Circuit Court for Charles County
Case No. C-08-CR-18-000244

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2450

September Term, 2018

GREGORY SYLVESTER BLAKENEY

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: March 12, 2020

After a jury trial in the Circuit Court for Charles County, Gregory Sylvester Blakeney, appellant, was convicted of possession of more than 10 grams of marijuana. He was sentenced to six months' incarceration, with all but three days of time served suspended. The sentencing court ordered, among other things, that appellant complete seven months of unsupervised probation and forfeit all cash, firearms, and marijuana seized. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following questions for our consideration:

> I. Did the circuit court err in denying appellant's motion to suppress evidence seized pursuant to a search warrant?
>
> II. Did the circuit court err in ordering the forfeiture of certain items seized during the search of appellant's home?

For the reasons set forth below, we shall reverse the order of forfeiture with respect to the cash seized from appellant's residence. In all other respects, the judgments of the circuit court shall be affirmed.

FACTUAL BACKGROUND

As the issues presented by appellant involve his motion to suppress and the court's order that certain items be forfeited, it is not necessary to set forth a detailed statement of the underlying facts. It is sufficient to note that appellant was charged with numerous drug and firearm-related crimes. After a jury trial, he was found guilty of possession of marijuana over 10 grams and acquitted of possession with intent to distribute, possession of firearms in nexus to possession with intent to distribute, possession of production equipment, and possession of a firearm in nexus to possession of production equipment.

At trial, Detective Patricia Adams of the Charles County Sheriff's Office testified that, in the early morning hours of February 28, 2018, she assisted in the execution of a search and seizure warrant at appellant's residence, located at 4019 Night Heron Court, apartment H, in Waldorf. When police arrived, appellant and his girlfriend, J'Nell Chapman, were in the apartment. During the course of the search, officers found and seized, among other things, a Ziploc baggie containing suspected marijuana, a black shoebox containing Ziploc baggies of suspected marijuana, a digital scale, small glass jars, a marijuana grinder, several cell phones, 4 handguns, ammunition, a tax document addressed to appellant, and a small dog carrier containing a plastic container that, in turn, contained United States currency. Forensic testing on a portion of the suspected marijuana determined that it was, in fact, marijuana.

Detective Reginald Forbes, the lead detective on the case, testified that the total amount of United States currency seized during the search of appellant's home was $1,614. Detective Forbes encountered appellant and Ms. Chapman in the apartment. He met with appellant in the living room and read him his Miranda[1] rights. Thereafter, Detective Forbes, appellant, and Detective Ralph Peters left appellant's apartment and got into an unmarked police vehicle. At that time, appellant stated that "everything in the house was his and it wasn't his girlfriend's."

Detective Peters similarly testified that, on the day the search and seizure warrant was executed, he spoke with appellant in an unmarked police vehicle that was parked

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

outside the apartment. As appellant was entering the vehicle, he stated that all of the drugs from the apartment were his and that his girlfriend did not have anything to do with them.

Lieutenant Ashley Burroughs of the Charles County Sheriff's Office supervised the execution of the search warrant. He testified as an expert in the field of identification, packaging, distribution, valuation, and use of controlled dangerous substances, specifically marijuana. He opined that the evidence found in appellant's apartment "clearly indicate[d]" that appellant possessed marijuana with the intent to distribute it. His opinion was based, in part, on the recovery from appellant's apartment of 140 grams of marijuana, large amounts of cash that had been banded together and placed in a dog carrier, packaging materials containing marijuana residue, containers, digital scales, and multiple firearms.

DISCUSSION

I.

Prior to trial, appellant filed a motion to suppress evidence seized pursuant to the search warrant, a supplemental motion to suppress, and a request for a hearing, pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). In *Franks*, the Supreme Court held that, upon request, a hearing must be held when a 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[.]" *Id.* at 155-56. A suppression hearing was held over several days. Appellant's arguments focused, primarily, on the affidavit submitted by Detective Forbes in support of the application for a search and seizure warrant.

