FOURTH DIVISION
March 20, 2014

No. 1-12-1303

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. CR 16358
	)	
DERRICK TAYLOR,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not abuse its discretion in denying defendant's motion for a *Franks* hearing. We affirm the judgment of the circuit court. We further order that the mittimus is corrected to reflect three additional days of presentence custody credit. We also order that defendant's monetary judgment be reduced from $2640 to $2435 to reflect the $5-per-day credit for 41 days in presentence custody.

¶ 2 After a bench trial, defendant, Derrick Taylor, was convicted of possession of a controlled substance and unlawful use of a weapon by a felon. He was sentenced to concurrent terms of 4 years in prison. Defendant now raises three arguments on appeal: the trial court erred in denying his motion for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) (*Franks* hearing); his mittimus should be corrected to reflect 41 days, rather than 38 days,

credit for time served in presentence custody; and his monetary judgment should be reduced from $2640 to $2435 to reflect the $5-per-day credit of presentence custody against his fines. We affirm the judgment of the circuit court of Cook County denying defendant's request for a *Franks* hearing. We further order that the mittimus be corrected and defendant's monetary judgment be reduced.

¶ 3 BACKGROUND

¶ 4 With respect to his conviction, defendant's appeal is limited to the issue of whether the trial court erred in denying his motion for a *Franks* hearing. Therefore, we will limit our discussion here to those facts that are relevant to this issue.

¶ 5 On August 20, 2009, Chicago police officer Ronald Coleman appeared before a circuit court judge with a confidential informant, "J. Doe," with a complaint for a search warrant. Both Officer Coleman and J. Doe were sworn to the contents of the complaint and signed each page. Officer Coleman averred in his complaint that he met with J. Doe on August 19, 2009. J. Doe told Officer Coleman that he had met with a black male whom J. Doe knew as Derrick Taylor. J. Doe described Taylor as 38 years old, approximately 6', 180 pounds, with a medium complexion. J. Doe told Officer Coleman that Taylor lived in the second floor apartment at 6640 South Morgan in Chicago. J. Doe stated that J. Doe sells cocaine throughout Chicago.

¶ 6 The complaint further stated that, on August 19, 2009, J. Doe met with Taylor in front of the apartment building for the purpose of purchasing cocaine from Taylor. After purchasing cocaine from Taylor, J. Doe would "break down" the cocaine and package it for distribution. J. Doe also told Officer Coleman that he and Taylor entered the second floor apartment and once inside, Taylor retrieved from the rear bedroom a medium-sized black plastic bag. They sat at a living room table and Taylor "removed a clear plastic bag which contained several chunks of a

white rock like substance cocaine." Taylor used a razor blade to cut off smaller chunks which he placed on a battery operated scale and then placed into clear plastic bags. J. Doe told Officer Coleman that he gave Taylor United States currency in paper form in exchange for the cocaine. During this transaction, J. Doe saw inside this black plastic bag "several additional clear plastic bags each containing several chunks of a white rock like substance cocaine."

¶ 7 The complaint also stated that Officer Coleman drove with J. Doe to 6640 S. Morgan. J. Doe walked to the front door of the apartment building, and placed his hand on the door to indicate that it was the same door he had entered to purchase the cocaine from Taylor. Officer Coleman showed J. Doe a computer generated photograph of Derrick Taylor from the Clear Data Warehouse and J. Doe positively identified him as the black male who lived at 6640 S. Morgan on the second floor and from whom he had purchased the cocaine. The complaint also stated that J. Doe provided the information voluntarily and received no promises or guarantees related to current or future criminal proceedings. The complaint stated that J. Doe appeared before the judge, was available for any questions, and swore to the contents of the complaint.

¶ 8 On August 20, 2009, the judge issued a search warrant for Taylor and the second floor apartment at 6640 South Morgan, authorizing seizure of: cocaine; documents showing residency; paraphernalia used in weighing, cutting or mixing of illegal drugs; and any money or records related to drug transactions. Defendant was subsequently charged by indictment with possession of a controlled substance with intent to deliver (count 1) and unlawful use of a weapon by a felon (counts 2-4).

