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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GERALD M. COOK, JR.,

Defendant-Appellant.

No. 25-3657

Appeal from the United States District Court for the Northern District of Ohio at Cleveland.
No. 1:20-cr-00767-1—Pamela A. Barker, District Judge.

Argued: October 20, 2026

Decided and Filed: November 6, 2026

Before: MOORE, THAPAR, and HERMANDORFER, Circuit Judges.

COUNSEL

ARGUED: Marisa Larrick Serrat, JAIME P. SERRAT LLC, Cleveland, Ohio, for Appellant. Kevin E. Bringman, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee. **ON BRIEF:** Marisa Larrick Serrat, JAIME P. SERRAT LLC, Cleveland, Ohio, for Appellant. Kevin E. Bringman, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee.

THAPAR, J., delivered the opinion of the court in which HERMANDORFER, J., concurred. MOORE, J. (pp. 12–13), delivered a separate opinion concurring in part and concurring in the judgment.

OPINION

THAPAR, Circuit Judge. After observing two controlled drug deals outside of Gerald Cook's house, officers obtained a warrant to search the home. During the search, they found an

assortment of drugs, weapons, ammunition, and drug-trafficking materials inside. Once Cook lost his bid to exclude that evidence, he pled guilty to several gun and drug charges. The district court sentenced him to just over 20 years in prison—nearly 10 years below the bottom of the Guidelines range. On appeal, Cook asks us to revive his quest to exclude the evidence found in his home and to vacate his below-Guidelines sentence. Seeing no reason to do either, we affirm.

I.

One morning, Willoughby police officers saw a black Porsche Cayenne blow through a red light. The officers followed the Porsche to a hotel and waited for the driver—Gerald M. Cook, Jr.—to go inside. Once Cook was inside, one officer walked up to the Porsche and looked through the window. He saw a gun. The officers then searched Cook and his car and recovered the gun, two $1,000 bundles of cash, counterfeit money, marijuana, and Cook's ID. As a felon, Cook couldn't legally possess firearms.

A month later, detectives with the Suburban Police Anti-Crime Network caught an individual with two grams of heroin wrapped in a lottery ticket. The individual cooperated and said the drugs were bought from a man nicknamed "JR" at his home on Gay Street. The now-informant described "JR" and said he drove a black Porsche Cayenne, which he kept in the driveway. Officers quickly identified "JR" as Cook. And when they showed the informant a picture of Cook, the informant confirmed that was "JR." Shortly after, officers drove by the home on Gay Street and saw a black Porsche Cayenne sitting in the driveway.

The next day, officers set up a controlled drug buy at the home. With multiple officers surveilling the area, the informant bought a mix of cocaine, 4-ANPP, and fentanyl wrapped in a lottery ticket. One officer saw the deal take place in Cook's driveway, and another officer saw Cook leave through his back door to complete the transaction and then re-enter the house. Three days later, the officers conducted another controlled buy at Cook's house. As before, one officer saw Cook leave the house to complete the transaction and then re-enter his back door.

The officers then obtained and executed a warrant to search Cook's house. They found drugs (including fentanyl mixtures), firearms, ammunition, cutting agents, multiple phones, and

packaging materials. Cook initially agreed to help law enforcement but then fled the house on foot. Several officers quickly chased him down.

Cook was indicted on several drug trafficking and firearms offenses. Three and a half years later, Cook's newly appointed attorney filed a motion to suppress the evidence found in Cook's home, claiming a lack of probable cause. But during the hearing on the motion, defense counsel asked to withdraw the motion based on Cook's instructions. Before granting Cook's request, the district court explained in detail that it would've denied the motion anyway because the officer's affidavit provided probable cause to issue the warrant.

At the same hearing, Cook's counsel then pivoted. After withdrawing one motion to suppress, he asked to bring a second—this one raising a *Franks* claim.[1] He argued that officers couldn't see Cook's back door and thus lied in the warrant affidavit. The district court denied the request. It reasoned that the motion was "untimely and not in the interests of justice" because Cook's theory was based on the same facts available to his lawyer when he filed the withdrawn motion to suppress, and to his prior lawyers. R. 78, Pg. ID 444.

