me her name and she stated that her name was Cassandra Summers. While making contact with the other occupants, I observed that Summers was repeatedly manipulating something in her right jacket pocket. I know that it is common for subjects who possess contraband to inadvertently keep touching it or manipulate it in an attempt to conceal it from police view. Rice eventually informed me that he lost his license and provided the registration to the Silverado which showed he was the owner. Rice provided me with his pertinent information and stated he was licensed in Maryland. Deputy Sheehy arrived on the scene to assist and stood at the passenger window while I returned to my patrol vehicle. I

> proceeded to run Summers information and was able to positively identify her by matching her to the MVA photo provided. I observed that Summers was wanted through Frederick County for felony drug related offenses, which is confirmed. I ran Rice's information and was able to positively identify him as the driver by matching him to the MVA photo provided. I observed Rice was valid and not wanted. I began approaching the passenger side of the Silverado again to place Summers under arrest for the warrant, when Deputy Sheehy informed me that he observed a knotted baggie containing suspected illegal drugs in Summers' right front jacket pocket, I recovered a knotted baggie containing an off-white rock like substance inside. I know that knotted baggies are a common way in which illegal drugs are packaged. I identified the off-white substances suspected fentanyl based on my training, knowledge, and experience. I know that fentanyl is a schedule II drug. Nothing else evidentiary was located during a search of Summers' person. I proceeded to advise Summers of her Miranda rights to which she stated she understood and waived. I asked Summers what was in the knotted baggie, and she stated that she was not sure if it was heroin or fentanyl, but that it was approximately one half of a gram worth $40. Due to the illegal contraband recovered, I believed that probable cause existed to conduct a search of Silverado for more contraband. During a search of the Silverado, nothing evidentiary was located. Deputy Parson began speaking with Rice and would later conduct a search of his person which revealed a small amount of loose white rock substance in his shirt pocket. I recovered the white rock substance and was able to identify it as suspected crack cocaine is a Schedule II drug. I released Rice on scene with a warning for the traffic violation. Due to Summers possessing suspected fentanyl and being wanted, I transported Summers to central booking where she was provided a copy of her criminal charges and arrest warrant. All events occurred in Frederick County, Maryland . . ..[12]

Ross also alleged in her second motion that Det. Schlosser's reliance on Cpl. Welsh's probable cause statement amounted to hearsay and that Det. Schlosser included material misrepresentations in his affidavit. Ross asserted there was no evidence of a hand-to-hand transaction between Ross and Summers on February 15, 2022. Ross contended

[12] The description of Corporal Welsh's training and experience with drug-related arrests and traffic stops has been omitted.

further that there was no record of a hand-to-hand transaction between the second confidential informant and Ross and that the informants were unverified and unreliable.

The State, in response, filed two pleadings. The initial one asserted that Ross's second motion was untimely based upon Maryland Rule 4-252(a)-(b). The State asserted that the filing of Ross's motion for a *Franks* hearing was beyond the 30-day period provided for the filing of mandatory motions and beyond the five-day grace period provided following the commencement of discovery on April 26, 2022.[13]

The second response, the State's Opposition to Defendant's Motion for *Franks* Hearing, included a substantive rebuttal to Ross's requests. The State denied that Det. Schlosser had made any false or misleading statements and asserted that there was a substantial basis for the issuance of the search warrant.

Judge Scott L. Rolle of the Frederick County Circuit Court initially presided over a pre-trial hearing to determine whether there were any open issues in the case and to schedule any necessary hearings prior to trial. During that hearing, Ross's counsel asserted that her motion to compel discovery that was filed on May 22, 2022, which demanded that both confidential informants' names be disclosed in order to ensure their credibility, was ripe for decision.

[13] Maryland Rule 4-252(b) provides:

> "[Mandatory motions] shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court… except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished."

> ROSS'S COUNSEL: I know the State and I disagree on what is discoverable, what should have been turned over. But a part of both motions to suppress, primarily the one involving the apartment, there's an issue whether there's a confidential informant that is someone that is a person that has credibility issues, and the State still has not disclosed.
>
> So, we would actually be asked to be heard in this order. Motion to compel, request for sanctions, because part of that is we're asking that the State not be able to reference any confidential informant or that information that has not been turned over to the defense. Then after that, the motion to suppress, Request for *Franks* hearing as to the apartment, and then lastly those filed first in time, the motion to suppress regarding the automobile and I'll call it the electronics, iPhone and tablet.

The State reasserted that Maryland Rule 4-263(g)(2) permits the State to preserve the identity of confidential informants, as long as the informants do not testify at trial and if non-disclosure does not deprive a defendant of a constitutional right. Because the State asserted that neither informant would be testifying and Ross had not raised a constitutional deprivation, Judge Rolle denied Ross's motion to compel discovery.

