

NOTICE  
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2020 IL App (5th) 180014-U

NO. 5-18-0014

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 14-CF-685
	)	
MONTEZ CRUMBLE,	)	Honorable
	)	Jan V. Fiss,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE OVERSTREET delivered the judgment of the court.  
Presiding Justice Welch and Justice Wharton concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the circuit court did not err in denying the defendant’s motion for the suppression of statements, did not err in denying the defendant’s motion for a *Franks* evidentiary hearing, and did not commit plain error during its *voir dire* questioning of veniremembers in regard to certain fundamental principles of criminal law, and where the State proved beyond a reasonable doubt that the defendant was guilty of unlawful possession of a weapon by a felon, and no contrary argument would have merit, the defendant’s appointed attorney in this appeal is granted leave to withdraw as counsel, and the judgment of conviction is affirmed.

¶ 2 A jury found the defendant, Montez Crumble, guilty of unlawful possession of a weapon by a felon, and the circuit court subsequently sentenced him to imprisonment for a term of four years and six months. The defendant now appeals from the judgment of conviction. His appointed attorney in this appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit, and on that basis it has filed with this court a motion to withdraw as counsel,

along with a brief in support thereof. See *Anders v. California*, 386 U.S. 738 (1967). OSAD provided the defendant with a copy of its *Anders* motion and brief. This court gave the defendant ample opportunity to file a written response to OSAD's motion, or a memorandum, brief, etc., explaining why this appeal has merit, but the defendant has not taken advantage of that opportunity. This court has examined OSAD's *Anders* motion and brief, as well as the entire record on appeal, and has determined that this appeal does indeed lack merit. Accordingly, OSAD is granted leave to withdraw as counsel, and the judgment of conviction is affirmed.

¶ 3

### BACKGROUND

¶ 4 On January 22, 2014, Joshua Hunt, a special agent with the Collinsville Police Department, who was assigned to the Illinois State Police's Metropolitan Enforcement Group of Southwestern Illinois (MEGSI), appeared before a judge of the circuit court of St. Clair County and sought a warrant to search a particular house on Gaty Avenue in East St. Louis, Illinois. In his sworn complaint for search warrant, Hunt described three occasions, on three different days in January 2014, when a confidential source, working in conjunction with Hunt and other police officers, purchased crack cocaine from the defendant at that house. According to Hunt, the confidential source was familiar with the defendant, and each of the three controlled buys was made as police watched the house from a distance. Also in the complaint, Hunt stated that he had "conducted a criminal history search" on the defendant, and he had found that (1) in two different St. Clair County felony cases commenced in 2004, the defendant was convicted of the manufacture or delivery of a controlled substance, and he was sentenced to probation and jail; (2) in December 1995, East St. Louis police arrested the defendant for possession of cannabis; (3) in two different St. Clair County felony cases commenced in 1995, the defendant was convicted of two counts of delivering 10 to 30 grams of cannabis, and he was sentenced to probation; and (4) in May 2005,

St. Louis County (Missouri) police arrested the defendant for disturbing the peace and for manufacturing or delivering a controlled substance.

¶ 5 Based on Hunt’s sworn complaint, the judge issued a search warrant for the Gaty Avenue house. Two days later, police officers executed the search warrant.

¶ 6 In May 2014, the defendant was charged with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)) and possession of a controlled substance with intent to deliver. Eventually, the two counts were severed, and the State elected to proceed first on the controlled-substance charge. A jury found the defendant guilty of the controlled-substance charge, and the circuit court subsequently sentenced him to a period of probation. This court recently affirmed the judgment of conviction in the controlled-substance case. See *People v. Crumble*, 2020 IL App (5th) 170323-U. The instant appeal concerns the weapon charge, exclusively. The controlled-substance charge will not be mentioned again in this order.

