

No. 1-12-0268

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 02824
)	
LORENZO LEON,)	Honorable
)	John Doody,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it denied defendant’s request for a *Franks* hearing because the confidential informant, who supplied the information for the search warrant, testified under oath in front of the judge who issued the warrant who had the opportunity to determine the informant’s credibility.

¶ 2 Following a bench trial on November 15, 2011, the trial court found defendant, 39-year-old Lorenzo Leon, guilty of one count of possession of less than 200 grams of a controlled substance, dihydrocodeinone, commonly known as vicodin. 720 ILCS 570/402(c) (West 2008).

On December 15, 2011, after hearing factors in aggravation and mitigation, the trial court

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sentenced defendant to 30 months of intensive probation and ordered defendant to pay \$1,243.50 in fees and costs.

¶ 3 On this direct appeal, defendant argues: (1) that the trial court erred in denying his pretrial petition for a *Franks* hearing, and (2) that the trial court erred in denying his request for an *in camera* interview of the confidential informant (CI), who had supplied the information used in obtaining a search warrant for defendant's home.

¶ 4 For the following reasons, we affirm.

¶ 5 BACKGROUND

¶ 6 This appeal concerns a search warrant which led to the recovery of 82 pills of vicodin from defendant's home. The details of the search warrant and its subsequent execution are provided below in the sections describing the pretrial proceedings and the State's evidence at trial.

¶ 7 I. Pretrial Proceedings

¶ 8 On January 4, 2010, a grand jury indicted defendant for possession of a controlled substance, alleging that defendant knowingly and unlawfully possessed less than 200 grams of dihydrocodeinone, commonly known as vicodin. 720 ILCS 570/402(c) (West 2008).

¶ 9 Both the State and the defense filed pretrial motions for discovery, and on March 10, 2011, the trial court granted defendant's request for additional discovery. Defendant also filed a pretrial motion to compel additional discovery, requesting the warrant affidavits supporting the search warrants for his home and the homes of Scott Bregman and Louis Maniscalco.

¶ 10 On May 27, 2011, defendant filed a petition for a *Franks* hearing, to which he attached

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affidavits from himself, Scott Bregman, Paul Ragano and Louis Maniscalco. Defendant stated in his affidavit that he was friends with Scott Bregman and Louis Maniscalco and had known the individuals for 23 years. On December 10, 2009, police conducted a search of his home pursuant to a search warrant signed on December 9, 2009. The affidavit supporting the search warrant declared that a John Doe informant was inside his home December 7, 2009, and allegedly observed him with a .45-caliber Colt handgun. Defendant stated that the alleged encounter between himself and the CI never occurred.

¶ 11 Defendant also stated in his affidavit that he was home alone all day on December 7, 2009, and that no one came to his door or entered his home. His door did not have a doorbell and was protected by a wrought-iron gate. The only way to enter his home was to call him on his cellular telephone to indicate arrival. Attached to defendant's affidavit were pictures of the wrought-iron gate in front of his home. He received only six calls on December 7, 2009: from his mother, girlfriend, brother and his client, who called twice, once from his cellular telephone and once from his office. Defendant also attached a phone log to his affidavit with handwritten notations indicating whose numbers each of the six incoming calls belonged to.

¶ 12 Scott Bregman stated in his affidavit that he had been friends with defendant for 23 years and with Louis Maniscalco for four years. On December 10, 2009, police conducted a search of his home pursuant to a search warrant. The affidavit supporting the search warrant stated that a CI was inside his home on December 7, 2009, and that he allegedly showed the informant a silver semiautomatic handgun, which he retrieved from his living room. Bregman stated that this never occurred.

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¶ 13 Bregman stated in his affidavit that he was at home on the evening of December 6, 2009, and two other people were staying at his home that evening, his girlfriend and his friend Paul Ragano. His girlfriend fell asleep late that evening and later that night Ragano returned home from an evening out. Ragano slept on his couch. On December 7, 2009, Bregman woke early in the morning and prepared to leave for a vacation to Mexico with his girlfriend. At 9 a.m. Ragano drove him and his girlfriend to O'Hare Airport where he boarded a plane to Mexico. No one was in his home during the late hours of December 6, 2009, through the time he left for Mexico on December 7, 2009. He returned from Mexico on December 14, 2009. Attached to his affidavit was a copy of his passport with a stamp from Mexico dated December 7, 2009.