Ross filed a supplement to her second motion for a *Franks* hearing. In the supplemental motion, Ross reasserted that the affidavit written by Det. Schlosser relied upon a statement of probable cause written by Cpl. Welsh and that the affidavit and probable cause statement contradicted each other, because Welsh's statement of probable cause did not reference Ross, nor did the statement assert that Cpl. Welsh had followed Summers from a drug buy with Ross. Ross again alleged that because the probable cause statement did not include reference to the hand-to-hand transaction between Ross and Summers that no record of the interaction existed anywhere.

Ross also re-alleged there is nothing in Cpl. Welsh's affidavit that evidenced an interaction between her and Summers:

> There are no allegations of Ms. Summers' vehicle interacting with another vehicle; nor are there allegations that Ms. Summers interacted with anyone outside of the vehicle she was riding in. Finally, Cpl. Welsh ['s] narrative makes clear the Summers' vehicle was on the side of the roadway on Schley Avenue because it was stopped for an alleged traffic stop violation.

Judge Julia Martz-Fisher of the Frederick County Circuit Court, thereafter, convened a hearing in August of 2022 to determine whether Ross had met the requirements to trigger a *Franks* hearing to determine the identity of the two informants. During the hearing, Ross not only questioned the reliability of the two confidential informants but also focused on what she presented as an alleged contradiction between Cpl. Welsh's summary of his interactions with Summers versus Det. Schlosser's articulation of the events in his search warrant application for Ross's apartment. She also pointed to several other alleged issues including vague descriptions of Ross as well as the location of Ross's apartment.

The State reasserted the untimeliness claim and resurrected Judge Rolle's denial of the motion to compel the confidential informants' contact information. The State pressed that Ross failed to demonstrate that there were deliberate falsehoods or misrepresentations in the affidavit, thereby failing to meet the high threshold required to prompt a *Franks* hearing.

The State explored Det. Schlosser's experience with narcotics investigations and explained how Det. Schlosser's affidavit and Cpl. Welsh's probable cause statement did not contradict each other because the probable cause statement and the affidavit reference the same event but from different points in time**:**

> Your Honor is very familiar with Frederick. You know where Schley [Avenue] and Homestead [Avenue] is. It's the park on Schley. If you read the warrant, it says Ms. Summers gets out of the Silverado and goes to the

> Infiniti that is --and the Infiniti is on Schley. You know that that's a corner there. It's very possible that the Silverado, as in Cpl. Welsh's supplement, which you correctly pick up on, has different starting point in the timeline, was parked on Homestead and then did make that right turn, completely reconcilable.

After reading the preceding round of motions and listening to oral arguments, Judge Martz-Fisher orally denied Ross's request for a *Franks* Hearing:

> Thank you. All right. I think this has been very, very interesting; however, I completely disagree with the Defense. It is the Court's opinion that the statement found in the Cassandra Summers' statement of probable cause and the statement from Schlosser, relaying Cpl. Welsh's, what happened in that event, are --they don't need to be reconciled. We're talking about different points in the chain, not at the -- no evidence that Schlosser asserted in this application that these were -- you know, that there wasn't break in this in some fashion. I will also say, I find that Schlosser's training and knowledge and experience does provide him with the ability to identify, to a reasonable degree of certainty, substances he confiscates as part of drug investigation. There's no question about that. I also find that there is no – I don't see anything in here that is -- shows an intent to be --to deceive or a reckless disregard for the truth. In fact, I think they go through this step by step by step, cautiously moving forward with the investigation, confirming information they receive independently, and I have --the four corners of this document to me are not contradictory and, actually, really demonstrate reliable police investigation that actually showed restraint in how they proceeded going forward. So, I will deny the request for the *Franks* hearing.

A three-day trial before Judge McGann ensued, after which Ross was found guilty of eight counts of drug related offenses including possession with intent to distribute fentanyl, methamphetamine, and cocaine. On November 16, 2023, Judge McGann sentenced Ross to ten years' incarceration.

Before us, Ross and the State have sparred over timeliness, once again. None of the trial judges, however, who handled the case, denied the *Franks* motion because of untimeliness, assumedly because Ross's counsel had initially confused the seizure of the

items in the car as a *Franks* issue, which she alleged contributed to the delayed filing. As the trial judges exercised their discretion to reach the merits, so do we. *See Bradley v. Bradley*, 208 Md. App. 249, 258 (2012). *See also Thompson v. State*, 245 Md. App. 450, 463 (2020) (When "the issues have been thoroughly briefed and argued, an analysis of the merits may guide trial courts and counsel in future *Franks* proceedings.")

Whether Det. Schlosser included material misrepresentations in his search warrant, is essentially the main issue in the instant appeal. Judge Martz-Fisher found Det. Schlosser performed a reputable and cautious investigation into Ross. In fact, she stated:

> . . . [T]hey go through this step by step by step, cautiously moving forward with the investigation, confirming information they receive independently, and I have -- the four corners of this document to me are not contradictory and, actually, really demonstrate reliable police investigation that actually showed restraint in how they proceeded going forward.