¶ 7 In August 2015, the defendant filed, by his public defender, a motion to suppress statements that he had made during a videotaped police interrogation. The motion alleged that the police provided the defendant with *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) in a hasty and incomplete manner, that the defendant was under the influence of drugs or alcohol at the time of the interrogation, and that the defendant’s statements were the product of “psychological coercion” and improper inducement.

¶ 8 The court scheduled a hearing on the defendant’s suppression motion for August 17, 2015. Apparently, the suppression hearing was held. However, the record on appeal does not include a transcript of the hearing. Not long after the hearing, the circuit court entered a written order denying the suppression motion. The court found that the defendant “was not grossly intoxicated” at the time of the police interrogation, and that he therefore “retained the capacity” to waive his

rights. The court further found that the State had met its burden of showing that the defendant's waiver of *Miranda* rights was "knowing, intelligent, and voluntary."

¶ 9 Although the record on appeal lacks a transcript of the suppression hearing, it does include a DVD of the police interrogation that was the subject of the suppression motion. Throughout the recording, the camera was trained squarely on the defendant; no one else was visible. At the start of the recording, the defendant was informed of his *Miranda* rights, albeit quickly, and the defendant indicated his understanding of those rights, both orally and by initialing and signing a "Miranda Rights Form." The initialed and signed form is part of the record on appeal. During the videotaped interrogation, the defendant certainly did not appear to be under the influence of alcohol or drugs, though he became somewhat emotional at times. He was coherent and responsive to questions, though he sometimes seemed evasive or nervous. No police coercion, intimidation, or improper inducement was apparent in the video. (A summary of the defendant's statements to his police interrogators is included in the summary of the trial evidence, *infra*.)

¶ 10 In August 2016, the defendant filed a "motion for a *Franks* hearing in order to quash the search warrant and suppress evidence illegally seized," *i.e.*, a motion for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). In his motion for a *Franks* evidentiary hearing, the defendant alleged that false statements had been included in the January 2014 search-warrant complaint, either knowingly or with reckless disregard for the truth, and he further alleged that without those false statements, probable cause for the search of the Gaty Avenue house could not be established. More specifically, the defendant alleged that the search-warrant complaint (1) inflated the defendant's criminal history and (2) described the facts and circumstances of the three alleged undercover drug purchases in a manner that was wholly inconsistent with the content of a surveillance video that the State had provided to the defense. According to the defendant's

*Franks* motion, the St. Clair County probation department in May 2014 prepared a criminal history of the defendant, and the history showed one, and only one, entry for the defendant—a conviction for delivery of a controlled substance in a St. Clair County felony case commenced in 2004. In addition, the defendant stated that the two 1995 St. Clair County felony cases mentioned in the search-warrant complaint related to someone other than the defendant, who had falsely given the defendant’s name at the time of arrest. In short, the defendant alleged in his *Franks* motion that of all the criminal-history items mentioned in the search-warrant complaint, only one of those items truly related to the defendant.

¶ 11 The State filed a response to the defendant’s *Franks* motion, asking the court to deny the motion. The State stated, *inter alia*, that any incorrect criminal-history information included in the complaint was not included intentionally, knowingly, or with a reckless disregard for the truth, and that probable cause for the search existed even if all the incorrect information were set aside. In regard to the alleged discrepancy between the search-warrant complaint’s description of three controlled buys versus the contents of a surveillance video, the State stated that the three controlled buys were separate and apart from the activity captured in the surveillance video.

¶ 12 In August 2016, the court held a hearing on the defendant’s motion for a *Franks* evidentiary hearing. Both sides presented arguments. The defendant’s attorney noted that the *Franks* motion addressed “two problems with the search warrant.” According to counsel, the more serious of the two problems was that the search-warrant complaint inflated the defendant’s criminal history. Specifically, the search-warrant complaint listed only one conviction that actually related to the defendant; none of the other listed convictions or arrests actually related to the defendant, and one of those convictions actually related to the defendant’s cousin, who sometimes used the defendant’s name as an alias. The second problem described in the *Franks* motion, counsel noted,

was that “the [search-warrant complaint’s] description of the three controlled buys” was inconsistent with the content of a surveillance video that the State had provided to the defense. During his argument to the court, counsel requested leave to add to the motion a third reason for holding a *Franks* evidentiary hearing—the need to determine whether it was the defendant or the defendant’s cousin who sold drugs to the confidential source during the three controlled buys described in the search-warrant complaint.

