Circuit Court for Worcester County
Case No. C-23-CR-18-000013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2380

September Term, 2018

JAMIE ANTHONY LEONARD

v.

STATE OF MARYLAND

Berger,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 13, 2019

Appellant, Jamie Anthony Leonard, was convicted by a jury in the Circuit Court for Worcester County of first-degree burglary, third-degree burglary, theft over $1,500 but under $25,000, and theft under $1,500. The circuit court sentenced appellant to eighteen months' incarceration for first-degree burglary and merged the remaining counts for sentencing purposes.

On appeal from his convictions, appellant presents the following questions for our review:

1. Did the trial court err when it denied [a]ppellant's request for a *Franks* hearing?

2. [Was] the evidence insufficient to sustain [a]ppellant's convictions?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

On November 10, 2017, at approximately 11:30 a.m., Olga Ukhanova arrived at her home located in Ocean Pines, Worcester County, Maryland, to find that it had been burglarized. She reported the burglary to the police and provided police with a list of items that were missing from the home and an approximate value for each item. The list of missing items included an iPad with a keyboard, iPod, laptop, diamond engagement ring, wedding ring, Pandora bracelet, and other jewelry. Ms. Ukhanova also provided police with the serial number for the iPad listed on the iPad's original box.

At trial, Ms. Ukhanova recalled that appellant had worked with her ex-husband, Phillip Carroll. She believed that appellant had been to her home on multiple occasions approximately three years prior to trial.

At the suggestion of police, Ms. Ukhanova visited Kozma's Jewelry in Ocean City, Maryland to see if any of the missing items had been pawned. She described her engagement ring to Daniel Kozma, the store's owner, who retrieved a ring from the store safe, and Ms. Ukhanova identified that ring as her engagement ring. Mr. Kozma's purchase record for the ring showed that on November 13, 2017, he had purchased the ring for $65.00 from Elizabeth Meekins, who had provided her driver's license as proof of her identity.

Ms. Meekins testified that she had known appellant for approximately five years. In November 2017, appellant and Ms. Meekins were neighbors and he and her boyfriend were friends. In November 2017, Ms. Meekins asked to borrow money from appellant, but he did not have money to loan to her. Sometime later, her boyfriend gave her a ring that he had received from appellant. The following day, Ms. Meekins sold the ring to a jewelry store for $60.00. At trial, she identified the ring she had received from her boyfriend and pawned, and the State introduced the ring into evidence.

On November 9 or 10, 2017, appellant brought a tablet to Ms. Meekins' apartment and asked her if she could unlock the passcode on it. According to Ms. Meekins, appellant had told her that "his cousin or someone … had given it to him, but he didn't have the passcode to get into it." She was unable to unlock the passcode for the tablet and she returned it to appellant. At trial, she identified the tablet she attempted to unlock.

On the morning following her sale of the ring, Ms. Meekins was contacted by Detective Patrice Ottey regarding property that had been pawned. Ms. Meekins was nervous about talking with the detective because she was on parole.[1] Ms. Meekins contacted appellant to ask him why a detective was calling her about the ring that had been pawned. According to Ms. Meekins, appellant told her that she "[didn't] want to know" where he got the ring. Ms. Meekins stated that when she pressed appellant further, he told her that the ring "was something that had come from a place that he had apparently robbed or broken into… it was stolen." Ms. Meekins told appellant that she could not lie to the police because she could not risk violating her parole or losing custody of her daughter. She stated that the appellant was not happy with her response.

Ms. Meekins acknowledged that when she met with Detective Ottey, she stated that the appellant had given her the ring. At trial, Ms. Meekins testified that she had received the ring from her boyfriend.

Ms. Meekins stated that she spoke with appellant on his initial trial date when he called to tell her that the court had issued a writ for body attachment for her because she had failed to appear at the trial. Appellant informed her that as long as she "kept to the story" and testified that she received the ring from appellant but did not know where he had gotten it, that "everything would be fine." Appellant had previously told her that he intended to say that he had found the ring on the side of the road in a bag.