Four months later, Cook was on his next lawyer. She filed another *Franks* motion to suppress the evidence found in Cook's home. The court denied the motion as an unjustified attempt to reopen the previous suppression hearing. And it denied the motion on the "independent" ground that Cook didn't meet his "initial burden" to get a *Franks* hearing. R. 90, Pg. ID 548.

After losing this motion, Cook pled guilty to several gun and drug charges. The court sentenced him to 248 months' imprisonment—112 months below the bottom of the Guidelines range. Cook timely appealed.

[1]As explained below, *Franks v. Delaware* lets defendants attack a warrant affidavit for containing intentional or reckless falsehoods necessary for a finding of probable cause. 438 U.S. 154, 171 (1978).

II.

Cook makes two arguments on appeal. First, he says the district court should've given him a *Franks* hearing. Second, he claims his sentence is procedurally and substantively unreasonable. Both arguments fail.

A.

The district court didn't err in denying Cook a *Franks* hearing. First, Cook's motion for a *Franks* hearing fails on the merits. And second, Cook's alternative ineffective-assistance-of-counsel claim is premature.

1.

Cook argues that the district court abused its discretion in refusing to reopen the first suppression hearing. But we needn't address reopening because Cook's request for a *Franks* hearing fails on the merits. When evaluating a district court's decision whether to grant a *Franks* hearing, we review factual findings for clear error and legal conclusions de novo. *United States v. Bateman*, 945 F.3d 997, 1007 (6th Cir. 2019).

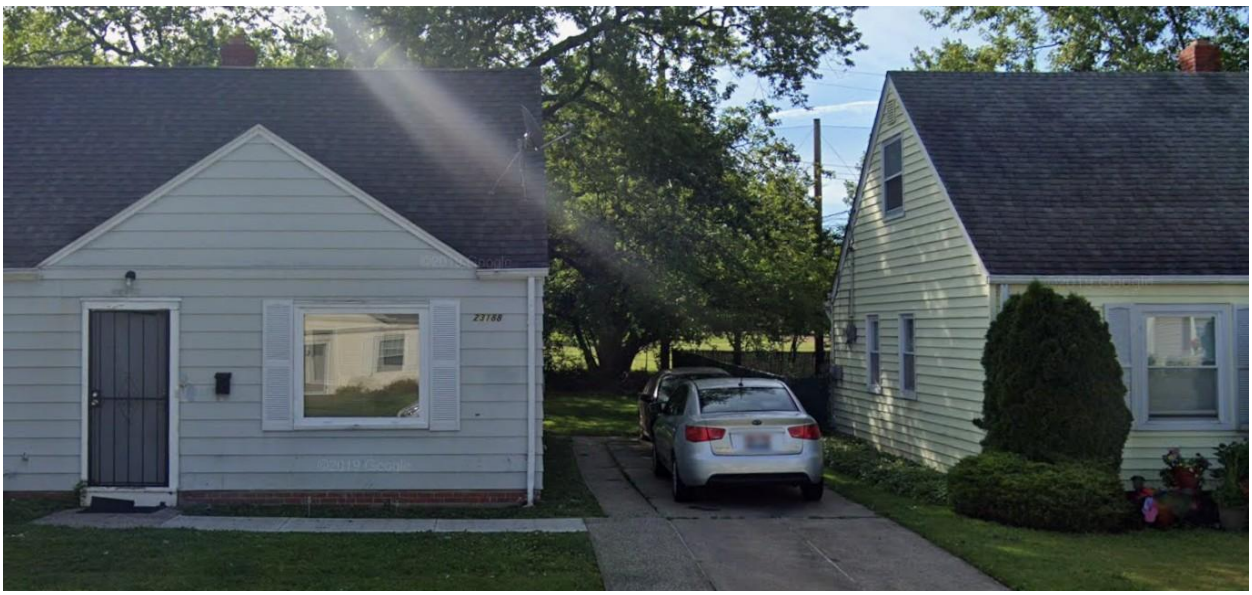
Warrant affidavits are presumed valid. *United States v. Richards*, 164 F.4th 508, 519 (6th Cir. 2026). So courts' ability to exclude evidence based on false information included in them is "limited." *Franks v. Delaware*, 438 U.S. 154, 167 (1978). The defendant must first show that a *Franks* hearing—that is, an evidentiary hearing—is required. *Richards*, 164 F.4th at 519. That's a high bar. *Id.* To clear it, the defendant must make a "substantial preliminary showing" that the warrant affidavit includes a "knowing, intentional, or reckless falsehood." *Id.* (quotation omitted). And then he must show that without the falsehoods, the affidavit couldn't have established probable cause. *Id.*

