MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Brian J. Johnson
Brian Johnson Law
Danville, Indiana

Tara L. Cragen
The Nice Law Firm, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tyler Banks
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Mindy Stephens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 26, 2023

Court of Appeals Case No. 22A-CR-2051

Appeal from the Hendricks Circuit Court

The Honorable Daniel F. Zielinski, Judge

Trial Court Cause No. 32C01-2105-F6-433

Memorandum Decision by Judge Kenworthy
Judge Crone concurs.
Senior Judge Robb concurs in result without opinion.

Kenworthy, Judge.

Case Summary

[1] Mindy Stephens appeals the denial of her motion to suppress. Stephens was involved in a one-car accident, and an officer obtained a warrant for a sample of her blood. The State then charged Stephens with several offenses, most notably Class A misdemeanor operating a vehicle while intoxicated in a manner endangering a person.[1]

[2] In this interlocutory appeal, Stephens argues: (1) the State failed to present probable cause for the search warrant; and (2) the officer who prepared the probable cause affidavit intentionally or recklessly omitted material facts, rendering the warrant invalid. We affirm.[2]

Facts and Procedural History

[3] On the afternoon of May 3, 2021, Officer Jennifer Brahaum of the Avon Police Department and other officers arrived at an address in Avon to investigate a report of a vehicle accident with injury. A red Kia Optima had landed on its roof on the side of a road after striking a utility pole.

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[1] Ind. Code § 9-30-5-2(a) & (b) (2001).

[2] We held oral argument on June 6, 2023, at the State House in Indianapolis. We thank the parties for their presentations.

[4] The car's driver and sole occupant, Stephens, was in an ambulance. Officer Brahaum questioned Stephens, who denied consuming any alcohol or drugs before the accident. But Stephens would not look at Officer Brahaum as she answered questions. In addition, Stephens' speech was slurred. She could not remember what her destination had been before the crash, or details about the crash. Stephens told Officer Brahaum she had not slept for two days. Finally, Stephens did not show any visible signs of a head injury, and she denied hitting her head during the crash, claiming her head did not hurt.

[5] Officer Brahaum left the ambulance and conferred with other officers. Their conversation was recorded by an officer's body camera. Officer Brahaum explained Stephens denied drug or alcohol use, but she had slurred speech and said she had not slept for two days. Officer Brahaum also mentioned Stephens denied hitting her head or having head pain. Officer Brahaum further stated she did not look in Stephens' purse because she did not think she had grounds for a warrantless search. She also said at one point, "I don't know if we have enough" to continue investigating. *Defendant's Ex. C* at 11:06. An officer expressed doubt further investigation would "hold up in court." *Id.* at 12:25. But another officer stated a magistrate had never rejected his warrant requests in investigations for operating while intoxicated, as long as "you have something." *Id.* at 13:00. The officers ended the conversation when the ambulance left for the hospital and the officers needed to reopen the road to traffic.

[6] Officer Brahaum decided to request a warrant for a sample of Stephens' blood. She filled out an affidavit ("the blood draw affidavit"), in which she stated she had reason to believe Stephens' blood contained "evidence of the crime of operating a vehicle while intoxicated." *Tr. Vol. 3* at 3. Officer Brahaum further stated she was investigating a motor vehicle crash, and Stephens admitted to being the driver. Next, the officer explained she believed Stephens was intoxicated because Stephens: (1) had slurred speech; (2) "could not recall which direction she was going, how the crash occurred"; and (3) "would not look at me when I asked about any alcohol or drug consumption prior to the crash." *Id.* at 4. Officer Brahaum further asserted Stephens could not consent to the blood draw because she was undergoing medical treatment at a hospital.

[7] The trial court issued a warrant for a blood draw. The return on the warrant shows hospital staff took a blood sample from Stephens, but the test results are not included in the record.

[8] Officer Brahaum issued a ticket and summons to Stephens for three offenses: (1) Class A misdemeanor operating a vehicle while intoxicated in a manner endangering a person; (2) operating a motor vehicle without proof of financial responsibility, a Class A infraction;[3] and (3) operating a motor vehicle in violation of a restricted license, a Class C infraction.[4] Next, the State charged

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[3] I.C. § 9-25-8-2(a) (2021).