[1] Ms. Meekins testified at trial that she was on parole following her conviction of possession with intent to distribute Tylenol with codeine. She was also previously convicted of theft and delivering contraband to a place of confinement (*i.e.*, a correctional facility).

Amanda Scott testified for the State that, in November 2017, she was staying with appellant and his girlfriend in their two-bedroom apartment where she had her own room. According to Ms. Scott, appellant had asked her if she would use her I.D. to pawn some of his mother's jewelry for him because he needed rent money. Ms. Scott believed that appellant did not have an I.D. at the time. Appellant drove her to Atlantic Pawn in Millsboro, Delaware, where she pawned jewelry in exchange for $200.00. At trial, Ms. Scott could not identify any of the items that were pawned because she "didn't look at any of the stuff" when she pawned it.

After Ms. Scott pawned the jewelry, she received a phone call from Ms. Meekins telling her to "make sure that the stuff that [she] took to the pawn shop was not stolen items." Ms. Scott went to the police station with Ms. Meekins on November 14 and told police that she had received items from appellant to pawn. Ms. Scott acknowledged that she had two prior convictions for theft.

Detective Patrice Ottey of the Ocean Pines Police Department testified that she investigated the burglary of Ms. Ukhanova's home. She responded to a call from D.A. Kozma reporting that Ms. Ukhanova had identified as stolen, a ring he had purchased from Ms. Meekins. Based on information provided by Ms. Meekins and Ms. Scott, the detective obtained the jewelry that Ms. Scott had sold to Atlantic Pawn in Millsboro and Ms. Ukhanova identified that jewelry as belonging to her.

Detective Ottey prepared an application for a search warrant for appellant's residence. On November 15, 2018, the search warrant was issued and police executed a search of appellant's residence. Pursuant to the search, officers located, in the drop ceiling

of the living room, an iPad Air with a serial number ending in 5VT. In the drop ceiling of appellant's bedroom, officers discovered a pink iPod and, in the glove compartment of his truck, police discovered a Pandora bracelet.

On November 16, 2018, Detective Ottey spoke with Lita Smith, appellant's girlfriend, and asked if any other stolen items were located in the residence. Ms. Smith directed the detective to the dresser in the bedroom she shared with appellant, where she retrieved from the top dresser drawer, a box containing a small diamond ring. The ring had not been present in the dresser when officers had searched it on the previous day.

Detective Ottey testified further that crime scene technicians had obtained fingerprints from Ms. Ukhanova's home. The parties stipulated that the Maryland State Police lab examined four fingerprints obtained from the exterior bedroom window screen of Ms. Ukhanova's home, and appellant was excluded as the source of three of the four fingerprints. The fourth fingerprint was inconclusive. Detective Ottey testified that she did not request that the crime lab compare the four fingerprints to the fingerprints of Ms. Meekins or Ms. Scott.

After a trial, the jury convicted appellant of all of the charges.

DISCUSSION

I. Denial of Request for a *Franks*[2] Hearing

Appellant contends that the circuit court erred in denying his request for a *Franks* hearing because Detective Ottey's statement in the application for a warrant that the iPad

[2] *Franks v. Delaware*, 438 U.S. 154 (1978).

was recovered from the pawn shop was either a deliberate falsehood or made with reckless disregard for the truth because the warrant return/property inventory showed that the iPad was among the items recovered from appellant's residence. Appellant contends that the false statement about the iPad was necessary to the finding of probable cause because the iPad was the only piece of evidence bearing a serial number which definitively linked evidence to the burglary of Ms. Ukhanova's home.

The State responds that the circuit court did not err in denying appellant's request for a *Franks* hearing because, though the statement that the iPad was recovered from a pawn shop was incorrect, the erroneous statement was not necessary to a finding probable cause. The State argues that even after the incorrect information was excised from the affidavit, other information contained in the affidavit connected appellant to jewelry stolen from Ms. Ukhanova's home and provided sufficient probable cause to justify issuance of the warrant.