A. Detective Forbes's Affidavit

In his affidavit, Detective Forbes wrote, among other things, that in January 2018, he "received information from a concerned citizen" that appellant, "a black male, date of birth December 16, 1991, who resides in the area of Night Heron Court, was selling marijuana." The concerned citizen advised that appellant drove a red Chevrolet Malibu and owned a handgun. On February 2, 2018, Detective Forbes checked "the Charles County Sheriff's Office database for any subjects by the name of 'Greg Blakeney' with a date of birth of December 16, 1991." That search led Detective Forbes to appellant, whose address was listed as 4019 Night Heron Court, Unit H, in Waldorf.

The check of the Charles County Sheriff's Office database revealed that, on August 25, 2017, another Sheriff's officer had conducted a traffic stop of a Nissan vehicle in which the sole occupant identified himself as Gregory Sylvester Blakeney. During the course of that traffic stop, the officer detected "an odor of marijuana emitting from the vehicle." A search of the vehicle "revealed a book bag storing two large plastic containers." One of the containers had an odor of marijuana emitting from it and the other contained three smaller containers of suspected marijuana. Mr. Blakeney was arrested for possession with intent to distribute marijuana.

On February 2, 2018, Detective Forbes conducted surveillance of 4019 Night Heron Court, Unit H, in Waldorf. He observed a red Chevrolet Malibu and a gray Nissan Versa parked in front of the residence. A vehicle registration check revealed that the Malibu was registered to appellant and the Nissan was registered to J'Nell Victoria-Romeka Chapman. Detective Forbes observed appellant and a woman leave the residence and drive off in the

Nissan Versa. After obtaining a photograph of Ms. Chapman, Detective Forbes identified her as the woman who had exited the residence with appellant and departed in the Nissan.

On February 7, 2018, Detective Forbes again conducted surveillance at the residence. He observed a silver Buick Century parked in front of the apartment. At about 1:52 p.m., a light-skinned male with long hair exited the vehicle and approached the residence. About 3 minutes later, the man exited the residence, entered the Buick, and left the area. A search of the registration for the Buick led Detective Forbes to Claude Robert Richardson. Detective Forbes stated that he checked "[t]he law enforcement databases" which revealed that Mr. Richardson had "previous arrests and convictions for possession of marijuana."

Two days later, Detective Forbes again conducted surveillance at the residence. He observed appellant and Chapman exit the apartment and depart in the Nissan Versa. A week after that, while Detective Forbes was again conducting surveillance, he observed a white male in a blue Honda Accord parked in front of the apartment. He observed appellant exit the apartment and walk up to the Honda. About 30 seconds later, appellant went back inside the apartment and the Honda left the area. A check of the registration for the Honda led Detective Forbes to Ryan Alexander Workman. According to Detective Forbes's affidavit, Workman had a "previous history for possession of marijuana." Detective Forbes "conducted a check through law enforcement databases and the Maryland Motor Vehicle of Administration [sic] for a photograph of Workman" and, through a photograph he located, was able to identify Workman as the operator of the Honda.

With respect to both the Buick and the Honda, Detective Forbes stated in his affidavit that, "through his training and experience as a narcotics detective . . . the activity observed is consistent with the sales of controlled dangerous substances." He further stated that he knew "through his training and experience as a narcotics detective that it is common for drug dealers to meet drug buyers at the dealer's residence to sell their product[,]" and that "it is common for the drug buyer to meet the drug dealer face to face in order to make a quick exchange to avoid detection by law enforcement."

At about 3:30 p.m. on February 16, 2018, Detective Forbes observed appellant leave his apartment, enter the Nissan Versa, and travel to the parking lot of a Burger King in Waldorf. In his affidavit, Detective Forbes wrote that moments later, another detective from the Charles County Sheriff's Office observed a black male exit the front passenger seat of the Nissan and then the vehicle exited the parking lot. The black male who exited the Nissan was not appellant and had not been in the vehicle four minutes prior when appellant drove away from his apartment. "Detectives continued surveillance and observed the Nissan" drive back to appellant's apartment.

Several hours later, another detective from the Charles County Sheriff's Office observed appellant exit his apartment, enter the Nissan Versa, and drive to a location on Pin Oak Drive. A third detective observed appellant exit the Nissan, walk to the front door of the residence, and then, less than two minutes later, return to the Nissan and depart the area.