Cook falters on the first prong. The district court correctly concluded that Cook failed to make a substantial preliminary showing that the officer lied.

Cook's first claim is that law enforcement lied when stating that an officer watched Cook go in and out of his back door before and after the drug deals. To support this assertion, he points to surveillance pictures of the front of the house, a Google Maps aerial image of the

house, a Google Maps image of the house from the street, and a search warrant photo of the back door. Cook's theory is that no officer saw him go in and out of the house because no officers were positioned behind the house, and even if some were, their view would've been blocked by the trees.

But this evidence doesn't suggest falsity. The affidavit made clear that multiple officers were surveilling the house during each drug deal. And just because officers on the street took pictures doesn't suggest other officers weren't positioned behind the home. Additionally, the aerial picture leaves open whether someone could've seen Cook's home from behind. In fact, that picture shows a golf course behind the home where officers could've been positioned. Last, the Google Maps street-view image shows a clearing in the foliage behind the home, indicating that it would've been easy for an officer positioned behind the home to see Cook's back door.[2]



These photos don't satisfy Cook's heavy initial burden to show an intentional or reckless falsehood.

[2]This is a zoomed-in version of the July 2019 Google Maps street-view image. Before the district court, Cook attached the June 2022 image of the home. But the two pictures show the same clearing. So we display the 2019 image simply because it's closer in time to the September 2020 controlled deals.

What's more, police reports establish that an officer was, in fact, positioned on the golf course behind Cook's home during one of the controlled buys. That further dispels any notion of falsity in the affidavit, showing why an evidentiary hearing wasn't warranted.

Cook disagrees on both factual and legal grounds. On the facts, he notes that the reports don't say that an officer was on the golf course during the *other* controlled buy. But that ignores that the reports say an officer was on the golf course for one controlled buy. And as to the other buy, the reports simply don't detail where all the officers were located. That lack of extra detail doesn't indicate deception, and it's consistent with one officer watching from the golf course.

On the law, Cook claims that we can't consider the police reports. After all, he says, courts can't go outside the affidavit when determining whether it provides probable cause to issue a warrant. But we aren't assessing probable cause when considering the first requirement for getting a *Franks* hearing. Rather, we're evaluating whether a defendant has made a substantial preliminary showing of an intentional or reckless falsehood in the warrant affidavit. And that inquiry necessarily involves evidence outside the affidavit. Indeed, defendants can make this showing only by giving "an offer of proof." *Franks*, 438 U.S. at 171. Cook implicitly recognizes this much, as most of the evidence he relies on wasn't part of the affidavit.

So Cook's real argument is that defendants can point to materials outside the affidavit but the government can't. That's incorrect. As noted, *Franks* requires defendants to overcome a high threshold before courts may grant them an evidentiary hearing. *Id.* Why? To prevent needless second-guessing of warrant affidavits. *Id.* at 166–67, 171. In other words, that high threshold screens out insubstantial charges of misrepresentations. Cook's proposed rule would undercut that goal. If courts must blind themselves to reliable evidence, including police reports, in assessing whether an evidentiary hearing is appropriate, then courts will be more likely to grant evidentiary hearings for baseless claims. The result? A waste of judicial and prosecutorial resources, and police officers pulled off the job to testify in court. *Cf. Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982) (emphasizing the "substantial cost[]" of taking officials away "from their governmental duties"). So judges should have the whole picture before them in order to see whether an evidentiary hearing is appropriate.