¶ 13 The State, for its part, argued that the defendant had alleged merely that the search-warrant complaint included “errors and mistakes,” and that the defendant thus failed to make a substantial preliminary showing that a false statement was included in the complaint intentionally, knowingly, or with reckless disregard for the truth. The State presented the court with a certified copy of the record in St. Clair county case No. 95-CF-61, *People v. Cortez Brown, a/k/a Montez Crumble*, and stated that the police officer who prepared the search-warrant complaint could easily and innocently have concluded from the court record that the conviction in that case belonged to the defendant. The State added that even if the inaccurate criminal-history information were excluded from the search-warrant complaint, the complaint would nevertheless contain enough information to establish probable cause for the search warrant. As for the alleged discrepancy between the search-warrant complaint’s description of the three controlled buys versus the content of a surveillance videotape that had been turned over to the defense, the State stated that the search-warrant complaint did not contain any mention of, or reference to, surveillance recordings, and that “[t]he search warrant that was issued by this court was not based on that video. It wasn’t based on the events depicted in that video.” The State asked the court to deny the motion for a *Franks* hearing, because “[t]he search warrant \*\*\* was based on three controlled buys from a reliable source” and those buys were corroborated by police officers’ observations. At the end of

the hearing, the court granted the defendant time to file an amended motion for a *Franks* evidentiary hearing, and it granted the State time to respond thereto.

¶ 14 The day after the hearing, the defendant filed an amended motion for a *Franks* hearing. The amended *Franks* motion was the same as the original *Franks* motion except that it included a paragraph alleging that the defendant had a cousin named Cortez Brown, who resembled the defendant, had an extensive criminal record, and frequented the area surrounding the defendant's Gaty Avenue residence, and further alleged that the police or the confidential source could have mistaken Cortez Brown for the defendant, rendering unreliable the identification of the defendant as the drug seller. The State did not file a response to the amended *Franks* motion, choosing to rest on its response to the original *Franks* motion and the arguments that it presented at the August 2016 hearing thereon.

¶ 15 On October 5, 2016, the circuit court entered a written order denying the amended motion for a *Franks* evidentiary hearing. The court found that the defendant had failed to make a preliminary showing that the police officer intentionally, knowingly, or with reckless disregard for the truth included false statements in his search-warrant complaint, and that the defendant therefore was not entitled to a *Franks* hearing.

¶ 16 In November 2017, the cause proceeded to trial by jury. During *voir dire*, the circuit court questioned the veniremembers about “four fundamental points” of jurisprudence. Specifically, the court (1) asked the veniremembers whether they understood and accepted the principle that the defendant is presumed innocent; (2) asked the veniremembers whether they accepted (but did not ask whether they understood) the principle that “the defendant must be found guilty beyond a reasonable doubt,” adding that “[t]he standard is beyond a reasonable doubt”; (3) asked the veniremembers whether they understood and accepted the principle that the defendant does not

have any obligation to present evidence at the trial; and (4) asked the veniremembers whether they accepted (but did not ask whether they understood) the principle that the defendant had a right not to testify at trial and his “failure to testify cannot be held against him.” All veniremembers answered the court’s questions in the affirmative. The defendant did not object to the court’s questions about these four principles. The State, during its own *voir dire* questioning, told the veniremembers that it had the burden of proving the defendant guilty beyond a reasonable doubt. Defense counsel asked the veniremembers whether they understood the presumption of innocence and whether they understood that the defendant remained innocent until such time as the jurors unanimously agreed that he was guilty, and all of the veniremembers apparently indicated that they understood.

