

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 25AP-441 (C.P.C. No. 23CR-2264)
Da’Quan M. Davis,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 29, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and *Brendan M. Inscho*, for appellee. **Argued:** *Michael A. Walsh*.

On brief: *Flowers & Grube, Louis E. Grube*, and *Michael Factor*, for appellant. **Argued:** *Michael Factor*.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Da’Quan M. Davis, appeals from a May 2, 2025 judgment of the Franklin County Court of Common Pleas entering convictions pursuant to his no contest pleas to one count of aggravated trafficking in drugs with a forfeiture specification and one count of identity fraud, and imposing sentences on those convictions. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} On March 28, 2023, while conducting surveillance of an individual identified as a drug trafficker, Franklin County Sheriff’s Office Detectives Jessie Hatfield and Jason BeVier observed Davis meet with the drug trafficker and engage in activity they believed to be consistent with a hand-to-hand drug transaction. After the apparent drug transaction,

Detective BeVier followed Davis, whose identity was unknown to the officers at the time, to the Xander on State apartments (“Xander”). The following day, Detective BeVier prepared an investigative subpoena pursuant to R.C. 2935.23 (“first investigative subpoena”) ordering Xander to appear before the Franklin County Municipal Court at a specified date and time to provide information regarding entry and access to its private parking garage on March 28, 2023 between 11:14 a.m. and 11:20 a.m. The first investigative subpoena included language advising Xander that it could comply without appearing in court by providing the requested information directly to Detective BeVier. A Municipal Court judge signed the first investigative subpoena and it was issued to Xander.

{¶ 3} In response to the first investigative subpoena, Xander provided a photocopy of an Ohio driver’s license containing a photo of Davis but issued in the name “Alexander James Bailey.” Subsequent investigation revealed that there was an Ohio driver’s license issued to an individual with that name but that individual was a different race from Davis, and the properly issued license had been issued on a different date and contained a different expiration date. The investigation also identified an Ohio driver’s license containing a different identification number and date of birth that had been issued to Davis. Based on this information and other details, the detectives concluded that the driver’s license provided by Xander in response to the investigative subpoena was a counterfeit. Detective Hatfield also learned that Davis was the subject of two active felony warrants issued in another county related to drug charges.

{¶ 4} Detective Hatfield then prepared a second investigative subpoena (“second investigative subpoena”) ordering Xander to appear before the Franklin County Municipal Court at a specified date and time to provide the rental agreement, address, phone number, email address, method of payment, and any identification documents provided by “Alexander James Bailey.” Once again, the second investigative subpoena included language advising Xander that it could comply without appearing in court by providing the requested information directly to Detective Hatfield. A Municipal Court judge signed the second investigative subpoena and it was issued to Xander.

{¶ 5} Several days later, and before the deadline for responding to the second investigative subpoena had passed, Detective Hatfield prepared a third investigative subpoena (“third investigative subpoena”) ordering Xander to appear before the Franklin

County Municipal Court at a specified date and time to provide the information sought in the second investigative subpoena and video surveillance from March 28, 2023 from 11:10 a.m. to 11:20 a.m. for the private parking garage entry and exit camera and the elevator camera. The third investigative subpoena included language advising Xander that it could comply without appearing in court by providing the requested information directly to Detective Hatfield. A Municipal Court judge signed the third investigative subpoena, and it was issued to Xander. The same day, Detective Hatfield sought and obtained a warrant to search the apartment Davis had rented at Xander for evidence related to Davis's use of fraudulent documents to obtain the apartment and conceal his identity. That search warrant was not executed because the detectives obtained information indicating Davis was in North Carolina at the time.

{¶ 6} Seven days later, after surveillance indicated that Davis had returned to the apartment at Xander, Detective Hatfield obtained another search warrant to search the apartment for evidence related to Davis's use of fraudulent documents to obtain the apartment and conceal his identity. When the search warrant was executed, Davis was seen throwing bags of suspected narcotics out of the apartment window. The bags were recovered and another search warrant was issued that authorized a search of the apartment for evidence of narcotics. Materials recovered from the apartment were tested and found to contain narcotics.

{¶ 7} The Franklin County Grand Jury indicted Davis on 13 charges, which included 10 charges related to trafficking or possession of drugs, one count of tampering with evidence, one count of identity fraud, and one count of forgery. Davis filed a pro se motion to suppress, arguing that the investigative subpoenas did not comply with the statutory requirements. Davis asserted there was not sufficient probable cause to support issuance of the search warrant if the information obtained from the investigative subpoenas was excised from Detective Hatfield's search-warrant affidavit. The trial court denied Davis's motion to suppress, concluding Davis lacked standing to challenge the investigative subpoenas issued to Xander because he did not have a reasonable expectation of privacy in the fraudulent information provided in his rental application. The trial court also concluded the exclusionary rule did not apply to suppress evidence obtained from the

investigative subpoenas or the search warrants obtained using information obtained from the investigative subpoenas.