¶ 14 In his affidavit, Paul Ragano stated that he lived in Kenosha, Wisconsin, but resided at Bregman's home from December 5, 2009, to December 14, 2009, while he was employed in Chicago. On December 10, 2009, police conducted a search of Bregman's home pursuant to a search warrant. The warrant affidavit stated that a CI was inside Bregman's home on December 7, 2009. On December 6, 2009, Ragano returned to Bregman's home after an evening out. He fell asleep on the couch in the center of the apartment. No one came to the door or departed the apartment the entire night. He woke just before 9 a.m., and at 9 a.m., he drove Bregman to the airport. He returned to Bregman's apartment at 12 p.m., and he remained inside the apartment alone the rest of the day and night. He never observed a gun in Bregman's home. He claimed that the actions the CI described in the warrant affidavit never occurred.

¶ 15 Louis Maniscalco stated in his affidavit that he was friends with defendant and had known him for 23 years. On December 10, 2009, police conducted a search of his home pursuant

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to a search warrant. The affidavit supporting the search warrant stated that a CI was present in his home on December 7, 2009, and that he allegedly sold cocaine to the CI. Maniscalco stated that this sale never occurred. He never possessed cocaine, never sold cocaine, and never consumed cocaine. The police did not recover any cocaine from their search, and he was never charged with a crime.

¶ 16 Maniscalco stated in his affidavit that on December 7, 2009, he departed his home to attend work at 7:45 a.m. He worked all day and did not return home until 8:45 p.m. His girlfriend arrived at his home after he returned from work. Other than his girlfriend, no one had been inside his home the entire day. Attached to Maniscalco's affidavit were four receipts from the UPS Store Center in Glenview where he worked. Each receipt depicted a separate transaction and identified him as the clerk. The receipt had time-stamps of 11:03 a.m., 1:17 p.m., 4:03 p.m. and 6:56 p.m., respectively.

¶ 17 At a pretrial hearing, the defense argued defendant was entitled to a *Franks* hearing because the CI lied to the police officer who had obtained the search warrant for defendant's home and those lies are imputed to the police officer. The defense inferred that the same CI had provided the same officer with the information to obtain a search warrant for defendant, Bregman and Maniscalco's homes. The same judge issued all three warrants. The defense argued that the police officer would have had to believe that the CI went to three different locations on the same day, which is unlikely. The police officer did very minimal investigation to corroborate the CI's information. All the officer did was determine that the individuals lived where the CI informed him they lived. The defense argued that the trial court should have held a *Franks* hearing with an

in camera interview of the CI which would have established that the police officer recklessly disregarded the obvious falsity of the CI's statements.

¶ 18 The defense argued that Bregman was out of the country, Maniscalco was working, and defendant was at home alone the entire day in question; therefore, there was enough evidence to show that the CI was not inside their homes on the day in question. The defense argued that it had made a substantial preliminary showing that the police officer recklessly disregarded the false statements made by the CI. The defense also requested that the trial court conduct an *in camera* interview of the CI to determine the validity of the warrant affidavit.

¶ 19 At the pretrial hearing, the State argued that defendant was not entitled to a *Franks* hearing because the CI who provided the information to obtain the search warrant appeared before the judge who issued the warrant. Thus, the judge had the opportunity to determine the CI's credibility. The officer who obtained the warrant testified that he corroborated the CI's statements by driving past the address the CI provided with the CI present and had the CI identify the house as the location where he observed defendant with a gun. The officer also conducted a property check on the Cook County Assessor's website to determine the address of the house and to match the layout of the home that the CI described. He also showed the CI a photo of defendant and the CI identified him as the man he observed with a gun at the address he had provided. The officer also ran a background check on defendant and verified that he had a prior arrest and found that defendant listed the address the CI provided as his residence. He also ran a LEADS check¹ on defendant and determined he did not have a valid FOID² card. The officer also

¹ A LEADS check is a criminal background check, conducted by law enforcement

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ascertained that defendant's application for a FOID card had been denied.