¶ 9 Prior to trial, on May 16, 2011, pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), defendant filed a motion seeking to quash the warrant and the arrest, and to suppress the evidence seized. Defendant argued that the warrant was invalid "because the facts on which it

[was] based were known to be false by the 'J. Doe' affiant and should have been known to be false by the officer affiant." Defendant contended that he made the requisite substantial preliminary showing entitling him to an evidentiary hearing because he had provided two affidavits containing specific assertions that contradicted J. Doe's "barebones" statements. Defendant asserted that J. Doe's assertions lacked specificity and basis of knowledge in that the complaint for the warrant did not mention: how long J. Doe stayed at the premises; whether J. Doe had any prior or subsequent dealings with defendant or had any repeat cocaine purchases or presence inside the second floor residence at the Morgan Street location; or whether J. Doe knew defendant from any other occasion or past experience.

¶ 10 Defendant also asserted that Officer Coleman did not corroborate J. Doe's assertions because he "did not establish any surveillance on the home and did not enlist any additional undercover police involvement in order to establish [that J. Doe's statements were] in fact true and accurate." Additionally, defendant denied that the drug sale of cocaine occurred and asserted he "was NOT AT HOME on the date of August 19, 2009." (Emphasis in original). Defendant stated that he was at work at Luster Products Inc. on August 19, 2009, from 6:35 a.m. until 4:30 p.m. Defendant argued that his "alibi defense" was supported by actual and edited time sheets' enclosed herein."[1] Defendant further asserted that, after work, he "never returned back home to the Morgan Street address until much later that evening." According to his motion, defendant "went with fellow Luster Products employees, James Hamp, Robert Watson, and out to dinner that evening with his wife, not returning home until the late evening hours around 10:00 p.m." We note here that, although the record contains only the original motion, during the hearing on defendant's motion, both sides referred to defendant's "amended" or

[1] On February 20, 2014, this court granted defendant's motion to supplement the record with the timesheets.

"supplemental" motion. Defense counsel explained that he had filed "an amended point" because he had erroneously thought that defendant went out to dinner with his wife but it was instead with his co-employees. Defense counsel also stated "there's no allegation that he was out with his wife."

¶ 11 In its response, the State argued that, other than the motion itself, no affidavits or other supporting evidence was presented to make the requisite substantial preliminary showing required under *Franks*. The State also argued that, although defendant contended that he was "NOT AT HOME on the date of August 19, 2009," he had provided no supporting affidavit or documentation corroborating his claim.[2] Moreover, the State argued, even if the trial court took defendant's assertion "at face value" that he was at work from around 6:35 a.m. and did not return home until around 10:00 p.m., there remained 8 hours for which defendant's location was unaccounted because there was no information to the contrary. The State noted that the complaint stated the drug transaction took place on August 19, 2009, but did not state at what time. Therefore, the State argued, "even excluding the 16 hours that the Defendant claims to have been elsewhere, it still leaves 8 hours where the Defendant could have been selling narcotics." The State also argued that, with respect to defendant's assertion that the officer/affiant should have known that J. Doe was asserting false information, defendant failed to make an offer of proof as to these allegations as required by *Franks* because defendant did not state how the officer/affiant would know that he was given incorrect information.

[2] During the hearing, each side referred to, and the court considered, affidavits from defendant's coworkers. The record does not contain these affidavits because defendant's appellate counsel was unable to obtain copies from either trial counsel or the trial court.

¶ 12 On June 13, 2011, after the hearing, the court denied defendant's motion for a *Franks* hearing. Defendant's case proceeded to a bench trial. Following the State's case-in-chief, the State introduced a certified copy of defendant's prior conviction for unlawful use of a weapon in case number 05 CR 121531. After the State rested, the court granted defendant's motion for a directed finding with respect to possession of a controlled substance with intent to deliver, but allowed the State to proceed on the lesser included offense of possession of a controlled substance. The court denied defendant's motion with respect to the three counts of unlawful use of a weapon by a felon. Defendant rested without presenting any evidence. The court found defendant guilty of possession of a controlled substance and guilty on all three counts of unlawful use of a weapon by a felon.

¶ 13 On April 5, 2012, the court denied defendant's motion for a new trial and sentenced him to concurrent terms of 4 years in prison for possession of a controlled substance and two counts of unlawful use of a weapon by a felon. The court granted defendant 38 days of credit against his sentence and imposed fines and fees of $2640. Defendant filed his appeal on the same day.