With respect to both of those observations of appellant, Detective Forbes wrote in his affidavit that "through his training and experience as a narcotics detective . . . the

activity observed is consistent with the sales of controlled dangerous substances." He explained that he knew "through his training and experience as a narcotics detective that it is common for drug dealers to meet drug buyers at public locations to sell their product[,]" and that "it is common for the drug buyer to meet the drug dealer face to face in order to make a quick exchange to avoid detection by law enforcement."

Detective Forbes conducted a search of law enforcement databases and found that a Smith and Wesson M&P .40 caliber handgun was registered to appellant. He also conducted a check of the National Crime Information Computer System ("NCIC") and "Maryland Rap Sheet" for information regarding Gregory Sylvester Blakeney, a black male, date of birth December 16, 1991. Detective Forbes found a record that showed a September 8, 2012 arrest for malicious destruction of property and an August 25, 2017 arrest for possession with intent to distribute marijuana, possession of marijuana, and common nuisance/controlled dangerous substance.

The court issued a search warrant for both appellant's residence and the Nissan Versa.

B. Request for a *Franks* Hearing

Appellant argues that the circuit court erred in failing to grant a *Franks* hearing because there were multiple false statements and material omissions in Detective Forbes's affidavit. Specifically, he argues that the affidavit omitted the fact that when he was arrested on August 25, 2017, he was in possession of "less than 10 grams" of marijuana, which is consistent with personal use and a potential civil violation, a fact the judge took judicial notice of at the suppression hearing. Appellant also points to the

statement in the affidavit that Mr. Richardson had various "convictions" for possession of marijuana when, in fact, he had only a single conviction for simple possession of marijuana in 2013. Similarly, appellant asserts that, contrary to Detective Forbes's statement that Mr. Workman had a prior history of possession of marijuana, no such history appears in the Maryland Judiciary Case Search. Finally, appellant argues that the behavior Detective Forbes observed was consistent with everyday life, that he did not observe a single hand-to-hand exchange of drugs for money, that no person was ever pulled over, stopped, or searched by the police, and no investigation of the other people was involved except for looking up their names in a database. According to appellant, a mere hunch is insufficient to establish reasonable suspicion much less probable cause. We are not persuaded.

In considering a trial court's denial of a motion to suppress evidence, we consider only the record developed at the suppression hearing. *State v. Johnson*, 458 Md. 519, 532 (2018). We view the evidence in the light most favorable to the prevailing party, and accept the circuit court's findings of fact unless they are clearly erroneous. *Sizer v. State*, 456 Md. 350, 362 (2017). We review the suppression court's legal conclusions *de novo*, and make "our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case." *Gupta v. State*, 452 Md. 103, 129 (quoting *Rush v. State*, 403 Md. 68, 83 (2008)), *cert. denied*, 138 S.Ct. 201 (2017).

The Fourth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, protects against "unreasonable searches and seizures." U.S. Const. amend. IV. As a means of ensuring reasonableness, the Fourth

Amendment provides that "no Warrants shall issue, but upon probable cause[.]" U.S. Const. amend. IV; *Williamson v. State*, 398 Md. 489, 501-02 (2007)(citing *United States v. Sharpe*, 470 U.S. 675, 682 (1985)). The task of a judge issuing a warrant is "'to reach a practical and common-sense decision, given all of the circumstances set forth in the affidavit, as to whether there exists a fair probability that contraband or evidence of a crime will be found in a particular search.'" *Patterson v. State*, 401 Md. 76, 89-90 (2007)(quoting *Greenstreet v. State*, 392 Md. 652, 667-69 (2006)). The issue before both the circuit court and an appellate court is not whether probable cause existed that evidence would be found, but "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). "The evidence necessary to demonstrate a 'substantial basis' is less than that which is required to prove 'probable cause.'" *Moats v. State*, 230 Md. App. 374, 391 (2016), *aff'd* 455 Md. 682 (2017).

