

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-1347

United States of America

v.

Omar Bernard,
Appellant

Appeal from
United States District Court for the Eastern District of Pennsylvania
Judge Gerald J. Pappert
No. 2:20-cr-00208-001

Before: Porter, Matey, and Ambro, *Circuit Judges*
Submitted Under Third Circuit L.A.R. 34.1(a)
Submitted: June 4, 2026 Decided: September 1, 2026

NONPRECEDENTIAL OPINION*

AMBRO, *Circuit Judge*

The warrant to search Omar Bernard’s residence was overly broad. The affidavit used to procure the warrant did not specify that the building was a duplex, so the warrant gave officers permission to search the entire property when there was only probable cause to search Bernard’s second-floor apartment. He moved to suppress the evidence found in that search. The District Court denied the motion because Bernard could not

* This disposition is not an opinion of the full Court and, under Third Circuit I.O.P. 5.7, is not binding precedent.

show that the affiant officer knowingly or recklessly misrepresented or omitted information in the affidavit. For the following reasons, we affirm that denial.

I

On February 7, 2020, Latoya Baker reported her boyfriend Omar Bernard to the Philadelphia Police Department for domestic violence. At the police station, Baker gave a formal interview. She stated that she was inside her “apartment at 5142 Harlan St 2nd fl” that morning when Bernard assaulted and threatened to shoot her. App. 241. Later, he threatened to “smack” her “if [she] tr[ied to] leave the house” and hit her when she laughed at him. *Id.* After Bernard left, Baker went to the hospital. She later returned to “the house” to collect her belongings, where Bernard her again. *Id.* In response to police questioning, Baker stated that Bernard had guns not registered to him and that he sold drugs “sometimes out of the apartment.” *Id.* at 242. When asked if he had a gun while assaulting her, she said, “[h]e didn’t pull it out on me[;] it was upstairs.” *Id.*

After the interview, the case was assigned to a new detective, David Palma, who was a member of the Gun Violence Reduction Task Force. Detective Palma drafted a search warrant application for “5142 Harlan St.” *Id.* at 64–65. The affidavit did not specify a floor number or use the word “apartment” to describe the residence. Detective Palma summarized Baker’s interview and reported Bernard’s firearms prohibition and criminal history, including a record of a previous incident that described Bernard’s address as “5142 Harlan St.” *Id.* A state-court magistrate judge approved the application and issued a search warrant for 5142 Harlan Street.

Police executed the search on February 21, 2020. They first entered a common area, which Bernard calls a “foyer” and the Government calls a “living room.” Br. for Appellant 6, Br. for Appellee 9, App.115. It contained stairs to the second-floor residence as well as a door to a first-floor residence. After talking with the occupant of the first-floor residence, officers determined the occupant was not related to Bernard and decided not to search that area. They did search the second-floor residence and the common area. In the latter, they found multiple firearms: one behind a pile of clothing and two in a safe that was unlocked by a key recovered from Bernard’s second-floor residence.

Bernard was indicted on one count of possession of a firearm and ammunition by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). He moved to suppress the fruits of the search under *Franks v. Delaware*, 438 U.S. 154 (1978), arguing that the warrant application recklessly omitted material information about 5142 Harlan Street and resulted in an overbroad warrant for the whole building.

At the suppression hearing, Detective Palma testified to his investigatory process and explained why he believed 5142 Harlan Street was a single-unit residence. First, he consulted a Google Maps image of the property, looking for indicators that the property contained multiple units. In that image, he saw no doors, mailboxes, or markings indicating multiple units. Next, he checked the City of Philadelphia’s police and property databases to see if the property was zoned as an apartment or a house. Detective Palma testified that both systems referred to the property as a single-unit “house.” However, the Government concedes that this assertion was incorrect—at least one record listed the

building as zoned for RM-1 (Residential Multi-Family 1), meaning 5142 Harlan Street was zoned for a maximum of two residences. He then checked previous police reports involving Bernard or Baker to see if the property was listed as an apartment. Each of them only listed the property as 5142 Harlan Street, without any apartment numbers. Lastly, Detective Palma checked the DMV records of Bernard and Baker, both of which returned addresses that were not 5142 Harlan Street.

The District Court denied Bernard's motion to suppress. It agreed that the warrant was overbroad but found that the affiant officer reasonably believed the property to be a single-unit residence. Bernard now appeals that decision.

II

The District Court had jurisdiction under 18 U.S.C. § 3231, and we have jurisdiction under 28 U.S.C. § 1291.

Bernard argues the fruits of the search must be suppressed because the warrant violated the Fourth Amendment. He claims that Officer Palma recklessly omitted from the affidavit any mention of multiple apartments at 5142 Harlan Street and that the omission was material to determining probable cause for the search warrant, making the warrant overly broad and therefore suppressible.

In *Franks v. Delaware*, the Supreme Court held that a defendant may “challenge the truthfulness of factual statements made in an affidavit of probable cause supporting a warrant subsequent to the ex parte issuance of the warrant.” *United States v. Yusuf*, 461 F.3d 374, 383 (3d Cir. 2006) (characterizing *Franks*, 438 U.S. at 171). To obtain suppression under *Franks*, the defendant must show by a preponderance of the evidence

“(1) that the affiant knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant,” and “(2) that such statements or omissions were material, or necessary, to the probable cause determination.” *Id.* The application of *Franks* is a mixed question of law and fact. *United States v. Brown*, 631 F.3d 638, 642 & n.4 (3d Cir. 2011). We review for clear error the District Court’s factual finding about recklessness and *de novo* its legal conclusion about materiality. *Id.*

The District Court did not clearly err by finding that Detective Palma did not knowingly or recklessly disregard the truth in his warrant application. Because Bernard must satisfy both prongs of *Franks*, that conclusion requires us to affirm, and we do not reach the materiality prong.

III

The District Court did not clearly err in its finding on the first *Franks* prong. Error is clear when, “although there is evidence to support it, the reviewing body on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. Montalvo-Flores*, 81 F.4th 339, 342 (3d Cir. 2023) (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 622 (1993)). Even when “convinced that had [we] been sitting as the trier of fact, [we] would have weighed the evidence differently,” we cannot reverse if the “district court’s account of the evidence is plausible in light of the record viewed in its entirety.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1984). Aside from a perfunctory

statement of the standard of review, Bernard’s briefing never mentions the clear-error standard—even in reply, after the Government’s brief discussed it extensively.

There is some evidence that it was reckless for Detective Palma to omit any mention of an “apartment” in the warrant application. Baker repeatedly described the residence as such. And Detective Palma’s testimony regarding zoning was incorrect.

But there is also substantial evidence that the officer did not behave recklessly. Baker did not just refer to the property as an apartment; she also referred to it as a “house.” Prior records identified her address as “5142 Harlan Street” with no indication of an apartment number. App. 99–100. After looking up a public image of the property, Detective Palma did not see ordinary visual cues indicating multiple residences. On this record, the District Court found that Detective Palma took reasonable steps to determine if the house was single- or multi-use.

Because this view of the evidence is permissible, we cannot say that the District Court clearly erred. “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Anderson*, 470 U.S. at 574. Detective Palma might have given more weight to the witness’s description of the property, especially in light of its zoning. But he went through a methodical investigatory process and consulted multiple sources before drafting his warrant application. These steps suggest diligence and care, not recklessness.

Bernard has failed to establish the first prong of *Franks* because the record permitted the District Court’s finding that Detective Palma did not act with a reckless

disregard for the truth. Therefore, we affirm the District Court's denial of the motion to suppress.