The Seventh Circuit's decision in *United States v. McMurtrey* isn't to the contrary. 704 F.3d 502 (7th Cir. 2013). There, in response to a request for a *Franks* hearing, the government asked the district court to allow "new" testimony from the officer "to explain the [alleged] discrepancies and contradictions." *Id.* at 509–10. The district court agreed, but it didn't allow the defendant to cross-examine the officer on that point. *Id.* at 507–08. Then, based on that new testimony, the district court concluded the defendant didn't meet his burden for a *Franks* hearing. *Id.* The Seventh Circuit held that this procedure was wrong. *Id.* at 505. Here, in contrast, the evidence wasn't new, nor was it live testimony without cross-examination. Instead, it was a series of police reports filed after the controlled drug deals and years before Cook asked for a *Franks* hearing. *See United States v. Fuller*, No. 17-2282, 2019 WL 1822801, at *3 (6th Cir. Jan. 3, 2019) (order) (distinguishing *McMurtrey* on similar grounds). So even assuming the Seventh Circuit was correct in *McMurtrey*, that doesn't change the result here. It's appropriate to consider the government's proffered evidence. And that evidence confirms why Cook's first asserted falsehood fails.

Cook's second claimed falsehood fares no better. He contends it's false that an officer showed a picture of Cook to the informant who then identified Cook as "JR." To support this theory, he points to two handwritten notes by the confidential informant detailing the controlled drug deals with Cook. Because these two notes refer to Cook by his nickname ("JR") and not his last name ("Cook"), they supposedly show that the informant didn't identify Cook. But the affidavit never says the informant identified Cook by his last name. It simply states that when an officer showed the informant a picture of Cook, the informant confirmed that was "JR." There's not even a hint of falsehood here. So Cook failed to make a substantial preliminary showing that the affidavit contained either asserted falsehood.

But suppose Cook overcame the threshold. And suppose he demonstrated that the challenged statements were false, meaning that we'd need to excise them from the affidavit and then reassess probable cause. Even if we did so, there would remain a strong argument that probable cause existed. The informant told officers that "JR" sells drugs from his home on Gay Street and that he keeps his black Porsche Cayenne parked in the driveway. Officers then drove by the home and saw the black Porsche sitting in the driveway, corroborating the tip. Moreover,

officers identified "JR" as Cook with the help of local police and discovered his extensive criminal history involving guns and drugs. Plus, officers witnessed two controlled drug deals with the informant outside Cook's house. In the ordinary case, that's enough for probable cause. *See United States v. Sanders*, 106 F.4th 455, 463 (6th Cir. 2024) (en banc); *United States v. Jones*, 159 F.3d 969, 974–75 (6th Cir. 1998). But the parties don't focus on this issue on appeal, and Cook hasn't made a preliminary showing of falsity in the first place. So we needn't, and don't, resolve this case by excising hypothetical falsehoods.

2.

Cook also brings an ineffective-assistance-of-counsel claim for his prior lawyers' failure to bring a motion to suppress asserting his two *Franks* arguments. To establish a claim, Cook must show (1) his counsel performed deficiently, and (2) this prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). But we generally don't resolve those claims on direct appeal unless the record clearly shows trial counsel was ineffective. *United States v. Burrell*, 114 F.4th 537, 548 (6th Cir. 2024). In other words, we need an adequately developed record before we can decide ineffective-assistance claims on direct appeal. *United States v. Zheng*, 27 F.4th 1239, 1243 (6th Cir. 2022).

Here, the record doesn't plainly show ineffective lawyering. Indeed, we don't know why Cook's former attorneys chose not to bring the relevant *Franks* motion. *See id.* So we decline to resolve Cook's ineffective-assistance claim now.

B.

Cook also challenges his below-Guidelines sentence as procedurally and substantively unreasonable. These arguments fail too.

Begin with the Guidelines calculation. Cook first claims the district court improperly declined to apply a two-point reduction for acceptance of responsibility. *See* U.S.S.G. § 3E1.1(a). We review such decisions for clear error, giving "great deference" to the district court's factual determination. *United States v. Merritt*, 102 F.4th 375, 381 (6th Cir. 2024).