¶ 20 The State also argued that it was possible that the CI was present at each of the three individuals' homes on the day in question because all three individuals were friends, and that each of the affidavits defendant supplied in support of his motion for a *Franks* hearing had flaws. The State argued that defendant's affidavit was flawed because only a phone log with defendant's own handwritten notations supported his affidavit, and the CI could easily have been the client defendant listed on the phone log. The State further argued Bregman's affidavit was flawed because Bregman's passport did not indicate the time he entered or departed Mexico; therefore, the CI could have visited Bregman's home on the day in question. The State also argued Maniscalco's affidavit was flawed because the record of his work transactions did not account for 11 hours of his whereabouts on the day in question, and the CI could have visited Maniscalco's home during those 11 hours. The State argued that defendant was not entitled to a *Franks* hearing because he did not make a substantial preliminary showing that the police officer recklessly disregarded the truth of the CI's statements in obtaining the search warrant. The trial court denied defendant's request for a *Franks* hearing.

¶ 21 Prior to trial, the defense filed a motion to reconsider the ruling on defendant's request for an *in camera* interview of the CI, which the trial court denied. Both the State and defense waived

officials by entering an individual's name through the Law Enforcement Agencies Data System (LEADS), which contains information from all Illinois law enforcement agencies.

² FOID stands for "Firearms Ownership Identification."

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their opening arguments.

¶ 22

II. Evidence at Trial

¶ 23 The State's evidence consisted of the testimony of one witness and two stipulations.

¶ 24 Officer Joseph Perez testified that he had been a police officer for 25 years with the Chicago police department and was currently assigned to the Gang Intelligence Unit for eight years. On December 9, 2009, at 6 p.m., he executed a search warrant at the second floor residence at 1909 West 21st Street in Chicago. Prior to executing the search warrant, he conducted surveillance of the residence; he was dressed in plain clothes, but he was wearing a Chicago Police baseball cap and a windbreaker that said Chicago Police.

¶ 25 Perez testified that the area surrounding the subject property is residential and, although it was becoming dark when he was conducting surveillance of the area, the streetlights were on. While he was conducting surveillance, he was 10 to 15 feet from the residence. When he observed the second floor lights of the residence turn on, he then approached the building to execute the search warrant.

¶ 26 Perez testified that he approached the wrought-iron gate at the bottom of the steps outside the residence and observed that the gate was locked. He returned to his police vehicle to obtain his tools, including a pry bar and a ram. He attempted to use the tools on the gate's lock, when defendant stepped out onto the porch of the second floor apartment of the residence.

¶ 27 Perez testified that, once defendant stepped out of the door of the second floor apartment and onto the porch, defendant proceeded down the stairs and opened the gate for him. Perez walked up the steps and proceeded into the second floor apartment. He handcuffed defendant,

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placed defendant at the dining room table within the apartment, and then placed a copy of the search warrant in front of defendant. Perez then advised defendant of his *Miranda* rights by using a preprinted form. Defendant indicated that he understood his rights and that he was willing to cooperate with the police.

¶ 28 Perez testified that, when he entered the apartment, he observed a small front room with an L-shaped dining room. He also observed a bathroom, a bedroom, a kitchen towards the rear of the apartment, and an enclosed porch at the very rear of the apartment. Prior to conducting the search, Sergeant Bocardo³ was on the scene with Perez and took pictures of defendant's apartment. Prior to Bocardo photographing the apartment, the officers conducted a precursory search by walking through the apartment to observe if any other individuals were inside and to ensure that the premises were safe.

¶ 29 Perez testified that Bocardo asked defendant if there were any weapons or valuables in the apartment. Defendant admitted that there was a handgun and some money in his bedroom. Sergeant Bocardo and Perez proceeded to the bedroom and Perez recovered a small revolver handgun and a bank money pouch with a large sum of United States currency inside.

¶ 30 Perez testified that Bocardo asked defendant about the handgun he had recovered and defendant responded that his brother had given him the handgun because he did not have a FOID card. Bocardo also asked defendant about the money that Perez had recovered and defendant replied that he had just finished a remodeling job and the money was in payment for that job. Perez asked defendant if there were any other weapons in the home and defendant responded that

³ Sergeant Bocardo's first name is not in the appellate record.

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he had more weapons in the basement. He asked defendant if he owned the house and defendant replied that he did.

¶ 31 Perez testified that, before the officers proceeded to the basement, defendant told them that the keys to the basement were in a sweater on the rear porch. Perez found the keys immediately, but did not do a thorough search of the sweater at that time. Once he found the keys, he proceeded to the basement and defendant directed him to a safe in the corner. Perez removed the handcuffs from defendant, and defendant opened the safe revealing two assault rifles, three handguns, a bottom receiver of another rifle and ammunition for those weapons.