¶ 14 STANDARD OF REVIEW

¶ 15 Defendant contends that the question of what standard of review applies to a trial court's ruling on a *Franks* motion is unsettled. Defendant notes that some federal courts apply a *de novo* standard. Actually, there appears to be a split of authority among the federal circuits. See, *e.g.*, *United States v. Pavulak*, 700 F.3d 651, 665 (3d Cir. 2012) *cert. denied*, 133 S. Ct. 2047 (U.S. 2013) *reh'g denied*, 134 S. Ct. 30 (U.S. 2013) ("We have not yet identified the standard of review for a district court's denial of a request for a *Franks* hearing, and our sister circuits are divided on the correct approach."); *United States v. Arbolaez*, 450 F.3d 1283, 1293 n. 11 (11th Cir. 2006) (and cases cited therein); *United States v. Fowlert*, 535 F. 3d 408, 415 n. 2 (6th Cir.

2002) (noting split in circuits as to the proper standard of review of the denial of an evidentiary hearing under *Franks*). Nevertheless, as defendant acknowledges, Illinois courts apply an abuse of discretion standard to a trial court's decision on a *Franks* motion. As the Illinois Supreme Court has noted: "the determination as to whether there has been a substantial showing sufficient to warrant a hearing must be made by the trial judge, and to a degree the decision on the issue will be final." *People v. Lucente*, 116 Ill. 2d 133, 152 (1987). The trial court's "determination in a given case must be based upon a careful balancing of the statements in the warrant affidavit versus those in support of the defendant's challenge to the warrant." *Id.*

¶ 16 Thus, as the *Lucente* court further explained:

> "Given the unavoidably subjective nature of these determinations, it may well be that in some cases a trial judge will deny a hearing when in fact a warrant was issued on the basis of the false statements. It is also true that the same balancing test may result in an evidentiary hearing being held when none is warranted. So long as the trial court's judgment is exercised within permissible limits, that judgment will not be disturbed." *Id.* at 153.

¶ 17 This court has interpreted *Lucente* for the proposition that the abuse of discretion standard applies to the trial court's ruling on a *Franks* motion. See, *e.g.*, *People v. Gorosteata*, 374 Ill. App. 3d 203, 212 (2007) (applying abuse of discretion standard to trial court's decision declining to grant defendant a *Franks* hearing); *People v. Castro*, 190 Ill. App. 3d 227, 236-37 (1989) ("the determination of whether a defendant has made a substantial showing sufficient to trigger an evidentiary hearing is within the trial court's discretion and will not be disturbed on review absent an abuse of discretion"). Thus, this court reviews a trial court's denial of

defendant's motion for a *Franks* hearing under an abuse of discretion standard. Accordingly, we decline defendant's request to apply a *de novo* standard of review. An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it. *People v. Rivera*, 2013 IL 112467, *cert. denied*, 134 S. Ct. 201 (U.S. 2013).

¶ 18 ANALYSIS

¶ 19 Defendant argues that the trial court abused its discretion in denying his motion for a *Franks* hearing. Defendant concedes that this issue was not presented in a posttrial motion. It is well-settled that in order to preserve an issue for appeal, a defendant must ordinarily object to the alleged error at trial and raise the issue in a posttrial motion. See, *e.g.*, *People v. Kitch*, 239 Ill. 2d 452, 460-61 (2011). Although defendant failed to preserve this issue for appeal, he asks that we review his claim for plain error. In order to prevail under the plain error doctrine, a defendant must show that (1) the evidence presented at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). However, before we can determine whether an error rises to the level of plain error under either category, we must first determine whether an error in fact occurred. *People v. Crosby*, 231 Ill. 2d 262, 273 (2008); see also *People v. Johnson*, 218 Ill. 2d 125, 139 ("Clearly, there can be no plain error if there is no error"); *People v. Gorosteata*, 374 Ill. App. 3d 203, 212 (2007) ("to succeed under a plain error analysis, the appellant must still demonstrate error).

¶ 20 "[A] sworn complaint supporting a search warrant is presumed valid. [Citations.]" *People v. McCarty*, 223 Ill. 2d 109, 154 (2006). The assumption that the factual showing of probable cause in an affidavit for a search warrant will be a "truthful" showing does not mean "truthful" in

the sense that every fact recited in the affidavit is necessarily correct but, rather, "truthful" in the sense that the information put forth is believed or appropriately accepted by the affiant as true. *Franks,* 438 U.S. at 164-65. Thus, "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." *People v. Lucente,* 116 Ill. 2d 133, 146 (1987) (citing *Franks v. Delaware,* 438 U.S. 154, 168 (1978). As the *Franks* Court instructed:

> "[W]here the 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. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, 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*. at 155-56.