The Fourth Amendment to the United States Constitution provides that "no Warrants shall issue, but upon probable cause." The Fourteenth Amendment applies the probable cause requirement to the states. *Birchead v. State*, 317 Md. 691, 700 (1989). In reviewing probable cause supporting a warrant, courts are ordinarily confined to the "four corners" of the warrant application and any supporting documentation. *Greenstreet v. State*, 392 Md. 652, 669 (2006).

If a defendant challenges the issuance of a warrant, the scope of our review is the same as that of the suppression judge, which was limited to the four corners of the warrant. *State v. Johnson*, 208 Md. App. 573, 581 (2012). We must determine whether the issuing

judge had a "substantial basis" for finding probable cause to issue the warrant. *Ellis v. State*, 185 Md. App. 522, 534 (2009); *see also Moats v. State*, 230 Md. App. 374, 391 (2016) ("The evidence necessary to demonstrate a 'substantial basis' is less than that which is required to prove 'probable cause.'"), *aff'd*, 455 Md. 682 (2017).

Probable cause has been defined "'as a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Agurs v. State*, 415 Md. 62,76 (2010), (quoting *Patterson v. State*, 401 Md. 76, 91 (2007)). "'The rule of probable cause is a nontechnical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion.'" *Wilkes v. State*, 364 Md. 554, 584 (2001) (quoting *Doering v. State*, 313 Md. 384, 403 (1988)).

In *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978), the Supreme Court created an exception to the four corners doctrine by establishing a process for a defendant to challenge the veracity of statements in the affidavit supporting a warrant. A defendant must first make a preliminary showing that the affidavit contains a statement made with "deliberate falsehood or reckless disregard for the truth." *Franks*, 438 U.S. at 171. The defendant's challenge must include "[a]ffidavits or sworn or otherwise reliable statements of witnesses . . . or their absence satisfactorily explained." *Id*. The Supreme Court explained the procedure for a defendant who has made a preliminary showing to obtain a *Franks* hearing:

> [W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the

> affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request … In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

438 U.S. at 155-56.

With respect to the standard for determining whether an affiant acted with "reckless disregard for the truth," the Supreme Court made clear that "[a]llegations of negligence or innocent mistake are insufficient." *Id.* at 171. In *Holland v. State*, 154 Md. App. 351, 389 (2002), we emphasized that the omissions or misstatements must be *material* in order for a court to invalidate a warrant:

> [T]o challenge a misstatement or an omission in an affidavit based on *Franks*, the accused must make a substantial "preliminary showing," by a preponderance of evidence, that the alleged omission was made intentionally or with reckless disregard for accuracy. A showing of negligent or innocent mistakes will not suffice. *Connelly v. State*, 322 Md. 719, 727, 589 A.2d 958 (1991); [*Yeagy v. State*, 63 Md. App. 1, 8 (1985)]. Rather, the omissions or misstatements must be *material*. As the *Yeagy* Court said, "'[a] magistrate cannot adequately determine the existence of probable cause with the requisite judicial neutrality and independence if the police provide him or her with a false, misleading, or partial statement of the relevant facts … but we will not invalidate a search warrant unless the omissions were material.'"
> *Yeagy*, 63 Md. App. at 8 (citation omitted).

Holland, 154 Md. App. at 389 (emphasis added). "'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.'" *Young v. State*, 234 Md. App. 720, 738-39, (2017), *aff'd*, 462 Md. 159 (2018) (quoting *McDonald v. State*, 347 Md. 452, 471 n.11 (1997)).

If these requirements are met, the court must determine whether, after the false information is excised from the affidavit, the remaining information is sufficient to establish probable cause, an evidentiary hearing is not required. *Holland*, 154 Md. App. at 389 (citing *Franks*, 438 U.S. at 156). A hearing is required, however, if probable cause would not exist absent the misstatement. *Id*. (citing *Franks*, 438 U.S. at 156).

In this case, the affidavit in support of the search warrant provided the following information:

- On November 9-10, 2017, Mrs. Ukhanova's home was burglarized and jewelry and an iPad Air were stolen.

- On November 13, 2017, Mrs. Ukhanova positively identified one of her rings at a pawn shop. The store's records indicated that Elizabeth Meekins had sold the ring to the store.