Courts decrease the offense level by two if "the defendant clearly demonstrates acceptance of responsibility for his offense." U.S.S.G. § 3E1.1(a). Cook claims that the district court should've done so because he pled guilty and submitted a written statement accepting responsibility. Although that's "significant evidence" of acceptance of responsibility, it can be "outweighed" by "inconsistent" conduct. *United States v. Jett*, 154 F.4th 459, 464, 468 (6th Cir. 2025) (quotations omitted).

The district court found such conduct here. While incarcerated, Cook ran a complex drug trafficking operation for one to three years. Cook had his mother and sister send drug-soaked mail falsely marked as legal documents to the detention facility, which were then distributed to fellow inmates. Cook was even caught smuggling drugs on the very day he entered his guilty plea. So the district court found that Cook didn't truly accept responsibility for his drug-trafficking offenses.

That's not an error, let alone a clear one. "We have repeatedly upheld decisions denying the acceptance-of-responsibility reduction to defendants who engaged in conduct similar to the offense of conviction while awaiting the entry of a plea or sentencing." *Id.* at 465. We do so again today.

Next, Cook argues that the district court should've exercised its discretion not to apply the career-offender enhancement. *See* U.S.S.G. § 4B1.1. Yet Cook doesn't contest that the enhancement's elements are met. His actual complaint is that following the Guidelines range under this enhancement would result in a sentence that's "too long." *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). But that's a substantive reasonableness challenge, which we address below. *Id.* Because Cook is a career offender, pled guilty to possessing a firearm in furtherance of a drug trafficking crime under 18 U.S.C. § 924(c), and didn't receive an acceptance-of-responsibility reduction, the district court correctly determined that Cook's Guidelines range is 360 months' imprisonment to life imprisonment.[3] *See* U.S.S.G. § 4B1.1(c). So his sentence isn't procedurally unreasonable.

[3]Cook also argues that the PSR made additional errors in calculating the Guidelines range. But we needn't consider these challenges because they wouldn't affect the Guidelines range.

The district court ultimately imposed a sentence of 248 months' imprisonment—over nine years below the bottom of the Guidelines range. Cook also contends this sentence is substantively unreasonable.

We review a sentence's substantive reasonableness for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). As noted, a substantive reasonableness challenge attacks the length of the sentence based on an improper weighing of the 18 U.S.C. § 3553(a) factors. *Rayyan*, 885 F.3d at 442. Our review of the district court's determination is "highly deferential," so the defendant shoulders a heavy burden. *Id.* That burden gets heavier when the court imposes a within-Guidelines sentence, which we presume to be substantively reasonable. *United States v. Greco*, 734 F.3d 441, 450 (6th Cir. 2013). And the defendant's burden to show substantive unreasonableness grows heavier still when his sentence falls below the Guidelines range, as it did here. *Id.*

That ultimate burden proves far too heavy for Cook. Cook points to his rough childhood, PTSD, and struggles with addiction. But the district court considered each of those facts. Cook also asserts that his current and past convictions primarily concern drugs, not violence. But the court recognized that Cook had no crimes of violence that would qualify for the career-offender enhancement, while also recognizing that Cook did "have a history of some violence." R. 134, Pg. ID 1245–46. Finally, Cook relies on sentencing disparities. Yet again, the court considered this information, even choosing to tether Cook's sentence to the average length of imprisonment for similar offenders.

Besides, the court had good reasons not to give an even lower sentence than it did. For example, the court considered Cook's lengthy criminal history. 18 U.S.C. § 3553(a)(1). It also noted that Cook fled from police officers after promising to help them, which showed disrespect for the law. *Id.* § 3553(a)(2)(A). Plus, the court saw a need to protect the public from Cook, as Cook was surrounded by guns and drugs and even engaged in some violent conduct. *Id.* § 3553(a)(2)(C). Moreover, the court noticed that Cook's shorter sentences for past convictions hadn't deterred him from crime, so it imposed a greater sentence to more effectively deter future crime. *Id.* § 3553(a)(2)(B). And the court recognized that Cook possessed and dealt fentanyl around his minor children as it considered the seriousness of his offense and the need for

punishment. *Id.* § 3553(a)(1), (a)(2)(A). In short, there's no sign that the court improperly weighed the § 3553(a) factors. So Cook's sentence isn't substantively unreasonable, either.