¶ 17 At the trial, the State’s evidence showed that on January 24, 2014, beginning around dawn, several police officers, under the supervision of the aforementioned Joshua Hunt of the Collinsville Police Department, executed the search warrant for the Gaty Avenue house. When the police arrived, the defendant was outside the house. They detained him, and he promptly informed them that a firearm was inside the house, in his bedroom. The bedroom was not large. Its furniture included a bed and a dresser. The bed was in one corner of the room, with the head of the bed abutting one wall, and one side of the bed abutting another wall, making the bed accessible from the foot of the bed and from the side that was closer to the bedroom door. The dresser was only a few steps from the bed. Underneath the bed—on the side that was closer to the bedroom door, not on the side that abutted a wall—police found a functioning 0.40-caliber Smith & Wesson semiautomatic pistol, designed to fire ammunition held in a magazine. Records showed that Dana Watson was the original purchaser of the pistol, and that Watson had a valid FOID card. Inside

the top drawer of the bedroom's dresser, police found two magazines capable of holding ammunition.

¶ 18 The State's trial evidence further showed that Joshua Hunt and another police officer interrogated the defendant shortly after the police finished their search of the Gaty Avenue house. The interrogation took place inside a police vehicle that was parked on the street in front of the house. The interrogation was recorded and subsequently burned to a DVD. The DVD recording of the interrogation was played for the jury.

¶ 19 During the recorded interrogation, the defendant stated that he and his wife, Dana Watson, resided in the Gaty Avenue house and that they had resided there for approximately four years. The defendant acknowledged that he had informed the police that a firearm was inside the house. Referring to the bedroom where the firearm had been located, the defendant stated that he slept in that bedroom. According to the defendant, his side of the bed was the side that was closer to the bedroom door, not the side that abutted a wall. The defendant stated that the firearm belonged to his wife, who kept it for personal protection. The defendant denied ever holding or handling the firearm, but he did state that he had "moved" it on occasion. Through his words and hand gestures, the defendant seemed to indicate that he had pushed the gun a short distance across the bedroom floor, moving it from a spot underneath the edge of the bed to a spot closer to the center of the bed.

¶ 20 The parties stipulated, in the presence of the jury, that on September 20, 2004, the defendant was convicted of "a criminal felony" in a specified St. Clair County case. Defense counsel did not want the jury to know the nature of the prior felony.

¶ 21 At the close of the State's case in chief, the defendant moved for a directed verdict, arguing that the State had failed to prove that the defendant possessed the pistol, actually or constructively. The court denied the motion. The defendant informed the court that he wished to waive his right

to testify. The defense rested without presenting evidence. The jury, after deliberating, found the defendant guilty of unlawful possession of a weapon by a felon, as charged.

¶ 22 The defendant filed a timely posttrial motion. He alleged that the circuit court had erred in denying his motion to suppress statements and in denying his motion for a *Franks* evidentiary hearing, and that the State had failed to prove guilt beyond a reasonable doubt. The posttrial motion did not allege that the court had erred in its *voir dire* questioning of the veniremembers. In December 2017, the court denied the posttrial motion and sentenced the defendant to imprisonment for four years and six months.

¶ 23 The defendant filed a timely notice of appeal, thus perfecting the instant appeal from the judgment of conviction. The circuit court appointed OSAD to represent the defendant.

¶ 24 ANALYSIS

¶ 25 In its *Anders* brief, OSAD raises four potential issues in this appeal, *viz.*: (1) whether the circuit court erred in denying the defendant's motion to suppress statements, (2) whether the circuit court erred in denying the defendant's motion for a *Franks* evidentiary hearing, (3) whether the defendant's conviction should be reversed due to the circuit court's failure to question veniremembers in compliance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), and (4) whether the State proved beyond a reasonable doubt that the defendant was guilty of unlawful possession of a weapon by a felon.