Ordinarily, when considering whether there is probable cause to justify the issuance of a search warrant, both the issuing court and a reviewing court are strictly confined to the "four corners" of the affidavit supporting the warrant. *Greenstreet*, 392 Md. at 669. In *Franks*, the United States Supreme Court set forth the only exception to the "four corners" doctrine by establishing "a formal threshold procedure [that must be met] before a defendant will be permitted to stray beyond the 'four corners' of a warrant application[.]" *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003). The Court recognized that there is "a presumption of validity with respect to the affidavit supporting [a] search warrant," but held that when the defendant meets the burden of 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." *Franks*, 438 U.S. at 155-56, 171. Only after making such a showing will a defendant be permitted "to examine live witnesses in an effort to establish that a warrant application was tainted by perjury or reckless disregard of the truth." *Fitzgerald*, 153 Md. App. at 643. In *Franks*, the Court emphasized that in order to mandate a hearing:

> the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

Franks, 438 U.S. at 171.

Franks applies to omissions as well as misstatements, but only those that are "made intentionally or with reckless disregard for accuracy. A showing of negligent or innocent mistake will not suffice." *Holland v. State*, 154 Md. App. 351, 389 (2003). In addition, a defendant must show "that a governmental affiant has perjured himself [or herself] on a material matter." *Id.* at 389. A *Franks* hearing is a rare and extraordinary exception that must be expressly requested and that will not be indulged unless the rigorous requirements have been satisfied. *Fitzgerald*, 153 Md. App. at 642.

In the instant case, the circuit court properly concluded that appellant failed to make the necessary preliminary showing that Detective Forbes made a material and deliberate falsehood in his affidavit. Detective Forbes stated in the affidavit that appellant was

arrested after a traffic stop in August 2017, but did not provide any information about the ultimate disposition of those charges. He stated that the officer who conducted the traffic stop "detected an odor of marijuana emitting from the vehicle," that two large plastic containers were found, that one of those containers was empty but "had an odor of marijuana emitting from it" and the other contained three smaller containers all of which contained suspected marijuana. In addition, two other containers with suspected marijuana were also were recovered. Appellant did not dispute the truth of those statements. Detective Forbes stated in his affidavit that, through his training and experience, "[i]t is common for drug dealers to break down their drugs by placing it into smaller containers for street sale," and that the size of the containers and amount of suspected marijuana located in the August 2017 search was "indicative of a subject who is involved in the sale of marijuana." As the suppression court stated, Detective Forbes's statements about appellant's August 2017 arrest was not the sole basis for his belief that appellant was selling drugs out of his home in February 2018, but was just one of several factors that led to that belief.

Detective Forbes also relied on representations about Claude Richardson and Ryan Workman, who were observed at appellant's apartment while Detective Forbes was conducting surveillance. Appellant argued below, as he does here, that Detective Forbes misstated Richardson's and Workman's drug history because Richardson had only one conviction, as opposed to the two or more convictions suggested in the affidavit, and because a search of the Maryland Judiciary Case Search did not reveal Workman had ever been convicted of drug possession. Detective Forbes did not indicate in his affidavit that

he obtained information about Richardson from the Maryland Judiciary Case Search or any other specific database. With regard to Workman, there was no suggestion that he had convictions for drug possession. Rather, Detective Forbes stated that he had a history of drug possession, a fact he could have obtained from any number of sources. In order to obtain a *Franks* hearing, appellant bore the burden of showing a deliberate falsehood or reckless disregard for the truth. The fact that the Maryland Judiciary Case Search did not confirm the detective's representations does not, by itself, lead to the conclusion that the detective's statement was a misrepresentation. The circuit court properly concluded that appellant did not meet that burden with respect to the statements in the affidavit pertaining to Richardson and Workman.

Appellant also argued that Detective Forbes did not see any hand-to-hand exchange of drugs for money, did not stop any of the individuals who interacted with him, and that his theory was based only on a "hunch." None of these contentions, however, identifies a misrepresentation or omission of fact that, if known, would have affected the probable cause determination. Rather, those arguments challenge the adequacy of the police investigation. In light of appellant's failure to point to a material misstatement of fact or an omission of the sort required by *Franks*, the circuit court correctly denied his request for a *Franks* hearing.

II.

