

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellant,

SC No. 152840

COA No. 322655

Wayne County Circuit

Lower Court Case No.14-003800-FH

vs.

DARIUS LAMARR FRANKLIN,

Defendant/Appellee.

DEFENDANT'S SUPPLEMENTAL BRIEF ON APPEAL



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Question Presented

- I. Whether the Court of Appeals erred in concluding that *Franks v. Delaware* limited the trial court's discretion to order a *Franks* hearing.**

Defendant/Appellee: No

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Statement of Facts

Defense counsel simultaneously filed two motions in circuit court: (1) a motion to quash the search warrant based on insufficient evidence and (2) a motion for an evidentiary hearing pursuant to *Franks v. Delaware*. Prior to these filings, Officer Moore submitted to a magistrate a sworn warrant affidavit based on assertions from an unregistered confidential informant. He paid the informant from his personal money and claims to have successfully used the informant over ten times in the past. However, he did not produce any supporting documentation. Actually, government failed to produce any of the activity logs or payment vouchers typically involved in drug surveillance cases. The court questioned the government's lack of pertinent information in the affidavit, and the government had no response.

During the thirty-minute timeframe of Officer Moore's alleged surveillance, he claims to have observed five unknown individuals walk up to the front door of the target address to meet an unknown 25-27 year old black male seller. He further asserts that each individual entered and then, within one minute, exited the Defendant's home. He then allegedly spoke to the last individual, who told him "they up right now just go to the front door and they will hook you up [with drugs]." In disputing the allegations in the search warrant affidavit, Defense counsel produced two witness affidavits, the search warrant return, photographs and the actual search warrant. The Defendant produced affidavits of himself and the next door neighbor that disputes the use of the front door, heavy traffic, and the existence of the 27 year old black male seller. But consistent with the neighbor's and the Defendant's sworn affidavits, the front door has not been used in a least six months.

The trial court reviewed the attached police document, known as the Search Warrant Return, listing all items and contraband seized from the premises. (See Exhibit A). The seized items were inconsistent with allegations of heavy drug trafficking, and the search of the

Defendant's home did not produce any other items connected with drug trafficking outside of the two bags of marijuana. The return shows a lack of evidence to support heavy traffic. The photographs show the route of the phantom buyers and the neighbor's clear, unobstructed view of the Defendant's home. Because of Officer Moore's false information, Judge Morrow operated well within his discretion when he granted the *Franks* hearing and dismissed the charges.

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Argument

I. Whether the Court of Appeals erred in concluding that *Franks v. Delaware* limited the trial court's discretion to order a *Franks* hearing.

In *Franks v. Delaware*, 478 US 154 (1978), the Court held that 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, 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. *Id.* Whether to hold an evidentiary hearing based on a challenge to a search warrant's affidavit is left to the trial court's discretion. *People v. Poindexter*, 90 Mich. App 599, 609 n. 4: 282 NW2d 411 (1979).

Trial court's decisions are reviewed de novo by appellate courts concerning questions of law, and findings of fact are reviewed for clear error. *People v. McSwain*, 676 N.W.2d 236, 250 (Mich. App. 2003). These decisions will only be reversed when there is an abuse of that discretion, which is when a decision falls outside the range of reasoned and principled outcomes. *People v. Duncan*, 835 N.W.2d 399, 404 (Mich. 2013).

As state in *Poindexter*, when the *Franks* requirements are met to the trial court's satisfaction and the statements challenged by the Defendant are set aside, the remaining content is insufficient to support a finding of probable cause, the Defendant is entitled to an evidentiary hearing. *People v Poindexter*, 282 N.W.2d 411, 416 (Mich. App. 1979). Footnote four in *Poindexter* acknowledges that proving the nonexistence of an informant, is virtually impossible. It goes on to say that the requirements for granting a hearing have been phrased to allow trial judges wide discretion in determining whether to grant them. Therefore, if a trial judge recognizes his or her discretion, considers the tests outlined in *Franks*, and is convinced that a Defendant has raised a legitimate question, the judge is free to order an evidentiary hearing.

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Here, there is only a fact question as to whether the trial court judge properly granted a *Franks* hearing to this Defendant. Judge Morrow had an opportunity to review several pieces of evidence: the search warrant, the warrant affidavit, the Defendant's affidavit, the Defendant's neighbor's affidavit, the search warrant return, photographs of the scene, and to hear the parties' arguments at the motion to suppress hearing. As stated by Judge Morrow during the July 3rd Motion to Suppress hearing and based on *Franks's* required treatment of informants' tips, the information from the confidential informant was not credible. The informant did not include in his tip a time, place, what, when, who, or where from which the informant could have concluded that relevant evidence might be discovered at the Defendant's home. Further, Judge Morrow noted the lack of any paraphernalia inside the house that substantiated the informant's claim of heavy drug trafficking. More specifically, there were no baggies, packaging materials, scales, tally sheets, records or any other evidence suggesting drug traffic. He further noted that the informant had never been inside the Defendant's home, had never purchased any drugs from the Defendant, did not know the Defendant's name, and did not provide any details as to the source of his drug-trafficking knowledge as required by *Franks*.