* * *

We affirm.

CONCURRENCE

KAREN NELSON MOORE, Circuit Judge, concurring in part and concurring in the judgment. I join Part II.A.2 and Part II.B. However, I would not reach the issues discussed in Part II.A.1, and therefore I concur only in the judgment.

A defendant is entitled to a *Franks* hearing to challenge the veracity of a search warrant affidavit if he (1) "makes a substantial preliminary showing" that a false statement was knowingly or recklessly included in the affidavit, and (2) shows that "the allegedly false statement [was] necessary to the finding of probable cause." *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978). Thus, where "there remains sufficient content in the warrant affidavit to support a finding of probable cause" after the allegedly false statements are excluded, *id*. at 172, it is unnecessary to resolve whether the appellant made a substantial preliminary show as to falsity.

Here, even after the challenged statements are excised from the warrant affidavit, the affidavit provides that (1) a confidential informant told law enforcement that he purchased illegal drugs from a man "who goes by 'JR' . . . from 'JR's' home at [2xxxx] Gay Street in the City of Euclid" by "contact[ing] 'JR'" at a phone number ending in 7711, R. 71-1 (Warrant Aff. ¶¶ 1–2) (Page ID #381); (2) the informant also told officers that "JR" was a "shorter, stocky black male" in his "late 20's/early 30's" who "always keeps the blinds and[]shades down at his house" and "drives a black Porsche Cayenne sport utility vehicle" that is "usually parked in the driveway of his [Gay Street] home," *id*. ¶ 2 (Page ID #381); (3) officers were able to identify "JR" as Gerald Cook with the assistance of the Euclid Police Department, and learned that Cook had "an extensive criminal history . . . includ[ing] multiple drug trafficking arrests/convictions," involvement in several "incidents [related to] the sale and/or possession of illegal drugs" in Euclid and the surrounding area, and outstanding warrants for "weapons related offenses," *id*. ¶¶ 3, 6 (Page ID #381–82); (4) officers conducted surveillance at the Gay Street residence and observed a black Porsche Cayenne parked in the driveway, *id*. ¶ 7 (Page ID #382); (5) officers learned that the car was registered to "[2zzzz] Lindbergh Avenue in the City of Euclid," and that

Gerald Cook had used this Lindbergh Avenue address in "his most recent court proceedings with the Cuyahoga County Common Pleas Court," *id*.; (6) soon after, law-enforcement officers conducted two controlled purchases of illegal drugs in the driveway of the Gay Street residence by providing the confidential informant with $200 in "recorded" cash, having him arrange an illegal drug transaction with "JR" by texting the 7711 cell number, affixing the informant with an audio-recording device, and "surveill[ing]" him while he traveled to the Gay Street residence and exchanged the $200 of controlled-buy money for 2 grams of suspected heroin in the driveway of the home, *id*. ¶¶ 8, 10.

Under our precedents, this is sufficient to establish probable cause. *See*, *e.g.*, *United States v. Jones*, 159 F.3d 969, 974–75 (6th Cir. 1998) (concluding that an affidavit supported probable cause to search a residence when a confidential informant made prior purchases from the defendant "in the driveway" of the residence, participated in two controlled buys on the "premises of [the defendant's] residence while being monitored by audio surveillance," and "in the 72 hours preceding the affidavit," observed the defendant in possession of drugs "for the purpose of unlawful distribution"); *United States v. White*, 874 F.3d 490, 501 (6th Cir. 2017) (collecting cases holding that "an informant's observation of drug trafficking outside of the dealer's home can provide probable cause to search" that home). Accordingly, it is unnecessary to resolve whether Cook made a substantial preliminary showing as to falsity; it is also unnecessary to consider whether the district court erred by relying on the proffered police reports in concluding that Cook had not made the requisite showing.

For these reasons, I concur in the judgment.