Appellant argues that Detective Forbes's affidavit, on its face, lacked probable cause to justify the search of his residence and vehicle because it lacked information about the knowledge and veracity of the "concerned citizen" and did not adequately compensate for

the lack of information concerning the informant's reliability, credibility, or basis of knowledge. Specifically, appellant contends that the affidavit did not establish the veracity or basis of knowledge of the "concerned citizen," that the information included in the affidavit was widely available to the public, that there was no basis for the concerned citizen's claims, that the affidavit did not include information about the concerned citizen or his or her reliability, and that the area of Night Heron Court was a huge development with "a population that exceeds that of many small towns." In addition, appellant argues that the affidavit failed to meet the nexus requirement because it failed to provide, either directly or by reasonable inference, something that would allow the magistrate to determine that contraband might be found in appellant's home. According to appellant, neither the concerned citizen's tip nor the "very limited investigation that followed" provided enough detail to establish a nexus between his home and the guns, marijuana, scales, and packaging materials sought by the search warrant.

Appellant also maintains that the seizure of the firearms and ammunition exceeded the scope of the search warrant. He argues that Detective Forbes knew that he had a handgun registered to him, and the fact that marijuana was found in appellant's home did not connect the possession of that weapon, or any ammunition for it, with illegal drugs or subject it to seizure. As for the other weapons seized during the search, appellant maintains that the warrant improperly left to the discretion of law enforcement officers the determination of whether the guns were connected to illegal drugs. For the reasons set forth below, we are not persuaded.

The Fourth Amendment permits the issuance of a warrant "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized." U.S. Const. amend. IV. Probable cause for a search "'exist[s] where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found'" in a particular place. *Johnson*, 458 Md. at 535 (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). Probable cause is a "'practical, nontechnical conception'" involving "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)(quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). It is not required that a warrant application aver that criminal activity actually occurred in the place to be searched. It is sufficient that the affidavit establish a nexus between the objects to be seized and the place to be searched from which a person of reasonable caution would believe that the items sought might be found there. *Holmes v. State*, 368 Md. 506, 519-22 (2002). Our review of the decision to issue a search warrant "is limited to whether there was a substantial basis for concluding that the evidence sought would be discovered in the place described in the application for the warrant." *Birchead v. State*, 317 Md. 691, 701 (1989)(internal citation omitted).

Upon review of the affidavit, we are convinced that the magistrate had a substantial basis to believe that appellant was engaging in the sale of marijuana from his apartment. The affidavit made clear that a concerned citizen gave law enforcement a tip that appellant was selling drugs. The information provided included appellant's name, date of birth, and race, correctly described the make, model, and color of his car, and stated that he lived on

Night Heron Court. It is inconsequential that Night Heron Court is a large area. Although the affidavit did not contain any statement about the size of the area, it included other specific details from which Detective Forbes was able to determine appellant's address. Regardless of the actual amount of marijuana involved in appellant's prior traffic stop, Detective Forbes's affidavit included information that the stop resulted in the recovery of marijuana and storage containers that, based on Detective Forbes's knowledge and experience, were indicative of a person involved in the sale of marijuana. The affidavit also included information that when appellant was under surveillance in February 2018, detectives observed brief encounters with Richardson and Workman that were, in Detective Forbes's opinion, based on his knowledge and experience, made quickly to avoid detection by law enforcement officers and were consistent with the sale of controlled dangerous substances. Similarly, the affidavit included information about two other transactions, one involving an unknown individual who entered appellant's car for a brief period of time and another involving appellant's entrance into the residence of another person for a brief period of time, both of which were, in Detective Forbes's opinion, consistent with the sales of controlled dangerous substances. Considering all this information in its totality, we conclude that the magistrate had a substantial basis to believe that appellant was engaging in the sale of marijuana from his apartment.

Moreover, the affidavit satisfied the nexus requirement. From the information in Detective Forbes's warrant application, the magistrate could reasonably infer that drugs and other evidence of controlled dangerous substance violations would likely be found in appellant's home. As the Court of Appeals explained in *Holmes*:

> The reasoning, supported by both experience and logic, is that, if a person is dealing in drugs, he or she is likely to have a stash of the product, along with records and other evidence incidental to the business, that those items have to be kept somewhere, that if not found on the person of the defendant, they are likely to be found in a place that is readily accessible to the defendant but not accessible to others, and that the defendant's home is such a place.