- Ms. Meekins told police that appellant had given her the ring and told her that she could pawn it. She stated that she did not know that the ring was stolen. She also told police that on November 9 or 10, 2017, appellant had asked her to try to unlock a password-protected iPad, but she was unable to unlock it.

- Amanda Scott, appellant's roommate, told police that appellant had asked her to pawn jewelry for him because he did not have a driver's license. She and appellant traveled to Atlantic Pawn in Millsboro, Delaware, where she pawned various pieces of jewelry in exchange for $200, which she gave to appellant.

- Appellant's parents lived within "a few blocks" of Ms. Ukhanova's residence and he had worked with her ex-husband.

- Appellant "has an extensive criminal history for burglary and theft and is currently on the sex offender registry."

- The following jewelry was found at the Atlantic Pawn and DAKozma:

  (1) **[iPad] air – SN#DMPQLALOGSVT,** 16 gb silver in color;
  (2) 8 white gold rings valued at $2000.00;
  (3) Necklace with blue topaz and gold chains valued at $500;
  (4) Engagement ring with white gold, large diamond in the center and diamonds around center stone;
  (5) White Marlin necklaces gold chain gold white marlin pendant dated 8/19/2016 valued at $500.

[Emphasis added]. The Affiant, therefore, represented that "probable cause exists to believe that there is now being concealed certain property, namely: jewelry, coins, electronics and additional evidence related to burglary and theft offenses."

The circuit court found that appellant had not made the requisite showing for a *Franks* hearing, finding that "there [was] sufficient content in the warrant affidavit to support a finding of probable cause even if the material that is the subject of the alleged falsity or reckless disregard is excluded from consideration." There is no dispute that the statement in the affidavit that the iPad was recovered from the pawn shop was false. As evidenced by the warrant return, the iPad was actually recovered from the search of appellant's residence, not the pawn shop. Appellant argues that he met his burden of

showing that the false statement was a deliberate falsehood or made with reckless disregard for the truth because "the affidavit is taken essentially verbatim from a section of a police report authored by Officer Suarez of the Ocean Pines Police Department and is 'functionally identical' to that report with the exception that the affidavit represents that the iPad was recovered from the pawn shop."

We fail to see the deliberate falsehood or reckless disregard for the truth in appellant's claim that Detective Ottey adopted the search warrant from the police report prepared by a fellow police officer and mistakenly identified an item from that report in the affidavit among the items recovered from the pawn shops. Appellant provided no affidavit or other evidence supporting his allegation that Detective Ottey's mistake was intentionally false or recklessly made. On this record, Detective Ottey's mistake appears to be no more than a "typo" or negligent mistake.

"[B]are allegations in a motion without affidavits or the like are insufficient to satisfy the stringent threshold requirement which must be met before a defendant may go beyond the four corners of a warrant." *Young*, 234 Md. App. at 739 (holding that appellant failed to make a substantial preliminary showing that the affiant "*intentionally* or *recklessly*" included false statements in an affidavit supporting a warrant application where appellant failed to provide evidence supporting his speculation that evidence might be stale or inaccurate) (emphasis in original). In our view, the appellant has failed to make the required preliminary showing to substantiate his claim that Detective Ottey's statement in the affidavit regarding the iPad was intentionally false or made with reckless disregard for the truth.

Though it appears that the circuit court proceeded to the last prong of the *Franks* analysis and determined that sufficient information existed in the affidavit to support probable cause, absent the false statement regarding the iPad, we may affirm the circuit court's decision on any ground adequately supported by the record. *See Rush v. State*, 403 Md. 68, 103 (2008); *Powell v. State*, 139 Md. App. 582, 590 (2001) (appellate court may affirm trial court's ruling on different ground where trial court reached correct result).

Because appellant failed to satisfy the requisite showing to justify a *Franks* hearing, the circuit court did not err in denying appellant's request for the hearing.

II. Sufficiency of the Evidence

Appellant argues that the evidence was insufficient to sustain his convictions because the State's case rested upon the uncorroborated testimony of Ms. Meekins and Ms. Scott, who were "uncharged accessories after the fact (at the least)[.]"

