In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1799

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DARELL ROLAND,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:20-cr-00251 — **James P. Hanlon**, *Judge*.

ARGUED FEBRUARY 16, 2023 — DECIDED MARCH 1, 2023

Before RIPPLE, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Indianapolis police responded to St. Vincent Hospital around 2:15 a.m. on July 9, 2020, after Robert Banks arrived there after being shot multiple times. Following conversations with Banks and his friend, Darell Roland, officers looked in Roland's Buick and saw blood and two handguns inside. Sergeant Jordan Lewis then sought a warrant to search the Buick, and a Marion County judge quickly granted that permission.

The officers came to learn that the handguns belonged to Roland and that he had a prior conviction for robbery. A federal charge followed under the felon-in-possession statute, 18 U.S.C. § 922(g)(1). Roland pleaded guilty but reserved the right to appeal his challenge to the state court's issuance of the search warrant, which he says was based on incomplete information. The district court rejected the challenge. We do too and affirm.

I

A

Upon arriving at St. Vincent Hospital, the first thing the police did was speak to Robert Banks. He told them he had been shot three times in the left hip. Another officer then spoke to Darell Roland, who explained "that he drove Robert Banks to the hospital in his Buick Park Avenue that [was] parked in the parking lot." Sergeant Jordan Lewis then walked outside, found Roland's Buick in the hospital parking lot, and saw the blood and firearms through the window.

Sergeant Lewis provided all this information in his search warrant application, which sought permission to search for and seize the following:

1. Firearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms;
2. spent cartridge casings, spent bullets, bullet fragments, live bullets;
3. documents showing ownership and/or other occupants of the vehicle;

4. spent cartridge casings, spent bullets, bullet fragments, live bullets;
5. DNA, trace evidence, latent prints; and
6. photographs/video of interior and exterior of the vehicle.

Sergeant Lewis submitted the warrant application at 3:18 a.m., and the state-court judge issued the warrant at 3:26 a.m.

Detective Gregory Shue then searched Roland's Buick. In addition to the blood and handguns visible through the window, Detective Shue and an evidence technician found ammunition in a duffel bag and a loaded magazine in the armrest console.

At some point that morning Detective Shue spoke further with Banks. We cannot determine from the record whether this happened before or after Sergeant Lewis submitted the warrant application. Either way, Banks told Detective Shue that he did not know who shot him, that he called Roland after being shot, and that Roland drove him to the hospital. None of this information appears in Sergeant Lewis's warrant application and instead comes from an affidavit Detective Shue prepared later in the day on July 9 to support Roland's arrest.

After Detective Shue searched the Buick, an officer drove Roland to the police station. Roland waived his *Miranda* rights and agreed to an interview in which he explained to Detective Shue that the car, handguns, and ammunition belonged to him. He also told Detective Shue that he had two prior convictions—one for robbery and another for possessing cocaine. Detective Shue confirmed Roland's criminal history and then

arrested him for possessing a firearm as a felon. A federal charge followed on September 24, 2020.

B

Roland moved to suppress the evidence seized from his Buick and his statements to Detective Shue, contending not only that there was not probable cause to issue the warrant but also that the warrant application omitted material information that would have negated probable cause. Roland attached both Sergeant Lewis's warrant application and Detective Shue's affidavit to his motion.

The district court disagreed. First, the district court determined that probable cause supported the issuance of the search warrant. Banks, the district court reasoned, was a victim with multiple gunshot wounds. That—plus the handguns and blood in Roland's Buick, which Banks rode in to the hospital—was plenty to establish a fair probability that evidence relating to a crime would be found in the car. From there the district court determined that Roland's assertion that Sergeant Lewis omitted material information from the warrant application was conclusory and not supported by facts or an evidentiary proffer. So the district court denied Roland's suppression motion without holding an evidentiary hearing.

Roland then pleaded guilty to the § 922(g)(1) charge but reserved the right to appeal the adverse suppression ruling. His appeal is now before us.