Holmes, 368 Md. at 521-22.

In the case at hand, detectives conducted surveillance at appellant's home. They observed two men with known drug histories enter and exit his home in a brief period of time. They also observed appellant engage in brief encounters with two other unidentified men. Based on his training and experience, Detective Forbes concluded that those encounters were consistent with the sale of controlled dangerous substances. Based on those encounters, it was reasonable for Detective Forbes to infer that appellant kept drugs in his home. As the Court of Appeals explained in *Stevenson v. State*, 455 Md. 709, 727 (2017), the court must give "due weight" to an officer's training and experience as part of what allows them to make inferences and deductions that support a warrant. Considered in its totality, the information set forth in the affidavit provided a substantial basis for concluding that the evidence sought would be discovered in appellant's home and vehicle.

With regard to the weapons, specifically, the concerned citizen advised that appellant owned a handgun. Detective Forbes's believed that appellant kept drugs in his home and stated, based on his training and experience, that drug dealers "commonly secrete their drugs, money, weapons and ammunition either on their person or in their vehicles, buildings, sheds, residence or surrounding property." Yet we need not address appellant's

challenge to the seizure of his firearms and ammunition, because even assuming, *arguendo*, that the court erred in denying appellant's motion to suppress the weapons and ammunition, that evidence related only to the firearm charges of which appellant was acquitted. As a result, any error in failing to suppress evidence of the firearms and ammunition would have been harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976).

III.

Appellant's final argument relates to the sentencing court's order that he forfeit the cash and guns seized during the search of his residence.[2] At the sentencing hearing, the State introduced a handwritten statement Ms. Chapman had given to police. In it, Ms. Chapman wrote that appellant sold drugs from his home, that the drugs found in the house belonged to him, and that appellant owned the guns found in the home. Ultimately, in sentencing appellant, the court ordered, *inter alia*, that appellant forfeit the guns and cash seized during the search of his residence. Appellant contends that the sentencing court

[2] The record does not reflect that an application for forfeiture was made below. "[F]orfeiture is a civil proceeding completely separate and apart from the criminal proceeding." *Dir. Of Fin. Of Prince George's County v. Cole,* 296 Md. 607, 619 (1983). "To apply for the forfeiture of money [seized in connection with a violation of a controlled dangerous substance law], the appropriate local financial authority or the Attorney General shall file a complaint and affidavit in the District Court or the circuit court in which the money was seized." Md. Code (2018 Repl. Vol.), § 12-302(a) of the Criminal Procedure Article ("CP"). Ordinarily, absent the filing of a civil action or the consent of the defendant, the sentencing court would lack jurisdiction to order the forfeiture of the cash. *See generally Gatewood v. State*, 264 Md. 301, 305 (1972). Our review of the record in the instant case convinces us that appellant consented to the forfeiture of the guns and acquiesced to the sentencing court's consideration of forfeiture with respect to the cash.

erred in admitting Ms. Chapman's statement because it was unreliable hearsay and in ordering the forfeiture of the guns and cash.

A. Forfeiture of Guns

Appellant argues that the sentencing court erred in ordering the forfeiture of the guns recovered from his residence, including one that was legally registered to him. This argument was waived. As the following passage from the sentencing hearing shows, appellant's counsel acquiesced to the forfeiture of the guns found in appellant's residence:

> [DEFENSE COUNSEL]: I would object to forfeiting the cash. [Mr. Blakeney] has a business, a job, it's working as a server. As you can see from that letter, he's a hard worker, they appreciate his work. We have, let me just confirm this. And we are fine forfeiting the guns, Your Honor, as a condition of this. I think [Mr. Blakeney] recognizes just how he got caught with, up in this and having those guns there. But like I said, he's taken these qualifications classes. At least one of the guns was registered to him. There –
>
> THE COURT: But he's okay, so we don't have to talk about the guns.
>
> [DEFENSE COUNSEL]: Right.