After the denial of Defendant's motion to suppress and prior to the evidentiary hearing, the court ordered the production of Officer Moore's activity logs and payment vouchers. The activity log is a written document stating the officer's location and duties while on surveillance. This log will either support or contradict the affiant's whereabouts as alleged in the search warrant affidavit. Even though ordered to produce the affidavit and voucher, the affiant failed to produce either. After reviewing the abovementioned documents and responses, Judge Morrow doubted the officer's veracity and granted the evidentiary hearing.

When reviewing Officer Moore's statement in his warrant affidavit that each transaction took about one minute, which, coupled with the lack of any prepackaged drugs, makes the

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statement even less credible. The statement from the next door neighbor of four years that she never witnessed high traffic or any traffic to the front door created more doubt. When adding the above information, to the sworn affidavits that the Defendant resided alone, that there was no 27 year old black male present at the Defendant's address, and the affiant's refusal to provide the activity logs provided the trial judge with a substantial preliminary showing that a knowingly false statement was alleged in the affidavit. When considering your decision, we ask this Honorable Court to consider and follow the words as written in footnote 4 of *Poindexter, supra*

We realize that the threshold requirements for an evidentiary hearing may be difficult to reach in cases such as the present. Proving a negative (here, that no informant existed) is virtually impossible. However, we have phrased our requirements to allow trial judges wide discretion in determining whether or not to grant an evidentiary hearing. Thus, if a trial judge recognizes his or her discretion, considers the tests outlined above, and is convinced that a defendant has raised a legitimate question regarding the existence of an informant, the judge is free to order an evidentiary hearing.

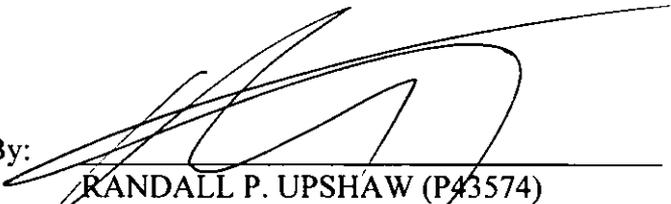
Judge Morrow's assessment, as reflected in the court's reasoning and subsequent decision to dismiss the charges, was that the affidavit lacked veracity. There is no clear error in Judge Morrow's holding and the decision to grant the hearing is fully within his discretion. Also, the decision does not fall outside the range of reasoned and principled outcomes. The Supreme Court should reverse the holding from the Court of Appeals and dismiss the charges.

Relief Requested

The Defendant, DARIUS FRANKLIN, respectfully requests that this Honorable Court reverse the Court of Appeals decision, reinstate the trial court's decision, and dismiss the charges.

Respectfully submitted,

By:



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Dated: April 25, 2016

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EXHIBIT A

RANDALL P. UPSHAW, ATTORNEY AT LAW
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SEARCH WARRANT RETURN

I, hereby certify and return, that by virtue of the within Search Warrant to be directed I have searched for the goods and chattels therein named, at the place therein described.

1. E53980704 - 08 CHEVY TRAILBLAZER PLT# 3LAS99
2. E54023704 - \$ 487.00 U.S. DOLLARS
3. E54023604 - BSA. 9mm - S&W HANDGUN
4. E54023504 - 2 BAGS OF SICK MARIJUANA - ASSORTED SIZES
5. E54023804 - 3 US MAPS & 1 PICTURE
6. _____
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23. _____

THIS 21ST DAY OF MARCH 2014 AT 11:00 AM (PM)

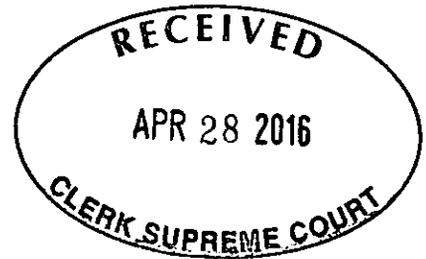
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April 22, 2016



VIA FIRST CLASS MAIL

Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

Re: People of the State of Michigan v. Darius Lamarr Franklin
COA No. 322655; Lower Court Case No. 14-003800

Dear Clerk:

Enclosed please find Defendant's Supplemental Brief on Appeal.

Thank you for your time and attention to this matter. Please do not hesitate to contact the undersigned.

Sincerely,

RANDALL P. UPSHAW
Attorney at Law

RPU/cls