¶ 21 As our supreme court noted: "*Franks* is intended to create a limited right to veracity challenges." *Lucente,* 116 Ill. 2d at 153. "[T]he linchpin of the *Franks* procedure is the 'substantial preliminary showing' requirement." *Lucente,* 116 Ill. 2d at 147. A defendant makes a "substantial preliminary showing" where he offers proof that is "somewhere between mere

denials" and "proof by a preponderance." (Internal quotation marks omitted.) *People v. Petrenko*, 237 Ill. 2d 490, 500 (2010) (quoting *Lucente*, 116 Ill. 2d at151-52). "To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine." *Lucente*, 116 Ill. 2d at 31 (quoting *Franks*, 438 U.S. at 171). The purpose of the substantial preliminary showing requirement is "to discourage abuse of the hearing process and to enable spurious claims to 'wash out at an early stage.' " *Id*. at 151 (quoting *Franks*).

¶ 22 As the *Lucente* court also noted: " '*The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant*.' " (Emphasis in original.) *Id*. at 148 (quoting *Franks*). Here, the affiant was Officer Coleman. "[I]t is the veracity of the affiant-officer, not the informant, which is at issue and may be impeached." *People v. Adams*, 259 Ill. App. 3d 995, 1002 (1993); see also *United States v. Jones*, 208 F.3d 603, 607 (7th Cir. 2000) (noting that *Franks* made clear that "the 'substantial preliminary showing' that must be made to entitle the defendant to an evidentiary hearing must focus on the state of mind of the warrant affiant, that is the police officer who sought the search warrant"). "'[T]he fact that a third party lied to the affiant, who in turn included the lies in a warrant affidavit, does not constitute a *Franks* violation.' [Citations.]" *Id*. "A *Franks* violation occurs only if the affiant knew the third party was lying, or if the affiant proceeded in reckless disregard of the truth." *Id*. Thus, in order to satisfy the "substantial preliminary showing" requirement, an attack on the informant's veracity alone is insufficient. A defendant challenging a search warrant must allege "deliberate falsehood" or "reckless disregard for the truth" on the part of the affiant. These allegations "must be accompanied by an offer of proof." *Franks*, 438

U.S. at 171. Indeed, the "purpose of permitting attacks on search warrant affidavits is to deter police misconduct." *Gorosteata*, 374 Ill. App. 3d at 212.

¶ 23 At the outset, we note that the State has asserted that this case "falls outside of the scope of *Franks* because J. Doe was a nongovernmental informant who appeared, under oath, before the magistrate issuing the search warrant." This court has acknowledged the apparent conflict on this issue. See *People v. Creal*, 391 Ill. App. 3d 937, 945-46 (2009).

¶ 24 In *People v. Gorosteata*, 374 Ill. App. 3d 203, 215 (2007), the court concluded that "since [the nongovernmental informant] appeared before the magistrate to testify surrounding the allegations contained in the complaint for the search warrant **** [the] case [fell] outside the scope of *Franks*." *Id*. at 215. The *Gorosteata* court "agree[d] with the circuit court that the police's employment of this procedure, rather than the officer merely presenting and vouching for his informant's claims in the officer's complaint, without presenting the informant to the court for interrogation, removed this case from the ambit of *Franks*." *Id*. at 213. As the *Gorosteata* court explained: "*Franks* does not apply in such instances because there exists no governmental misconduct that could be detected or deterred by a *Franks* hearing"). *Id*. at 214 (quoting *State v. Moore*, 54 Wash. App. 211, 215, 773 P.2d 96, 98 (1989)).

¶ 25 However, in *People v. Caro*, 381 Ill. App. 3d 1056 (2008), another division of this court declined to follow *Gorosteata*. The *Caro* court stated that "*Gorosteata* defeats the purpose of *Franks* by allowing a warrant affidavit, revealed after the fact to contain a deliberately or recklessly false statement, to stand beyond impeachment as long as the nongovernmental informant testified before the judge issuing the search warrant." *Id*. at 1066. We note, however, that the *Caro* court acknowledged that "*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 from the granting of a *Franks* hearing." *Id*. at 1065.