¶ 32 Perez testified that he asked defendant where he had obtained all of the weapons and ammunition and defendant replied that he had received some from friends and others off the street. Defendant indicated that he owned the weapons. The officers and defendant returned to the second floor apartment and defendant asked for his sweater that was on the porch. Perez retrieved and searched the sweater. He found a small plastic bag containing numerous pills in the left breast pocket of the sweater. He properly inventoried the pills. He was later informed that the bag contained 85 pills.

¶ 33 Perez testified that, after he located the pills, he asked defendant what the pills were. Defendant responded that the pills were vicodin and that he had purchased the pills from a friend to help another friend. Defendant indicated that he did not have a prescription for the pills.

¶ 34 Perez identified a bank statement he recovered from defendant's apartment that showed that it bore defendant's residence at the address. He identified a utility bill that he also recovered from defendant's apartment that also showed defendant's address at the same location.

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¶ 35 Perez then identified a photograph of the sweater from which he recovered the basement keys and the pills, and a photograph of the pills. Perez did not open the bag in which the pills were located.

¶ 36 Perez testified that he also filled out an evidence recovery log for the evidence removed from defendant's apartment. Defendant signed the log the same day that the police officers executed the search warrant.

¶ 37 On cross-examination, Perez testified that the search warrant the judge issued for defendant's residence was specifically for firearms. He relied on information from a CI who told him that defendant carried a .45-caliber weapon.

¶ 38 Perez testified that defendant's girlfriend was also in the apartment while he and Bocardo searched it, and he asked her to stay seated at the dining room table during the search. The search warrant included only the apartment itself, but defendant volunteered that he had weapons in the basement so Perez also searched the basement.

¶ 39 The parties then stipulated to the chain of custody and chemical composition of the substance Perez recovered from defendant's home.

¶ 40 The stipulation stated that, if called to testify, Officer Vins⁴ would testify that on December 9, 2009, he recovered 82 pills of vicodin from a knotted plastic bag that he had received from Officer Perez. He kept the pills under his control from the time of recovery until the time of inventory. He followed standard police procedure to inventory the pills and deliver the pills to the Illinois State Police crime lab.

⁴ Officer Vins' first name is not in the appellate record.

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¶ 41 The State presented a second stipulation between the parties which stated that if Rosa Lopez, a forensic scientist at the Illinois State Police crime lab, were called to testify, she would testify that she received the inventoried item in a heat-sealed envelope. When she opened the envelope, she observed that it contained a knotted plastic bag holding 82 pills of vicodin. She was qualified to testify as an expert in forensic chemistry and all of the equipment was functioning properly when she tested the pills. She performed commonly accepted forensic chemistry tests on the pills and found that the pills tested positive for dihydrocodeinone. The pills weighed 34.6 grams.

¶ 42 The State rested, and the trial court denied defendant's motion for a directed finding without argument. The defense then indicated it would not offer any evidence. The trial court informed defendant of his right to testify and defendant indicated that he understood and would exercise his right not to testify. The defense then rested.

¶ 43 The State waived its initial closing argument and reserved rebuttal. In its closing argument, the defense argued that the police officers who searched defendant's home had a motive to lie because, but for the recovery of the vicodin, the police officers had no legal basis to seize the money recovered from defendant's home. The defense argued that a police officer would have taken control of the keys defendant used to open the front gate and it is likely that the police officers used those keys to open other doors in the apartment. It is extremely unlikely that defendant would have asked a police officer to hand him his sweater when he knew it contained vicodin. The defense argued that Officer Perez's testimony did not have "a ring of truth to it" and that the State had not met its burden of proof.

¶ 44 The State argued in its rebuttal that the police officers followed all of the proper procedures in this case. It had been two years since the police officers executed the warrant at defendant's home and there is no reason why Officer Perez should remember where a particular set of keys were during a search. The reason Perez did not do a thorough search of defendant's sweater at first was because defendant was detained and not a threat at that point. The State argued that it did not have to prove why defendant asked for his sweater; it had to prove only that defendant was guilty beyond a reasonable doubt. Defendant admitted the pills were his and he did not have a prescription. The State argued that it met its burden to prove defendant guilty beyond a reasonable doubt.