¶ 26 In regard to the potential issue of whether the circuit court erred in denying the defendant's motion to suppress statements, OSAD suggests that the denial order was not against the manifest weight of the evidence (see *People v. Glass*, 232 Ill. App. 3d 136, 150 (1992)) and that any argument to the contrary would lack substantial merit. This court agrees with OSAD's assessment. In his motion to suppress statements, the defendant alleged that the police provided the defendant

with *Miranda* warnings in a hasty and incomplete manner, that the defendant was under the influence of drugs or alcohol at the time the police interrogated him, and that the defendant's statements were the product of "psychological coercion" and improper inducement. The videotaped interrogation, which this court has described in some detail *supra*, did not support the defendant's allegations; indeed, it refuted those allegations. While the *Miranda* warnings were given fairly quickly, they were given completely, and the defendant indicated both orally and in writing that he understood his rights. Nothing in the defendant's speech or manner suggested that he was under the influence of any substance, and nothing suggested improper police conduct. Due to the absence of a transcript of the suppression hearing, this court can only presume that the interrogation DVD was played at the hearing; this court cannot know what other evidence, if any, was presented. This court must presume that the circuit court's decision was aligned with the evidence that was admitted at the hearing. See, e.g., *People v. Lopez*, 229 Ill. 2d 322, 344 (2008).

¶ 27 In regard to the potential issue of whether the circuit court erred in denying the defendant's motion for a *Franks* evidentiary hearing (see *Franks v. Delaware*, 438 U.S. 154 (1978)), OSAD suggests that there is no meritorious argument that error was committed. This court agrees. *Franks* gives a criminal defendant a right, under limited circumstances, to a hearing where he may challenge the veracity of an affidavit supporting a search-warrant complaint. *People v. Voss*, 2014 IL App (1st) 122014, ¶ 16. The purpose of a *Franks* hearing is to provide some protection against perjurious warrant applications. *People v. Lucente*, 116 Ill. 2d 133, 150 (1987). The affidavit supporting a search warrant is presumed valid, but if a defendant makes a substantial preliminary showing that a false statement—and, moreover, a false statement necessary for the finding of probable cause—was included in the affidavit intentionally, knowingly, or with reckless disregard for the truth, the defendant will be granted an evidentiary hearing. *Franks*, 438 U.S. at 171.

Appellate review of a ruling on a motion for a *Franks* evidentiary hearing is *de novo*. *People v. Chambers*, 2016 IL 117911, ¶ 79. (In its *Anders* brief, OSAD did not suggest a standard of review for this issue.)

¶ 28 In his *Franks* motion, as detailed *supra*, the defendant alleged that the sworn search-warrant complaint included an inflated criminal history for the defendant, attributing to the defendant various convictions and arrests that did not actually pertain to him. As the State conceded in the circuit court, the search-warrant complaint did in fact include inaccurate information about the defendant's criminal history. However, some of the inaccurate information appears to have resulted from an understandable confusion between the defendant's criminal history and the criminal history of the defendant's cousin, Cortez Brown, who appears to have used the defendant's name as an alias. The defendant did not proffer any actual evidence that the inaccurate criminal-history information was included intentionally, or knowingly, or with a reckless disregard for the truth. Furthermore, even if all of the inaccurate criminal-history information in the search-warrant complaint were set aside and disregarded, there was enough information in the complaint to establish probable cause for the search of the Gaty Avenue residence. The complaint detailed three then-recent controlled buys of crack cocaine at the defendant's residence, each involving a confidential source who was familiar with the defendant and who was under police surveillance. The defendant did not make any specific allegation of deliberate falsehood or of reckless disregard for the truth in relation to the accounts of those controlled buys. In short, the defendant failed to make the type of showing that would have entitled him to a *Franks* evidentiary hearing.

