

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1169**

State of Minnesota,
Respondent,

vs.

Aaron Mitchel Peterson,
Appellant.

**Filed August 12, 2024
Affirmed
Schmidt, Judge**

Meeker County District Court
File No. 47-CR-22-758

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Schmidt, Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this direct appeal from his convictions of threats of violence, second-degree assault with a dangerous weapon, fifth-degree possession of a controlled substance, and nine gross-misdemeanor counts of unlawful possession of a firearm, appellant Aaron Mitchel Peterson argues that the district court erred in denying his request for a *Franks*¹ hearing because the search-warrant application contained material misrepresentations and omissions and did not otherwise provide probable cause. We affirm.

FACTS

In August 2022, Peterson's mother called 911 to report that she and her husband had been threatened by Peterson. A deputy responded to Peterson's mother's house and spoke with Peterson's parents. Peterson's mother showed police a text message that she had received earlier in the day from Peterson: "Hope you know when this all is [h]appens its because of what u have done . !!!! U Will see." Peterson's mother told police that she called Peterson after receiving this text message, and he threatened to come over to their house with a shotgun if they did not return firearms that they were holding for him. Peterson also told his mother that "any cops that I hit is on you."

After a detective arrived on the scene, the deputy went to Peterson's home. The deputy deemed it unsafe to knock on Peterson's door and instead surveilled his house from

¹ See *Franks v. Delaware*, 438 U.S. 154, 171 (1978) (permitting an evidentiary hearing to challenge the validity of a search-warrant affidavit upon allegations of deliberate falsehood or of reckless disregard for the truth, accompanied by an offer of proof).

down the road. The deputy observed a vehicle leave Peterson's property and stopped the vehicle to inquire about Peterson's state of mind. The vehicle's driver, B.V., told the deputy that he was Peterson's friend and, during the past hour visiting with him, he did not observe any guns or ammunition in Peterson's home. B.V. also told police that he did not find Peterson to be threatening or suicidal, but noted Peterson did appear to be anxious.

The deputy called Peterson on the phone. Peterson refused the deputy's request to leave his house. When the deputy told Peterson that police could not just leave the situation and that all he could do is try to contact Peterson, Peterson replied "well I guess that's all you can say when everything goes down then . . . is that, you know, you really tried."

Various agencies mobilized their SWAT teams while the detective submitted a search warrant application for Peterson's home. In the application, the detective stated that he expected to find Peterson, firearms, and ammunition in Peterson's residence, and attested that the facts establishing the ground for a search warrant included the following:

On 08/01/2022 at approximately 1731 hours, the Meeker County Sheriff's Office received a report of threats . . . The caller, [Peterson's mother], DOB [] reported her son, [Peterson], DOB [] called her and demanded his guns she had in her possession. Law Enforcement arrived and learned [Peterson's mother] said [Peterson] told her on the phone and by text "hope u know when this all is [h]appens its because of what u have done!!! U Will see" and "any cops I hit are on you." [Peterson's mother] said she believes [Peterson] is suicidal and made threats to burn his house down as well as [her house] if he did not get his firearms back. [He] said if she didn't give them to [him] he would come over with a shotgun and take them. [Peterson's mother] said she had not seen [Peterson] today and it was believed he was at his residence . . . due to the fact he said he could not come get the guns because he did not have any gasoline in his vehicle. [Peterson's mother] said she was afraid [Peterson] would hurt

himself or a police officer. [Peterson's mother] said she believed [Peterson] to be in possession of a shotgun or long gun.

A cell phone ping of [Peterson's] phone showed his phone location at his residence with an uncertainty of 164 meters. Law enforcement had been parked on the road near [Peterson's] residence since approximately 1830 hours and had not seen [Peterson] arrive at or leave his residence.

[Peterson] is currently on probation through the Department of Corrections Litchfield District and is prohibited from possessing weapons. The Kandi-Meeker SWAT team was activated to respond to the residence.

The district court issued the search warrant. Following a 28-hour standoff between law enforcement and Peterson, Peterson surrendered. The detective and three officers executed the search warrant for Peterson's residence the following day. They recovered nine firearms, nine rounds of .22-caliber ammunition, and methamphetamine residue in a baggie found in plain view.