¶ 45 III. Conviction and Sentencing

¶ 46 At the close of the evidence and after closing arguments, the trial court found defendant guilty of possession of less than 200 grams of a controlled substance, dihydrocodeinone, commonly known as vicodin. Defendant filed a posttrial motion for a new trial, which the trial court denied.

¶ 47 During sentencing on December 15, 2011, the trial court considered matters in aggravation and mitigation. Specifically, the court considered defendant's presentence investigation report (PSI), which indicated defendant has been convicted of: (1) possession of a controlled substance in 1992 and was sentenced to one-year probation; and (2) possession of cannabis in 1996 and sentenced to 710 probation. At the time of sentencing, defendant also had a pending DUI case. The report indicated that defendant had a normal childhood and that he dropped out of high school. He earned his GED and an associate's degree in culinary arts. He had

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been self-employed as an interior designer since 2000 and had an annual income of \$40,000.

Defendant did not report any illegal drug use and indicated that he did not need treatment for drug or alcohol abuse.

¶ 48 The State then called as a witness Officer Perez who testified that, after defendant's trial, he observed defendant in the hallway. Defendant turned in the direction of Perez, and in an angry tone stated: "I'll be seeing you around." He interpreted defendant's statement as a threat.

¶ 49 Defense counsel stated that he was present for the conversation between defendant and Officer Perez after defendant's trial and he did not interpret defendant's comment as a threat. The defense maintained that defendant did not do anything disrespectful or menacing to Perez.

¶ 50 Defendant stated in mitigation, "I go to work every day and I help my mother who is disabled, 70 years old."

¶ 51 The trial court sentenced defendant to 30 months of intensive probation with day reporting and ordered defendant to pay \$1,243.50 in fees and costs. Defendant filed a timely notice of appeal, and this direct appeal followed.

¶ 52 ANALYSIS

¶ 53 On appeal, defendant argues: (1) that the trial court erred in denying his pretrial petition for a *Franks* hearing, and (2) that the trial court erred in denying his request for an *in camera* interview of the CI, who had supplied information used in obtaining a search warrant for defendant's home.

¶ 54 I. *Franks* Hearing

¶ 55 Defendant argues that the trial court erred in denying his pretrial petition for a *Franks*

hearing because he made a substantial preliminary showing that the affiant recklessly included false statements in an affidavit, which was used to obtain a search warrant for defendant's home.

¶ 56 A. Standard of Review

¶ 57 When a defendant challenges the trial court's denial of a *Franks* hearing, the standard of review is whether or not the trial court abused its discretion in finding the defendant was not entitled to a *Franks* hearing. *People v. Gorosteata*, 374 Ill. App. 3d 203, 212 (2007). There is a presumption of validity with respect to an affidavit supporting a search warrant. *People v. Lucente*, 116 Ill. 2d 133, 146 (1987). "The determination of whether a defendant made the necessary showing to warrant a *Franks* hearing is within the discretion of the circuit court and will not be disturbed absent an abuse of discretion." *People v. Caro*, 381 Ill. App. 3d 1056, 1062 (2008) (citing *Gorosteata*, 374 Ill. App. 3d at 212.) "An abuse of discretion occurs 'only where the [trial court's] ruling is arbitrary, fanciful or unreasonable, or where no reasonable person could take the view adopted by the trial court.'" *People v. Rodriguez*, 387 Ill. App. 3d 812, 821 (2008) (quoting *People v. Purcell*, 364 Ill. App. 3d 283, 293 (2006)).

¶ 58 B. *Franks* Hearing Requirements

¶ 59 In the case at bar, defendant argues that he made a substantial preliminary showing that statements in the CI's affidavit were false and, therefore, the defense was entitled to a hearing to challenge the veracity of the CI's statements in the affidavit. This type of hearing is commonly known as a *Franks* hearing and was described in a United States Supreme Court case of the same name. *Franks v. Delaware*, 438 U.S. 154 (1978). The United States Supreme Court "held that under certain circumstances a defendant may be entitled to a hearing to challenge the veracity of

sworn statements made by the police to obtain search warrants.” *Lucente*, 116 Ill. 2d. at 146.