{¶ 8} Davis filed a second pro se motion to suppress, arguing the trial court erred when it concluded that he lacked standing to challenge the investigative subpoenas. Davis also filed a pro se motion for a hearing to examine the veracity of Detective Hatfield's affidavit in support of the second search warrant, pursuant to the standard set forth in *Franks v. Delaware*, 438 U.S. 154 (1978), often referred to as a "*Franks* hearing." Davis asserted that Detective Hatfield's search-warrant affidavit failed to inform the reviewing judge that the investigative subpoenas were not issued in compliance with the statutory requirements. The trial court denied Davis's motions. The trial court treated Davis's second motion to suppress as a motion for reconsideration of its decision denying the first motion to suppress. The court concluded the second motion to suppress largely repeated the arguments it had already considered and rejected, reiterating its conclusions that Davis lacked standing to challenge the investigative subpoenas and that the investigative subpoenas were issued in compliance with the law. With respect to Davis's request for a *Franks* hearing, the trial court concluded Davis failed to make a substantial preliminary showing that Detective Hatfield knowingly and intentionally, or with reckless disregard for the truth, made a false statement in his search-warrant affidavit.

{¶ 9} After the trial court denied his motions, Davis entered no contest pleas to one count of aggravated drug trafficking and one count of identity fraud. At the state's request, the trial court entered a nolle prosequi as to the other 11 counts charged in the indictment. The trial court entered convictions on Davis's no contest pleas and imposed sentences of 8 to 12 years of imprisonment on the aggravated drug trafficking conviction and 12 months of imprisonment on the identity fraud conviction, to be served concurrently for a total sentence of 8 to 12 years of imprisonment.

II. Assignments of Error

{¶ 10} Davis appeals and assigns the following two assignments of error for our review:

[I.] THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT-APPELLANT DAVIS'S MOTION [] FOR A *FRANKS v. DELAWARE* HEARING TO ADDRESS THE OMISSION OF A STATUTORY VIOLATION THAT

IMPACTED THE VERACITY AND RELIABILITY OF
INFORMATION PRESENTED IN A WARRANT AFFIDAVIT.

[II.] OFFICER HATFIELD NEGLIGENTLY USURPED THE
MAGISTRATE'S INFERENCE-DRAWING FUNCTION BY
FAILING TO DISCLOSE THE VIOLATION OF R.C. 2935.23.

III. Discussion

A. General law regarding issuance of search warrants

{¶ 11} The Fourth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The Ohio Constitution contains a nearly identical provision. Ohio Const., art. I, § 14. *See* R.C. 2933.22(A) (“A warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized.”); Crim.R. 41(C) (detailing the standards for issuance of a warrant). “In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, ‘[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him . . . , there is a fair probability that contraband or evidence of a crime will be found in a particular place.’ ” *State v. George*, 45 Ohio St.3d 325 (1989), paragraph one of the syllabus, quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

B. Denial of Davis’s motion for a *Franks* hearing

{¶ 12} In his first assignment of error, Davis argues the trial court erred by denying his motion for a *Franks* hearing to examine the veracity of Detective Hatfield’s search-warrant affidavit. Davis claims he was entitled to a *Franks* hearing because Detective Hatfield failed to disclose in his search-warrant affidavit that the investigative subpoenas did not comply with R.C. 2935.23. Davis argues the investigative subpoenas failed to comply with the statute because they permitted Xander to respond by providing the requested information directly to Detective BeVier or Detective Hatfield rather than appearing before the court to be examined under oath. Davis asserts Detective Hatfield

deliberately or recklessly failed to disclose the lack of statutory compliance and argues that this failure affected whether there was probable cause to issue the warrant.

{¶ 13} Plaintiff-appellee, State of Ohio, argues that Davis was not entitled to a *Franks* hearing because he failed to make a sufficient offer of proof that Detective Hatfield knowingly made a false statement in the search-warrant affidavit or was reckless with the truth. The state further asserts that the trial court correctly concluded that Davis did not have a reasonable expectation of privacy in the rental application materials he submitted to Xander.