The state charged Peterson by amended complaint with threats of violence, second-degree assault with a dangerous weapon, fifth-degree possession of a controlled substance, and nine gross-misdemeanor counts of unlawful possession of a firearm. Before trial, Peterson challenged the validity of the search warrant issued to search his home. The district court denied Peterson's request for a *Franks* hearing and concluded that the search warrant was valid because the alleged misrepresentations and omissions were not material.

The jury found Peterson guilty of all charges. The district court granted Peterson a downward dispositional departure and sentenced him to five years on probation.

Peterson appeals.

DECISION

Peterson argues that the search-warrant application contained material misrepresentations and omissions of fact and that, without these misrepresentations and omissions, the application lacked probable cause. He also argues that the district court abused its discretion by denying him a hearing on the issue.

Standard of review.

In reviewing an argument that the district court should have held a *Franks* hearing, appellate courts review for clear error the district court's findings on whether there was a statement or omission that was false or in reckless disregard of the truth. *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010). Appellate courts review de novo whether the alleged misrepresentation or omission was material to the probable cause determination. *Id.*

“A search warrant is void, and the fruits of the search must be excluded, if the application includes intentional or reckless misrepresentations of fact material to the findings of probable cause.” *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (referencing *Franks*, 438 U.S. at 171–72). However, to challenge the truthfulness of factual statements made in an affidavit seeking a search warrant, Peterson must show that “(1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination.” *Andersen*, 784 N.W.2d at 327 (explaining that the search warrant was valid because the alleged misrepresentations and omissions in the application were not material). No *Franks* hearing is necessary if there is an absence of evidence that an officer deliberately or recklessly omitted information material to the probable cause determination. *See id.*

The contested statements are not material facts that were deliberately or recklessly omitted from the search-warrant application.

Peterson argues that “the search-warrant application misrepresented some facts, while omitting others, thus rendering the warrant and subsequent search invalid.”

As a threshold matter, Peterson does not identify any misrepresentation in the search-warrant affidavit, let alone any intentional or reckless misrepresentation. As such, Peterson has not identified misrepresentations in the search-warrant application that would invalidate the search warrant. *Andersen*, 784 N.W.2d at 327.

Next, Peterson argues that the search-warrant affidavit should have included B.V.’s statements, which were that Peterson was home, not suicidal, non-threatening, and that B.V. did not notice ammunition in Peterson’s home.

The district court determined that there was no omitted information that caused the warrant to be false or misleading. The court further concluded that the omission of B.V.’s statements was not material because “material omissions in a search warrant . . . also must impact the probable cause if you add in the omissions.”

Specifically, the court stated that Peterson had

failed to offer proof sufficient to satisfy . . . that any of the offered omissions ([Peterson’s] criminal history, [B.V.]’s interactions with [Peterson], law enforcement[’]s interactions with [Peterson], whether [Peterson’s mother] regretted her decision to call law enforcement, etc . . .), if added to the search warrant would have changed the probable cause such that the judge would not have issued the warrant with that information included in the warrant.

We agree with the district court that adding the alleged omissions into the search-warrant application would not impact the finding of probable cause because the

purported omissions do not negate the other evidence provided to law enforcement. For example, while B.V. claimed that Peterson was not suicidal, he conceded that Peterson appeared anxious. And adding B.V.'s statement about not noticing ammunition in Peterson's home to the warrant application would not negate the fact that Peterson's mother told officers that Peterson threatened to go to his mother's house with a shotgun to take his guns back, or the fact that Peterson was prohibited from possessing a firearm. The omissions also do not negate Peterson's disturbing texts about what will happen if his mother did not return the guns: "any cops that I hit is on you."

In other words, the omissions do not diminish the signing judge's probable-cause determination given the totality of the circumstances. *See Anderson*, 784 N.W.2d at 327–29 (holding alleged misrepresentations and omissions regarding weapons owned by defendant in application for search warrant of defendant's property were not material to probable cause); *State v. Mems*, 708 N.W.2d 526, 532 (Minn. 2006) ("Misrepresentations invalidate a warrant when they are . . . material to establishing probable cause, meaning probable cause could likely not be established without them."). Because Peterson failed to satisfy the first prong of this two-step inquiry, the district court properly determined that a *Franks* hearing was unnecessary because the allegations were not pertinent to the probable cause issue. *Anderson*, 784 N.W.2d at 320.

Affirmed.