First, Illinois courts will consider whether a confidential informant testified to the statements in the warrant affidavit before the judge who issued the search warrant. *Gorosteata*, 374 Ill. App. 3d at 214. Second, Illinois courts will consider whether a government officer or a nongovernmental informant provided the statements in question. *Lucente*, 116 Ill. 2d. at 151. Third, Illinois courts will consider whether the defendant made a " 'substantial preliminary showing' " that an affiant " 'knowingly and intentionally, or with reckless disregard for the truth' " included false statements in a warrant affidavit. *Lucente*, 116 Ill. 2d. at 147 (quoting *Franks*, 438 U.S. at 155-56).

¶ 60 C. Testimony Before the Issuing Judge

¶ 61 The Illinois Supreme Court has not yet addressed the issue of whether a defendant is ever entitled to a *Franks* hearing when the confidential informant testified to the statements in front of the issuing judge. However, the Illinois Supreme Court has found in regards to a *Franks* hearing that: “So long as the trial court’s judgment is exercised within permissible limits, that judgment will not be disturbed.” *Lucente*, 116 Ill. 2d. at 153.

¶ 62 However, the Illinois Appellate Court has considered whether the trial court can grant a *Franks* hearing when the confidential informant testifies before the issuing judge. *Gorosteata*, 374 Ill. App. 3d at 214. In *Gorosteata*, the jury found the defendant guilty of possession of cannabis and possession of a controlled substance with intent to deliver. *Gorosteata*, 374 Ill. App. 3d at 205. A confidential informant notified a police officer that he entered the defendant’s second floor apartment and observed large green plants he believed to be marijuana. *Gorosteata*, 374 Ill. App. 3d at 205. The CI smoked some of the green plant substance in the defendant’s

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home and told the officer that the defendant sold him marijuana several times including multiple pounds on one occasion. *Gorosteata*, 374 Ill. App. 3d at 206. Based on the informant's information, the officer brought the CI before a judge to testify to the statements in his warrant affidavit. *Gorosteata*, 374 Ill. App. 3d at 206. The judge issued the search warrant; the police executed it and recovered two duffel bags full of marijuana and bottles of inositol, an agent used to dilute cocaine. *Gorosteata*, 374 Ill. App. 3d at 207. Prior to trial, the defendant moved for a *Franks* hearing which the trial court denied. *Gorosteata*, 374 Ill. App. 3d at 207-08.

¶ 63 On appeal, the defendant argued that the trial court erred in denying the *Franks* hearing because the arresting officer recklessly disregarded the truth when he relied on the informant's statements to obtain the search warrant. *Gorosteata*, 374 Ill. App. 3d at 211. The appellate court affirmed. *Gorosteata*, 374 Ill. App. 3d at 230. Writing for the majority, Justice Joseph Gordon explained that, "[w]hen the informant appears before the judge issuing the search warrant, the informant is under oath *** moreover, the judge has the opportunity to personally observe the demeanor of the informant and to assess the informant's credibility." *Gorosteata*, 374 Ill. App. 3d at 214 (quoting *People v. Phillips*, 265 Ill. App. 3d 348, 448 (1994)). He further reasoned that it was not even necessary for the police to corroborate the informant's account if the informant appeared before the issuing judge, because the issuing judge could then determine the basis of the informant's statements. *Gorosteata*, 374 Ill. App. 3d at 214 (citing *Phillips*, 265 Ill. App. 3d at 448.) In sum, when an informant appears before an issuing judge to testify, the case falls outside the scope of *Franks*. *Gorosteata*, 374 Ill. App. 3d at 215.

¶ 64 While the appellate court in *Gorosteata* found that whenever an informant appears before

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an issuing judge the case is outside the scope of *Franks*, in the case at bar, defendant argues that *Franks* contains no language precluding an attack on a warrant affidavit simply because a non-governmental informant testifies before the issuing judge. In support of this contention, defendant cites *Caro*, where the appellate court found the trial court did not err in granting a *Franks* hearing even though the informant testified in front of the issuing judge. *Caro*, 381 Ill. App. 3d at 1066.