"When reviewing the sufficiency of evidence, we view the evidence and any reasonable inferences therefrom in the light most favorable to the State and determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Sewell v. State*, 239 Md. App. 571, 607 (2018) (quoting *Donati v. State*, 215 Md. App. 686, 718 (2014)). "We defer to any possible inferences the jury could have drawn from the admitted evidence." *State v. Mayers*, 417 Md. 449, 466 (2010)). We exclude from consideration any exculpatory inferences that may be drawn from the evidence supporting appellant's theory of the case as they are not part of the version of the evidence most favorable to the State. *Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied*, 445 Md. 5 (2015).

The law in effect at the time of appellant's trial was that "a person accused of a crime may not be convicted [only] on the uncorroborated testimony of an accomplice." *Turner v. State*, 294 Md. 640, 641-42 (1982). After appellant's trial, the Court of Appeals issued its opinion in *State of Maryland v. Jones*, _____ Md. _____, No. 52, September Term, 2018, abrogating the accomplice corroboration rule and holding that uncorroborated accomplice testimony is a matter of witness credibility for the jury to determine after a cautionary instruction as to the potential unreliability of accomplice testimony. *Jones*, slip op. at 10. Because the Court of Appeals also held that the newly-adopted rule was to be applied prospectively, the rule does not apply in this case. *Id.* at 11.

The accomplice corroboration rule applicable in effect at the time of appellant's trial required "only slight corroboration [of accomplice testimony]." *McCray v. State*, 122 Md. App. 598, 605 (1998). In order to be an accomplice, "a person must participate in the commission of a crime knowingly, voluntarily, and with common criminal intent with the principal offender, or must in some way advocate or encourage the commission of the crime." *Silva v. State*, 422 Md. 17, 28 (2011) (citations and quotations omitted).

"An accessory after the fact is one who, knowing that a felony has been committed, harbors and protects the felon or renders him any other assistance to elude punishment." *Watson v. State*, 208 Md. 210, 217-18 (1955). In Maryland, testimony of an accessory after the fact does not have to be corroborated. *Jones*, slip. op. at 8. *See also Rivenbark v. State*, 58 Md. App. 626, 634 n.1 (1984) ("If a witness qualifies merely as an accessory after the fact, he is not usually regarded as an accomplice and hence his testimony

need not be corroborated."); *Smallwood v. State*, 51 Md. App. 463, 475 (1982) (noting that an accessory after the fact does not have to be corroborated, "but merely believed by the jury"); *Gardner v. State*, 6 Md. App. 483, 495 (1969) ("[A]n accessory after the fact is not an accomplice ... Nor is a receiver of stolen goods an accomplice of a thief unless they conspire together in a pre-arranged plan for one to steal and deliver to the other and pursuant to such plan one does steal and deliver to the other.") (internal citation omitted).

In this case, there was no evidence that Ms. Meekins and Ms. Scott had participated in the planning of the burglary or theft that would support a finding that they were accomplices to those crimes.[3] On the evidence presented, they were, at most, accessories after the fact, and therefore, their testimony did not require corroboration.

Even absent the testimony of Ms. Meekins and Ms. Scott, there was sufficient evidence to support appellant's convictions. During the execution of the search warrant for appellant's apartment, police discovered Ms. Ukhanova's iPad in his living room ceiling, her pink iPod in his bedroom ceiling, and her Pandora bracelet in the glove box of his truck. On the day following the search, Ms. Ukhanova's diamond ring was discovered in the dresser in appellant's bedroom. Ms. Ukhanova also testified that she was familiar with appellant as he had worked for her ex-husband and had been to her home on previous occasions. Viewed in the light most favorable to the State, there was sufficient evidence to permit the jury to draw the rational inference that appellant was in possession of Ms.

[3] There is no indication in the record that the defense requested an accomplice instruction, and no such instruction was given.

Ukhanova's jewelry and electronics because he had, in fact, stolen them when he burglarized her home.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.