{¶ 14} We begin by evaluating Davis’s assertion that the investigative subpoenas issued to Xander did not comply with the statutory requirements. The statute governing investigative subpoenas in felony investigations sets forth the following procedure and requirements:

After a felony has been committed, and before any arrest has been made, the prosecuting attorney of the county, or any judge or magistrate, may cause subpoenas to issue, returnable before any court or magistrate, for any person to give information concerning such felony. The subpoenas shall require the witness to appear forthwith. Before such witness is required to give any information, he must be informed of the purpose of the inquiry, and that he is required to tell the truth concerning the same. He shall then be sworn and be examined under oath by the prosecuting attorney, or the court or magistrate, subject to the constitutional rights of the witness. Such examination shall be taken in writing in any form, and shall be filed with the court or magistrate taking the testimony. Witness fees shall be paid to such persons as in other cases.

R.C. 2935.23. Davis argues that the investigative subpoenas issued to Xander did not comply with the statute because they permitted Xander to provide the requested information directly to Detective Hatfield or Detective BeVier and did not require a representative of Xander to appear in court and give sworn testimony.

{¶ 15} This court has held that language in an investigative subpoena “permitting the subpoenaed third-party to provide the requested information in lieu of appearing in court . . . conflict[s] with the plain language of R.C. 2935.23.” *State v. Diaw*, 2024-Ohio-2237, ¶ 22 (10th Dist.). We further held that “[t]here is no excuse for law enforcement’s failure to comply with such an explicit statutory provision.” *Id.* Accordingly, consistent

with our prior holding in *Diaw*, we find that the trial court erred when it stated that the investigative subpoenas fully complied with R.C. 2935.23.

{¶ 16} Our inquiry does not end with that conclusion, however. In *Diaw*, we held that suppression of evidence was not an appropriate remedy for failure to comply with R.C. 2935.23 based on the facts of that case. *Id.* at ¶ 23 (“[A]bsent an express legislative directive, we are not permitted to impose the exclusion of evidence in this instance as an available remedy for noncompliance with the statute.”). In the present case, Davis argues that Detective Hatfield’s failure to disclose the noncompliance with R.C. 2935.23 tainted his search-warrant affidavit and that the trial court erred by denying his motion for a *Franks* hearing to examine the veracity of the search-warrant affidavit.

{¶ 17} In *Franks*, the United States Supreme Court held that a hearing is required “where [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 [a] warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause.” *Franks*, 438 U.S. at 155-56. At the hearing, if the allegation of perjury or reckless disregard is established by a preponderance of the evidence, the affidavit must be examined to determine whether probable cause existed without the false statement. *Id.* at 156. If 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.” *Id.*

{¶ 18} Federal courts are divided on the appropriate standard of review for a trial court’s denial of a *Franks* hearing, with some courts reviewing the decision de novo and other courts applying clear-error review. *State v. Craine*, 2024-Ohio-2501, ¶ 13, fn. 3 (10th Dist.). See *United States v. Rajaratnam*, 719 F.3d 139, 156, fn. 19 (2d Cir. 2013) (“We also recognize uncertainty both in our own Circuit and in our sister Circuits as to whether to review the denial of a *Franks* hearing for clear error or *de novo*. Moreover, it is unclear whether either of these standards is appropriate, inasmuch as that we generally review discretionary decisions on whether a district court ought to conduct a hearing for ‘abuse of discretion.’ ” (Citation omitted.)). In this case, we conclude that even under the more exacting de novo standard of review, Davis fails to establish that the trial court erred by denying his motion for a *Franks* hearing.

{¶ 19} The alleged false statement in Detective Hatfield’s search-warrant affidavit was an omission—i.e., the failure to disclose that the investigative subpoenas did not comply with R.C. 2935.23. An omission constitutes a false statement if it is designed to mislead, or made with reckless disregard as to whether it would mislead, the reviewing magistrate. *State v. Waddy*, 63 Ohio St.3d 424, 441 (1992). Therefore, to be entitled to a *Franks* hearing, Davis was required to make a substantial preliminary showing that Detective Hatfield knowingly and intentionally, or with reckless disregard, omitted from his search-warrant affidavit that the investigative subpoenas did not comply with R.C. 2935.23, and that the omission was necessary to the finding of probable cause. *See Franks* at 155-56. *See also State v. Woods*, 2024-Ohio-467, ¶ 48 (8th Dist.) (holding that before an omission can be considered material the defendant must show that the omission would have materially influenced the magistrate such that the omitted material would have negated probable cause if it had been included in the affidavit); *State v. Blaylock*, 2011-Ohio-4865, ¶ 15-16 (2d Dist.) (adopting Sixth Circuit standard providing that alleged omission of facts from a search-warrant affidavit warrants a *Franks* hearing only where the defendant makes a strong preliminary showing that the affiant excluded critical information with an intention to mislead and the omission is critical to the finding of probable cause).