¶ 65 In *Caro*, an informant told a police officer that he frequently bought drugs from the defendant at the defendant's home, and had done so the previous night. *Caro*, 381 Ill. App. 3d at 1058. The officer proceeded to the address provided by the informant and observed the defendant's name on the door. *Caro*, 381 Ill. App. 3d at 1058. The officer brought the informant before an issuing judge and, after interviewing the informant, the judge issued a search warrant for the defendant's home. *Caro*, 381 Ill. App. 3d at 1058. During the ensuing search, the officer recovered one shotgun and defendant was subsequently charged with unlawful use of a weapon. *Caro*, 381 Ill. App. 3d at 1058. The defendant filed a *Franks* motion and the trial court held a *Franks* hearing, where the defendant presented multiple affidavits indicating that he did not sell narcotics on the night in question. *Caro*, 381 Ill. App. 3d at 1058-60. After the hearing, the trial court granted the defendant's motion to quash the search warrant and suppress the evidence. *Caro*, 381 Ill. App. 3d at 1061.

¶ 66 The appellate court in *Caro* recognized that *Caro* was distinguishable from the facts in *Gorosteata*, stating: "*Gorosteata* is factually inapposite, as the appeal there was taken by defendant following the denial of a *Franks* hearing, whereas the appeal here is taken by the State

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from the granting of a *Franks* hearing." *Caro*, 381 Ill. App. 3d at 1065. The appellate court found, on the particular facts before it, that the trial court did not abuse its discretion, and declined to hold that, when an informant testifies in front of an issuing judge, it categorically precludes the trial judge from holding a *Franks* hearing. *Caro*, 381 Ill. App. 3d at 1065.

¶ 67 The case at bar is factually analogous to *Gorosteata* and distinguishable from *Caro*. Here, defendant appeals the trial court's denial of a *Franks* hearing, which is unlike *Caro*, where the State appealed the trial court's grant of a *Franks* hearing. Furthermore, in both *Gorosteata* and the case at bar, the informant testified, under oath, to the statements in the warrant affidavit before the judge who issued the warrant. The issuing judge in this case, as in *Gorosteata*, had the opportunity to determine the credibility of the informant's testimony and verify the statements in the warrant affidavit and thus, since the informant testified to the statements in the warrant affidavit in front of the issuing judge, this case falls outside the scope of *Franks*. Finally, in both *Caro* and *Gorosteata*, the appellate court found the trial court had the discretion to grant or deny a *Franks* hearing, and the appellate court did not disturb the trial court's finding in either case.

¶ 68 The United States Supreme Court's primary concern in *Franks* was that, if warrant affidavits were unimpeachable, government officials, namely police officers, may provide deliberately false statements in those affidavits in order to obtain search warrants. *Franks*, 438 U.S. at 171. Here, since the informant testified before the issuing judge under oath, there is no concern that the officer falsified the warrant affidavit because the judge had the opportunity to determine the informant's credibility and verify the statements in the warrant affidavit.

¶ 69 In sum, the trial court had the discretion to deny defendant a *Franks* hearing, and the trial

court did not abuse it because the confidential informant testified, under oath, in front of the issuing judge who had an opportunity to determine the credibility of the informant and verify the statements in the warrant affidavit. Since we find dispositive the fact that the confidential informant testified to the statements in the warrant affidavit in front of the issuing judge, we need not address the other considerations for a *Franks* hearing.

¶ 70

II. *In Camera* Interview

¶ 71 Second, defendant argues that the trial court erred in denying his request for an *in camera* interview of the confidential informant. We find, on the facts before us that the trial court did not err.

¶ 72 The Illinois Supreme Court has held that the trial court has the discretion to decide whether or not an informant is required to appear for an *in camera* interview during a *Franks* hearing. *People v. Vauzanges*, 158 Ill. 2d 509, 520 (1994). In addition, where a defendant fails to show he is entitled to a *Franks* hearing, the defendant is also not entitled to *in camera* review. *People v. Creal*, 391 Ill. App. 3d 937, 946 (2009). In the case at bar, we have already found that defendant failed to show he was entitled to a *Franks* hearing; therefore, he is also not entitled to an *in camera* interview of the confidential informant. Furthermore, the informant already testified in front of the judge who issued the search warrant, so there is no concern that the police fabricated the existence of an informant. *People v. Phillips*, 265 Ill. App. 3d 438, 444 (1994).

¶ 73

CONCLUSION

¶ 74 We find that the trial court did not abuse its discretion when it denied defendant's request for a *Franks* hearing because the confidential informant, who supplied the information for the

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search warrant, testified under oath in front of the judge who issued the warrant who had the opportunity to determine the informant's credibility. We further find that the trial court did not err in denying defendant's request for an *in camera* interview of the CI, who had supplied information used in obtaining a search warrant for defendant's home.

¶ 75 Affirmed.