Judge Martz-Fisher found the information obtained from the confidential informants to be reliable. In particular, she noted the specificity and reliability of the following information that the first confidential informant provided to the Det. regarding the identification of Ross:

> So I don't think they just described her as a black female. They had the car she drove, the registration number, and then the officer observed from the photo that she's a young-looking female.

Judge Martz-Fisher observed that the law enforcement officers were then able to confirm information provided by the confidential informant by observing Ross in her car, near her apartment and by matching her appearance to an MVA photo. Furthermore, it is clear from the record, that Det. Schlosser included the bases for the reliability of the informants in the text of his affidavit.

Judge Martz-Fisher also noted that "the statement found in the Cassandra Summers statement of probable cause and the statement from Schlosser, relaying Cpl. Welsh's, what happened in that event, are --they don't need to be reconciled" because the statements were "talking about different points in the chain." Judge Martz-Fisher also explained that police are not required to announce in a statement of charges for one defendant the details of another investigation:

> Is the ---- so are the police required to put in their statement of charges the fact that they -- there was another person involved, here was the other person, we were watching because -- we caught Ms. Summers because we watched her do a drug deal, allegedly, with another person and, basically, announce that they are actively investigating another defendant unrelated to the statement of probable cause in the charges against Ms. [Summers].

Finally, Judge Martz-Fisher, when discussing Det. Schlosser's prominent role in the controlled buy between Ross and the second confidential informant, found that:

> Schlosser's training and knowledge and experience does provide him with the ability to identify, to a reasonable degree of certainty, substances he confiscates as part of a drug investigation. There's no question about that.

All of Judge Martz-Fisher's findings, as articulated are supported by the record and are not clearly erroneous. Based upon her findings and our independent review of the record, we determine that Det. Schlosser, in his very thorough and exhaustive affidavit in support of the warrant and in his references to Cpl. Welsh's statement, did not include any deliberate falsehoods, did not recklessly disregard the truth, and did not materially mispresent the facts. Judge Martz-Fisher did not err in denying the motion for a *Franks* hearing.

CELL PHONES AND JURY DELIBERATIONS

Ross then asserts the trial court erred in refusing to remove electronic devices from the jurors after deliberations began and in failing to voir dire jurors after the issue was brought to the court's attention based upon Maryland Rule 16-208(b)(2)(D), which requires that "an electronic device may not be brought into a jury deliberation room after deliberations have begun."[14] The State alleges that Ross waived this issue, because she did not object to jurors having cellphones, prior to or during jury deliberations. According to Maryland Rule 8-131(a),[15] this issue was not preserved for appellate review, because Ross did not lodge any objection when Judge McGann instructed the jurors about their cell phones.

Judge McGann advised the jurors regarding bringing electronics into the jury room during deliberations on two occasions. In the first instance, he said:

> You will take your notes in with you, and you'll take your personal belongings. Now, since I'm -- I was an active judge for 15 years in Montgomery County, and then for the last four, I've been senior judge, sitting in eight or nine counties. Every county is a little different. Some counties have a policy they don't want your cell phones to go back. I don't have that policy because I think it's the same policy I had during the course of trial: You can't do any independent research on your phones, you can't google any terms, and they're not there for you to make calls to anybody while you're

[14] Under Maryland Rule 16-208(a)(2), the definition of an electronic device includes "a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device."

[15] In pertinent part, Maryland Rule 8-131(a) provides:

> "Ordinarily, an appellate court will not decide any issues unless it plainly appears by the record to have been raised in or decided by the trial court…"

> back there. Just turn them off. There'll be plenty of time later on to make calls.

Counsel for Ross did not object.

That same day, Judge McGann informed the jurors that, "You can keep your cell phones, and -- but don't - - turn them off, don't make any calls, and certainly, don't do any research." Ross's counsel once again did not object. As a result, Ross waived any ability to challenge Judge McGann's instructions regarding the cellphones. *See Lopez-Villa v. State*, 478 Md. 1, 13 (2022) (summarizing *Medley v. State*, 52 Md. App. 225, 231 (1982) ("The application of the rule limiting the scope of appellate review to those issues and arguments raised in the court below 'is a matter of basic fairness to the trial court and to opposing counsel, as well as being fundamental to the proper administration of justice.'")

In conclusion, we hold that the trial court did not err in finding that Ross failed to sufficiently prove "allegations of deliberate falsehood or of reckless disregard for the truth," and thus, failed to satisfy the multiprong test to disclose the identity of the informants under *Franks v. Delaware*, 438 U.S. 154 (1978). She also failed to preserve the issue of jurors having cell phones for appellate review.

We affirm Ross's convictions.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY COSTS.