{¶ 20} When considering an omission from a search-warrant affidavit, we previously have referred to a Second District Court of Appeals decision which “concluded that in order for an omitted fact to be intentionally misleading or made with reckless disregard of its tendency to mislead the magistrate, the fact would necessarily have to be exculpatory information or information that impeaches a source of incriminating information.” *State v. Neil*, 2016-Ohio-4762, ¶ 43 (10th Dist.), citing *State v. Stropkaj*, 2001-Ohio-1837 (2d Dist.). Applying that standard, this court concluded that a detective’s failure to state in a search-warrant affidavit that no incriminating evidence had been obtained from GPS-tracking devices attached to a robbery suspect’s vehicles during a three-month period was not designed to mislead the magistrate because there were no robberies attributed to that suspect during that same period. *Id.* at ¶ 44.

{¶ 21} Similarly, in this case, the fact that the investigative subpoenas permitted Xander to provide documents and information directly to Detective Hatfield and Detective

BeVier, rather than appearing in court and giving the same information under oath, does not necessarily impeach that information. Davis does not argue that any of the information provided by Xander in response to the investigative subpoenas was incorrect or inauthentic; rather, he only argues the information was not provided pursuant to the procedure contained in R.C. 2935.23. Moreover, we cannot conclude that Detective Hatfield's failure to disclose the non-compliance with R.C. 2935.23 was necessary to the magistrate's finding of probable cause. The search-warrant affidavit explained the additional measures Detective Hatfield took to investigate whether the driver's license provided by Xander was counterfeit, which did not depend on whether that driver's license was provided directly to Detective Hatfield or by a representative of Xander pursuant to a sworn appearance before the court. Therefore, the trial court did not err by denying Davis's motion for a *Franks* hearing.

{¶ 22} Accordingly, we overrule Davis's first assignment of error.

C. Denial of Davis's motion to suppress

{¶ 23} In his second assignment of error, Davis argues the trial court erred by denying his motion to suppress because Detective Hatfield usurped the magistrate's inference-drawing function by asserting the credibility of the information received from Xander as an empirical fact in his search-warrant affidavit. Davis argues this court should remand to the trial court for findings regarding the alleged undisclosed inference. The state argues that Detective Hatfield did not make any impermissible inferences in his search-warrant affidavit and did not usurp the magistrate's inference-drawing function.

{¶ 24} Denial of a motion to suppress presents a mixed question of law and fact. *State v. Castagnola*, 2015-Ohio-1565, ¶ 32, citing *State v. Burnside*, 2003-Ohio-5372. Because the trial court acts as the finder of fact in considering a motion to suppress, we must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Burnside* at ¶ 8. "Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.*

{¶ 25} "For a search warrant to issue, the evidence must be sufficient for the magistrate to conclude that there is a fair probability that evidence of a crime will be found in a particular place." *Castagnola* at ¶ 35. The Supreme Court of Ohio has recognized that

“a factual narrative [in a search-warrant affidavit] will inevitably include a number of inferences drawn by the affiant.” *Id.* at ¶ 40. The magistrate reviewing the search-warrant affidavit must have the opportunity to test any significant inferences made by the affiant. “The facts upon which those inferences are based must be disclosed to permit a magistrate’s independent review.” *Id.* “[A] magistrate cannot be viewed as neutral and detached if the magistrate issues a search warrant that is unknowingly based on [a] police officer’s conclusions.” *Id.* at ¶ 41. The Supreme Court set forth a test to be applied when a defendant moves to suppress evidence based on undisclosed inferences in a search-warrant affidavit:

[W]hen a defendant’s motion to suppress evidence challenges the validity of a search warrant, claiming that an undisclosed inference stated as an empirical fact usurped the magistrate’s inference-drawing authority, a reviewing court should consider (1) whether the inference was so significant that it crossed the line between permissible interpretation and usurpation of the magistrate’s role in finding probable cause, considering both the relevance and the complexity of the inference and (2) whether the affiant intended the inference to deprive the magistrate of his or her authority to determine whether probable cause existed.