¶ 26 "Prior to *Franks*, attacks on warrant affidavits were *absolutely precluded* under the law of Illinois." (Emphasis added.) *Lucente*, 116 Ill. 2d at 146. In recognizing a defendant's limited right to a hearing to challenge the veracity of a warrant affidavit, the *Franks* Court was concerned primarily with the fact that government officials, *i.e.*, police officers, could provide deliberately false statements in affidavits in order to obtain search warrants if the warrant affidavits were unimpeachable. *Id*. at 171. The *Franks* Court, however, did not consider the situation where a nongovernmental informant personally appears before a magistrate with the police officer who is requesting a search warrant. To the extent *Gorosteata* stands for the proposition that a *Franks* hearing is *never* warranted if the nongovernmental informant appears before the magistrate, we reject this bright-line rule. Nonetheless, a defendant must still make the requisite substantial preliminary showing and we shall continue our analysis of whether the trial court committed an error here in determining that defendant failed to make the requisite showing. Although the trial court here indicated that probable cause for a search warrant is established "when a nongovernmental informant is personally brought before the magistrate to testify to the facts," the court did not end its analysis there but continued to consider the two coworker affidavits presented by defendant, which the court found were form affidavits that were insufficient.

¶ 27 In *Lucente*, the warrant affidavit stated that an unnamed informant had told the police officer that he went to an apartment at 3010 South Princeton at approximately 8:30 p.m. on the previous evening, where he purchased marijuana. In support of his *Franks* motion, the defendant stated that he was not present in his apartment from 6:30 to 10 p.m., and that he was with his

wife and his sister at a location over a mile away. The court determined that the defendant made the requisite showing for a *Franks* hearing where he submitted his own affidavits stating facts supporting an alibi, as well as two corroborating affidavits from his wife and sister. As the court stated: "[T]he presence of such sworn corroboration elevates [the defendant's] showing above the level of 'mere denial.' " *Id*.

¶ 28 *Lucente* is distinguishable. In the present case, the trial court correctly determined that defendant's attack on Officer Coleman's warrant affidavit was insufficient and that defendant failed to make the requisite substantial preliminary showing. As the trial court noted, in the "form affidavits," the affiants stated only that they were with the defendant after work and did not state "where he was, where they were or any substantial facts." The trial court also noted that the affiant's name was not even included on the first part of one of the affidavits. We agree with the State that the trial court's comments reflect that the affidavits in the instant case lacked legitimate substance and did not corroborate defendant's claims. Additionally, unlike the defendant in *Lucente*, defendant did not present his own affidavit. Even considering the time sheet showing that defendant worked on August 19, 2009 from 6:30 a.m. to 4:30 p.m, along with the two affidavits of his coworkers stating that they were with him until 10:00 p.m., they do not negate the very real possibility that defendant executed the drug transaction with J. Doe on August 19, 2009 at 6640 South Morgan at some time between 12 a.m. and 6 a.m. or between 10 p.m. and 11:59 p.m. Other cases have come to a similar conclusion. See, *e.g.*, *People v. Martine*, 106 Ill. 2d 429, 436 (1985) (affirming denial of *Franks* hearing where three affidavits provided by the defendant did not explain how she could not have sold cocaine to the informant on the day in question and affidavits provided by neighbors who were repairing the defendant's premises failed to negate the possibility that the cocaine purchase of occurred while they were

away from the premises); *People v. Coss*, 246 Ill. App. 3d 1041, 1045-46 (1993) (concluding that trial court did not abuse its discretion in denying a *Franks* hearing where the defendant's exhibits lacked detail and did not negate the possibility that the defendant "could have sold drugs before work, on his way to work, during breaks away from work, and after work"); *People v. Tovar*, 169 Ill. App. 3d 986, 992 (1998) (affirming denial of a *Franks* hearing where informant stated a drug transaction occurred on July 25, and affidavits from defendant and his wife stating that defendant was at work from 7:30 a.m. to 4:45 p.m. and visiting friends between 6:00 p.m. and 10:30 p.m, "did not establish an impossibility of the informant having access to the apartment here, but were more in the nature of an 'I didn't do it' type of affidavit"); *United States v. Johnson*, 289 F.3d 1034, 1039 (7th Cir. 2002), *abrogated on other grounds*, *United States v. Vaughn*, 433 F.3d 917, 923 (7th Cir. 2006) (although confidential informant did not provide the level of specificity and detail that would have removed all ambiguity from the probable cause inquiry, the facts supported the issuance of the search warrant where the informant "provided first-hand observations of illegal activity, offered statements against his penal interest, and appeared before the magistrate to allay any concerns regarding his veracity").