¶ 29 In regard to the potential issue of whether the circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) when questioning veniremembers, and whether

such failure should result in reversal of the defendant's conviction, here too OSAD correctly suggests a lack of any meritorious argument. This court reviews *de novo* the related questions of whether a circuit court violated a supreme court rule and what consequences, if any, should flow from that violation. *People v. Wilmington*, 2013 IL 112938, ¶ 26. Rule 431(b) requires a trial court, during *voir dire*, to ask each potential juror whether he or she “understands and accepts” four fundamental legal principles, *viz.*: (1) that the defendant is presumed innocent of the charge against him, (2) that the defendant cannot be found guilty unless the State proves him guilty beyond a reasonable doubt, (3) that the defendant is not required to offer any evidence on his own behalf, and (4) that if a defendant chooses not to testify at his trial, his reticence cannot be held against him. A trial court's failure to ask a potential juror whether he or she understands these principles “is error in and of itself.” *Id.* ¶ 32. In the instant case, the trial court fumbled some—though far from all—of the Rule 431(b) questioning, as this court's summary of the questioning, *supra*, illustrates. So, the trial court certainly committed error. Any possible prejudice to the defendant, however, was mitigated by subsequent *voir dire* statements and questions from the State and from defense counsel, also described *supra*, and also by jury instructions that fully explained the State's burden of proof and plainly prohibited the jury from considering, in any way, the fact that the defendant did not testify.

¶ 30 Furthermore, the defendant did not object to the court's Rule 431(b) questioning, and he did not include this issue in his posttrial motion. He therefore forfeited appellate review of this issue. See, *e.g.*, *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Any attempt to invoke the plain-error rule would be unsuccessful, for the evidence in this case was not closely balanced, and the error was not so fundamental or of such magnitude as to affect the fairness of the trial. See, *e.g.*, *Wilmington*, 2013 IL 112938, ¶ 31. As discussed *infra*, in relation to the potential issue of

insufficient evidence of guilt, the State presented overwhelming evidence of the defendant's guilt, and therefore the closely-balanced-evidence prong of the plain-error rule does not provide a basis for excusing the defendant's procedural default. The veniremembers were not perfectly instructed and questioned on the four legal principles enumerated in Rule 431(b), but they were substantially instructed and questioned thereon, and nothing in the record suggests that the court's partial noncompliance with Rule 431(b) resulted in a biased jury, and for those reasons, the fundamental-error prong of the plain-error rule does not provide a basis for excusing the defendant's procedural default. See *id.* ¶ 33.

¶ 31 Finally, in regard to the potential issue that the State failed to prove the defendant guilty beyond a reasonable doubt, OSAD suggests that the State's evidence was sufficient to support the jury's guilty verdict. This court agrees. The defendant stood trial for unlawful possession of a weapon by a felon. The parties stipulated that the defendant had been convicted of a felony approximately 9½ years prior to his alleged possession of that weapon, so the defendant's felon status was undisputed. The State's evidence showed that the weapon, a Smith & Wesson semiautomatic pistol previously purchased by the defendant's wife, was found in the defendant's bedroom, underneath his bed, on his side of the bed, and that the defendant knew that it was there; no contrary evidence was proffered. Furthermore, the defendant admitted, during the videotaped interrogation that was published to the jury, that he had "moved" the pistol at some point(s) in the past. At a minimum, the State's evidence established that the defendant had constructive possession of the pistol. See *People v. Hunter*, 2013 IL 114100, ¶ 19 (a defendant has constructive possession over contraband if he has knowledge of the contraband's presence and control over the area where the contraband was found). The evidence of the defendant's guilt was overwhelming, and certainly sufficient to permit a rational trier of fact to find, beyond a reasonable doubt, that the

defendant was a felon who unlawfully possessed a weapon, and therefore any challenge to the sufficiency of the evidence would fail. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 32

#### CONCLUSION

¶ 33 None of the four potential issues discussed by OSAD in its *Anders* brief has any merit. Furthermore, this court has not found any significant error revealed anywhere in the record on appeal. Accordingly, OSAD is granted leave to withdraw as the defendant's counsel on appeal, and the judgment of conviction is affirmed.

¶ 34 Motion granted; judgment affirmed.