Id. at ¶ 106. If the court finds that the undisclosed inference is significant and the affiant acted intentionally or with conscious indifference as to whether the undisclosed inference would deprive the magistrate of the authority to determine the existence of probable cause, the warrant should be invalidated and the evidence suppressed. *Id.* at ¶ 50. If, however, the court finds that the affiant acted negligently, the undisclosed inference should be removed, the omitted underlying facts added, and the affidavit should be reassessed. *Id.*

{¶ 26} In *Castagnola*, the defendant admitted in text messages and a recorded conversation with a police informant to having damaged a city prosecutor’s vehicles. *Id.* at ¶ 3. During the recorded conversation, the defendant stated that he had “look[ed] up” the prosecutor’s address on court records. *Id.* at ¶ 3. Relying on the text messages and the recorded conversation, a detective sought a warrant to search the defendant’s residence for records and documents stored on computers related to criminal damaging and similar offenses. *Id.* at ¶ 4-5. In summarizing the recorded conversation in the search-warrant affidavit, the detective stated that the defendant admitted finding the prosecutor’s address “online” based on court records related to a parking ticket. *Id.* at ¶ 8. The search warrant

was issued, and a search of the defendant's home computers resulted in evidence of child pornography, which led to additional charges being filed. *Id.* at ¶ 11-14. The defendant moved to suppress the evidence obtained from his computers, arguing in relevant part that he never used the term "online" in the recorded conversation and that the detective's use of the term in the search-warrant affidavit was an unwarranted inference. *Id.* at ¶ 16. Ultimately, the Supreme Court agreed, holding that the detective's undisclosed inference that the defendant had searched online for the prosecutor's address crossed the line between permissible interpretation of the evidence and usurpation of the magistrate's inference-drawing authority. *Id.* at ¶ 59. The Supreme Court further found that the detective had acted negligently, and that if the improper inference was removed from the search-warrant affidavit there was no probable cause to believe that a computer in the defendant's residence was used in furtherance of the alleged criminal damaging offenses. *Id.* at ¶ 61.

{¶ 27} Davis argues his case is similar to a case where the Eighth District Court of Appeals remanded to the trial court for additional findings regarding alleged undisclosed inferences in a search-warrant affidavit. *State v. Tolbert*, 2025-Ohio-4469, ¶ 39-40 (8th Dist.). In that case, there was surveillance video of a shooting that occurred on a street. *Id.* at ¶ 2. The investigating police detectives obtained a report identifying the defendant as the suspect observed in the surveillance video from a system that used artificial intelligence facial recognition technology. That report included a disclaimer stating that facial recognition search results should only be treated as investigative leads and that any identification should be independently verified. The disclaimer further stated that identifications were not intended to be used as admissible evidence in court or in any court filing. *Id.* at ¶ 9. However, in his search-warrant affidavit, the detective did not disclose or refer to the disclaimer that was included with the report identifying the defendant as the suspect. *Id.* at ¶ 4. The defendant moved to suppress the evidence, arguing in part that the search-warrant affidavit contained undisclosed inferences because it withheld the disclaimer and affirmatively stated that there had been a positive identification using the facial recognition software. *Id.* at ¶ 8. The trial court granted the motion to suppress. *Id.* at ¶ 17. On appeal, the Eighth District relied on *Castagnola* in analyzing the alleged undisclosed inferences included in the search-warrant affidavit. The court found that the

trial court failed to make any findings regarding the significance, relevance, or complexity of the undisclosed inferences and remanded to the trial court for such findings. *Id.* at ¶ 39.

{¶ 28} The present case is substantially different from *Castagnola* and *Tolbert*. In his search-warrant affidavit, Detective Hatfield stated that in response to the first investigative subpoena Xander supplied a photocopy of an Ohio driver's license containing a specified license number, name, and date of birth. He further stated that the person pictured in the photograph on the driver's license appeared to be the same person who had been observed meeting the known drug dealer. Detective Hatfield then detailed the further investigative steps he took to verify whether the driver's license provided by Xander was legitimate, which included contacting an investigator at the Ohio Bureau of Motor Vehicles to determine the authenticity of the license. Detective Hatfield asserted that, based on the information he and Detective BeVier had obtained, he believed the apartment at Xander was being rented by an individual using a fraudulent identity and that Davis was the resident of the apartment. In *Tolbert*, the detective's search-warrant affidavit failed to include significant disclaimers that accompanied the facial recognition software identification. By contrast, in this case, Detective Hatfield's search-warrant affidavit detailed the investigative steps he took to determine whether the driver's license supplied by Xander in response to the investigative subpoena—albeit not in compliance with R.C. 2935.23—was legitimate. Thus, we do not find that Detective Hatfield made improper inferences in his search-warrant affidavit that usurped the reviewing magistrate's inference-drawing authority.

{¶ 29} Accordingly, we overrule Davis's second assignment of error.

IV. Conclusion

{¶ 30} For the foregoing reasons, we overrule Davis's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

EDELSTEIN and DINGUS, JJ., concur.