When a party acquiesces in a court's ruling, there is no basis for appeal from that ruling. *Simms v. State*, 240 Md. App. 606, 617 (2019); Md. Rule 8-131(a)(explaining that, except for certain issues pertaining to jurisdiction, an appellate court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]") As appellant agreed to forfeit the guns, this issue is not properly before us.

B. Forfeiture of Cash

Appellant contends that the court erred in ordering the forfeiture of the cash found in his residence because it improperly relied on a statement provided to police by his girlfriend. During the search of appellant's residence, police seized a total of $1,614 in cash. At the sentencing hearing, the State requested the court to order forfeiture of that cash based on a written statement given to police by appellant's girlfriend, Ms. Chapman, after she had been arrested. That statement provided:

> Q. Do you understand that you are under arrest at this time?
> A. Yes.
>
> Q. Have I advised you of your Miranda rights before this interview began?
> A. Yes.
>
> Q. Do you understand those rights/
> A. Yes.
>
> Q. Whose drugs is it in the house?
> A. Gregory
>
> Q. How often was Gregory selling?
> A. here and there not often
>
> Q. Who did the gun belong to
> A. Gregory
>
> Q. Has Gregory used any vehicles to sell drugs?
> A. No, he has never driven my car.
>
> Q. What kind of drugs was Gregory selling?
> A. Just marijuana.
>
> Q. Have you told Gregory to stop selling before?
> A. yes
>
> Q. Why hasn't Gregory stopped selling?
> A. In the process of finding a job. And its hard. Been spoken to by my family and his family

Q. Who is Gregory to you?
A. My boyfriend

Q. Does people come to the house or Gregory meets them?
A. They come to the house

Q. How much do they buy?
A. Like $20 its little stuff

Q. Where did the baggies and digital scale in your car come from?
A. I do not know. I just know yesterday I had [illegible word] to smoke with my friend.

Q. Who do you think put those items in your car?
A. I don't know. That's not mine.

Q. Is there anything else you would like to tell me?
A. Not my stuff in that car.

Q. Is everything you have told me the truth?
A. Yes

Q. Do you know how to read and write the English language?
A. Yes

Q. Have you read this statement or have you had this statement read to you today?
A. Yes

Q. After having read this statement would you like to change or add anything?
A. The items found in backseat (baggies. Scale) doesn't belong to me

Q. Will you sign each page of this statement to verify its accuracy?
A. Yes

Q. Have I made you any promises or threatened you in any way to give this statement?
A. No

Q. Have I treated you fairly during this investigation?
A. Yes

Appellant objected to the admission of Ms. Chapman's statement on the ground that it constituted unreliable hearsay. The State disagreed and asserted that her statement was not unreliable hearsay, that it was written by her after her Miranda rights were given, that there were no Fifth Amendment considerations because Ms. Chapman had not been charged with any crimes, and there was no evidence that she participated in any of the crimes for which appellant had been charged. The State argued:

> So, Your Honor, the main thing as it relates to the forfeiture of the cash is where Ms. Chapman stated that her and his family have been urging Mr. Blakeney to get out of selling the marijuana, to find another job, but he can't get another job that supplements the income.
>
> I think by giving him back the cash we have no guarantee he's not going to re-up and fall right back into that. I think that by forfeiting the cash is a signal you're not going to get back in easy.
>
> You need to find another way to provide for yourself, because this life, yeah, it's just marijuana, it's still illegal, as many people want to downplay marijuana, it's still violent, it's still dangerous when you're selling it. He's going to get himself killed or someone else killed doing his business.
>
> So I think forfeiting the cash so that, to make it at least harder for him to start up his business again is reasonable under the facts as the Court heard and under the statement from Ms. Chapman.

Appellant challenged the State's argument that Ms. Chapman did not have a Fifth Amendment right, pointing out that she was found in the residence with appellant and arrested, that there were more than 10 grams of marijuana out in the open in the apartment, that a scale and baggies were found in her vehicle, and that she admitted, in her statement to police, that she had smoked marijuana.

As a mitigating factor, appellant also provided the sentencing court with a certification he received from the Maryland Medical Cannabis Commission on February

21, 2018, granting him an identification number and permission to possess cannabis for a medical necessity, specifically, insomnia, an eating disorder, and severe and recurring anxiety. Appellant did not know that the medical necessity certification had been granted until after the trial. Finally, appellant argued that the cash seized was tip money that had been earned by both him and Ms. Chapman.