¶ 29 Unlike the affidavits in *Lucente* which were "sufficiently detailed so as to subject the affiants to the penalties of perjury if they [were] untrue" (*Lucente*, 116 Ill. 2d at 154), the "form affidavits" in the instant case apparently contained no details at all. As the trial court explained, they co-workers' affidavits did not state "where he was, where they were or any substantial facts."

¶ 30 Defendant also asserted in his motion that Officer Coleman's assertions in the warrant affidavit were unreliable because, among other things, "J. Doe has never been an informant for the police in the past and his integrity or veracity has not been proven to be reliable in the past."

Where a defendant challenges the credibility of an informant, this court consider several factors including the informant's personal observations, the degree of detail provided, independent police corroboration of the information, and whether the informant testified at the probable cause hearing. *People v. Smith*, 372 Ill. App. 3d 179, 183-84 (2007) (citing *Johnson*, 289 F.3d at 1038-39). No single factor is dispositive, and a deficiency in one may be offset by a strong showing in another or by some other indication of reliability. *Id*. As the *Smith* court explained, "where the informant has appeared before the issuing judge, the informant is under oath, and the judge has had the opportunity to personally observe the demeanor of the informant and assess the informant's credibility, additional evidence relating to informant reliability is not necessary. [Citations]." (Internal quotation marks omitted.) *Smith*, 372 Ill. App. 3d at 182. Similar to the instant case, the defendant in *Smith* noted that, although the informant was present in court, the record did not indicate whether the magistrate asked the informant any questions. *Id*. at 182. However, the *Smith* court determined that the reliability established by the informant's presence was not destroyed by "the lack of an on-the-record colloquy between the magistrate and the informant." *Id*. at 184. As the *Smith* court noted: "The issuing magistrate's task is simply to make a practical, common-sense decision whether, *given all the circumstances set forth in the affidavit* before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (Internal quotation marks omitted and emphasis added.) *Id*. (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)); see also *McCarty*, 223 Ill. 2d at 153.

¶ 31 Defendant has also argued that the police failed to corroborate J. Doe's information. This court has stated that such corroboration is unnecessary when the informant personally appears before the issuing court. *People v. Lyons*, 373 Ill. App. 3d 1124, 1129 (2007); *People v.*

Hancock, 301 Ill. App. 3d 786, 792 (1998); *People v. Phillips*, 265 Ill. App. 3d 438, 448 (1994). Moreover, defendant's contention that there was no corroboration is incorrect. Officer Coleman averred that he drove J. Doe to 6640 South Morgan and that J. Doe walked to the front door of the apartment building and placed his hand on that door to indicate it was the same door that he had entered to purchase cocaine. Additionally, Officer Coleman showed J. Doe a computer generated photograph of defendant and J. Doe positively identified him as the individual who lived in the second floor apartment at 6640 South Morgan and from whom he had purchased the cocaine. Thus, in the instant case, the informant's information was corroborated prior to the request for a search warrant.

¶ 32 In view of the foregoing, we conclude defendant did not overcome the presumption of validity of the search warrant. The trial court correctly concluded that defendant was not entitled to a *Franks* hearing. Defendant failed to make the substantial preliminary showing that the affiant Officer Coleman included a false statement in the warrant affidavit "knowingly and intentionally" or "with reckless disregard for the truth." In fact, defendant made no showing that the affidavit contained a false statement. Having concluded that the trial court did not commit any error, we need not further address defendant's plain error argument.

¶ 33 Defendant also argues, and the State correctly agrees, that his mittimus should be corrected because defendant spent 41, not 38, days in presentence custody. This court has the authority to correct the mittimus at any time without remanding the matter to the trial court. *People v. Harper*, 387 Ill. App. 3d 240, 244 (2008). Accordingly, we order the correction of the mittimus to reflect three additional days of presentence custody credit.

¶ 34 The State also agrees with defendant's next argument that defendant should have received a credit of $205 against his fines for his 41 days in presentence custody, based on the application

of the $5-per-day credit against fines. The trial court order does not reflect that *any* credit was applied. We therefore order the clerk of the circuit court to modify the fines, fees, and costs order to reflect the $5-per-day credit for 41 days in presentence custody and reduce defendant's total monetary judgment from $2640 to $2435.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County denying defendant's motion for an evidentiary hearing under *Franks*. We further order the clerk of the circuit court to correct defendant's mittimus and monetary judgment consistent with this order.

¶ 37 Affirmed; mittimus corrected; fines and fees order corrected.