II

The Fourth Amendment requires that "no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. To establish probable cause, a warrant application must "contain

facts that, given the nature of the evidence sought and the crime alleged, allow for a reasonable inference that there is a fair probability that evidence will be found in a particular place." *United States v. Zamudio*, 909 F.3d 172, 176 (7th Cir. 2018) (quoting *United States v. Aljabari*, 626 F.3d 940, 944 (7th Cir. 2010)). Of course, police cannot obtain a warrant by presenting the issuing judge with false information or omitting material information. See *United States v. Woodfork*, 999 F.3d 511, 516 (7th Cir. 2021). That would undermine the very purpose of the Fourth Amendment's warrant requirement.

Roland contends that is what the officers did here. He insists that Sergeant Lewis omitted six material facts from his warrant application:

- Banks did not know his shooter;
- Banks knew Roland;
- Banks and Roland were friends;
- Banks called Roland to get a ride to the hospital;
- Roland picked up Banks; and
- Roland brought Banks to the hospital.

Roland sees these six facts as negating probable cause. At the very least, he says the district court should have conducted an evidentiary hearing—commonly called a *Franks* hearing—to determine whether the facts were deliberately or recklessly omitted from the application. See *Franks v. Delaware*, 438 U.S. 154, 171 (1978).

To be sure, if a criminal defendant moves to suppress on the contention that the warrant application was materially inaccurate or incomplete, he may be entitled to a *Franks* hearing. He can obtain one by making a "substantial preliminary showing" of both the materiality of the alleged inaccuracy or

omission and the recklessness or deliberate intent of the officer. *Woodfork*, 999 F.3d at 516 (quoting *United States v. Glover*, 755 F.3d 811, 820 (7th Cir. 2014)). If a defendant makes this preliminary showing, the district court should hold a *Franks* hearing to resolve the disputed point of fact regardless of whether the defendant explicitly requested a hearing or instead just moved to suppress evidence obtained from the execution of a search warrant. See *Franks*, 438 U.S. at 172 (holding that "the defendant is entitled, under the Fourth and Fourteenth Amendments, to his hearing" if he makes the required preliminary showing).

But the district court was right to conclude that no hearing was necessary here. Even if we take Roland at his word that Sergeant Lewis recklessly or deliberately omitted the six highlighted facts, he did not make the preliminary showing that those omissions "would alter the probable cause determination." *Woodfork*, 999 F.3d at 516 (quoting *Glover*, 755 F.3d at 820). In a word, Roland failed to establish materiality.

The shortcoming with Roland's position is that there can be probable cause to search a space belonging to someone who is not—or at least not yet—suspected of committing a crime as long as the facts establish a fair probability that the search will uncover evidence that will aid the police in their investigation. See *Warden v. Hayden*, 387 U.S. 294, 306–07 (1967) (requiring that a warrant seeking "mere evidence" of a crime—as opposed to contraband, the fruit of a crime, or an instrumentality of a crime—contain probable cause that the evidence will "aid in a particular apprehension or conviction").

The issuing judge's determination of probable cause therefore did not hinge on whether, at the time Sergeant Lewis

presented the warrant application, the police suspected Roland of shooting Banks. Roland may be right that the facts omitted from the warrant application, if accepted as true, exonerated him from that offense. But at the critical time—indeed, during the middle of the night—Banks was still in the hospital with gunshot wounds and Banks's blood was still in Roland's car along with two clearly visible handguns. Sergeant Lewis did not know whom the guns in the car belonged to, nor did he know whether those guns were the same guns that someone used to shoot Banks. That explains why Sergeant Lewis requested a warrant to search for, among other things, "[f]irearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms," "spent cartridge casings, spent bullets," "DNA, trace evidence, [and] latent prints." There was a fair probability that such evidence would assist the police in investigating Banks's shooting regardless of Roland's own culpability. In other words, there was probable cause either way—with or without the added facts Roland underscores on appeal.

III

Indianapolis police did exactly what they should have done. When they learned that potential evidence of a crime was inside Roland's car, they stopped and took the safest, most prudent course possible by requesting a search warrant. Nothing they might have omitted from the warrant application changes the fact that probable cause supported the state court's issuance of the warrant. On these facts, then, we AFFIRM.