On appeal, appellant again argues that Ms. Chapman's statement was unreliable hearsay, that it was self-serving, and that it was intended to exonerate herself and implicate him. Appellant asserts that the sentencing court erred both in accepting Ms. Chapman's statement without having her testify and in denying him an opportunity to confront her and test her credibility through cross-examination. At trial, the State advised the court that Ms. Chapman was evading service and the court issued a body attachment. The State, however, did not compel Ms. Chapman's appearance. At the sentencing hearing, the State acknowledged it could "call Ms. Chapman to authenticate and introduce her statement or I can just give it to the Court." Over objection, the court accepted Ms. Chapman's statement and did not compel her to appear in person. According to appellant, because the jury unanimously rejected the State's theory that he was selling marijuana or using guns, scales, or other paraphernalia to sell or produce marijuana, the sentencing court should not have assumed that Ms. Chapman's unsworn, unauthenticated, and self-serving statement was sufficiently reliable hearsay so as to justify the forfeiture of the cash.

Maryland Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." A trial court has "'no discretion to admit hearsay in the absence of

a provision providing for its admissibility.'" *Vielot v. State*, 225 Md. App. 492, 500 (2015)(quoting *Gordon v. State*, 431 Md. 527, 535 (2013)(in turn quoting *Bernadyn v. State*, 390 Md. 1, 7-8 (2005)). It is well established, however, that the strict rules of evidence do not apply at a sentencing proceeding. *Whittlesey v. State*, 340 Md. 30 (1995)(under common law applicable in noncapital cases, strict rules of evidence do not apply at sentencing proceeding); *State v. Dopkowski*, 325 Md. 671, 680 (1992)("The strict rules of evidence do not apply at a sentencing proceeding."); *Miller v. State*, 67 Md. App. 666, 671 (1986)(procedure in sentencing is not the same as in the trial process). Similarly, the right of confrontation does not extend to sentencing. *See United States v. N. Powell*, 650 F.3d 388, 393 (4th Cir. 2011)("[I]n holding that the Confrontation Clause does not apply at sentencing, we join every other federal circuit court that hears criminal appeals."); *Driver v. State*, 201 Md. 25, 32 (1952)("[T]he sentencing judge may consider information, even though obtained outside the courtroom from persons whom the defendant has not been permitted to confront or cross-examine."). Nevertheless, due process requires that the evidence considered by a sentencing court have "some minimal level of reliability." *Powell*, 650 F.3d at 393; *Johnson v. State*, 75 Md. App. 621, 641 (1988)(it is proper for sentencing judge to consider reliable evidence of details and circumstances surround criminal charge of which defendant was acquitted, but it is essential that the evidence relied upon be reliable).

In the instant case, Ms. Chapman's written statement was unreliable and should not have been considered at the sentencing hearing in support of the forfeiture of the cash found during the search of appellant's home. On its face, Ms. Chapman's statement was

obviously self-serving and intended to exonerate her by implicating appellant. Ms. Chapman was with appellant in the apartment where the drugs, paraphernalia, and guns were found. In her written statement, Ms. Chapman acknowledged that appellant had never driven her car, in which police found baggies and a scale. Although Ms. Chapman claimed that appellant was selling drugs because he was "[i]n the process of finding a job," police found an envelope from his employer in his apartment and the management at the restaurant where appellant worked confirmed in writing that he was a highly-valued server. Although Ms. Chapman stated that appellant was selling drugs, we note that the jury acquitted appellant of all distribution and related firearms charges and convicted him on only a single count of possession of marijuana over 10 grams. Because the court improperly relied on Ms. Chapman's unreliable hearsay statement to support its order requiring appellant to forfeit the cash that was seized from his apartment, reversal of the forfeiture order with regard to the cash is required.

JUDGMENT OF FORFEITURE WITH RESPECT TO CASH SEIZED REVERSED; ALL OTHER JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID ONE HALF BY APPELLANT AND ONE HALF BY CHARLES COUNTY.