[4] I.C. § 9-24-11-8 (2020). Although the ticket lists Indiana Code Section 9-24-11-7 (2016) as the governing statute, that statute merely sets forth the circumstances under which the Bureau of Motor Vehicles may

Stephens with Level 6 felony possession of methamphetamine;[5] Class C misdemeanor possession of a substance represented to be a controlled substance;[6] and Class A misdemeanor operating a vehicle while intoxicated in a manner endangering a person.[7]

[9] Officer Brahaum signed a probable cause affidavit ("the charging affidavit") supporting the charges. In the charging affidavit, she stated she considered Stephens' failure to look her in the eyes during questioning to be a sign of deception, based on her training and experience. Later, the State requested and received the court's permission to amend the charging information to add a habitual vehicular substance offender sentencing enhancement.[8]

[10] Stephens moved to suppress the results of the blood draw. The trial court presided over an evidentiary hearing, at which Officer Brahaum was the only witness. Following the hearing, the trial court denied Stephens' motion to suppress, determining:

> Given the totality of the circumstances, that being: 1) a motor vehicle crash; 2) during daylight hours; 3) where the driver had slurred speech; 4) where the driver was unable to recall the

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impose restrictions on a driver's license. Indiana Code Section 9-24-11-8 specifies the act of driving in violation of license restrictions is a Class C infraction.

[5] I.C. § 35-48-4-6.1(a) (2014).

[6] I.C. § 35-48-4-4.6(c) (2019).

[7] We exclude allegations related to the drug possession charges from this decision because those charges are not at issue in this appeal.

[8] Ind. Code § 9-30-15.5-2 (2015).

> direction she was going; 5) where the driver was unable to recall how the crash occurred; would leave a reasonable person to have probable cause to believe that the driver may have been intoxicated, which would warrant a blood draw.

Appellant's App. Vol. 2 at 70.

[11] Stephens requested and received permission to pursue this interlocutory appeal.

Discussion and Decision

A. Probable Cause for Blood Draw

[12] Stephens argues Officer Brahaum's blood draw affidavit failed to establish probable cause for the warrant. The Fourth Amendment provides, in relevant part, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The text of Article 1, Section 11 of the Indiana Constitution contains language nearly identical to the Fourth Amendment. The General Assembly has codified these principles in Indiana Code Section 35-33-5-2 (2014), as follows in relevant part:

> (a) Except as provided in section 8 of this chapter, and subject to the requirements of section 11 of this chapter, if applicable,[9] no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:
>
> 1) particularly describing:

[9] Sections 8 and 11 are inapplicable to this case.

> (A) the house or place to be searched and the things to be searched for; or
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> (B) particularly describing the person to be arrested;
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> (2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:
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> (A) the things sought are concealed there; or
>
> (B) the person to be arrested committed the offense; and
>
> (3) setting forth the facts known to the affiant through personal knowledge or based on hearsay, constituting the probable cause.

[13] In deciding whether to issue a search warrant, "[t]he task of the issuing magistrate is simply to make a practical, common[-]sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Query v. State*, 745 N.E.2d 769, 771 (Ind. 2001) (*quoting* Illinois v. Gates, 462 U.S. 213, 238 (1983)).

[14] In general, we "review a trial court's denial of a motion to suppress in a manner similar to review of other sufficiency issues." *Sanders v. State*, 989 N.E.2d 332, 334 (Ind. 2013). That is, we must determine whether there is "substantial evidence of probative value in the record to support the ruling of the trial court." *Id.* But "to the extent a motion to suppress raises constitutional issues, we review the trial court's decision de novo." *Bunnell v. State*, 172 N.E.3d 1231, 1234 (Ind. 2021).

[15] We are reviewing the trial court's decision on a motion to suppress evidence seized pursuant to a search warrant. In these circumstances, "we apply a deferential standard of review to the magistrate's probable cause finding, affirming if the magistrate had a 'substantial basis'" for issuing the search warrant. *Heuring v. State*, 140 N.E.3d 270, 273 (Ind. 2020) (*quoting McGrath v. State*, 95 N.E.3d 522, 527 (Ind. 2018)). A substantial basis inquiry "requires the reviewing court, with significant deference to the magistrate's determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the determination of probable cause." *State v. Spillers*, 847 N.E.2d 949, 953 (Ind. 2006). We consider only the evidence presented to the issuing magistrate and not later justifications for the search. *Jaggers v. State*, 687 N.E.2d 180, 182 (Ind. 1997).

[16] Here, Officer Brahaum averred a blood draw would reveal evidence Stephens was intoxicated at the time of the accident. The General Assembly defines intoxicated, in relevant part, as "under the influence of . . . alcohol [or] a controlled substance . . . so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." I.C. § 9-13-2-86 (2013). As a result, we are asked to decide whether the magistrate had a substantial basis to conclude evidence of intoxication would be found in Stephens' blood sample. *See, e.g., Combs v. State*, 895 N.E.2d 1252, 1255–56 (Ind. Ct. App. 2008) (concluding the evidence set forth in the probable cause affidavit "reflected a fair probability that evidence of intoxication would be found in [the defendant's] blood sample"), *trans. denied*.

[17] Stephens argues Officer Brahaum's blood draw affidavit was inadequate because the officer failed to show a "nexus, [or] a causal link" between Stephens' slurred speech and intoxication, suggesting her slurred speech could have been caused by the accident. *Appellant's Br.* at 14. Stephens further argues Officer Brahaum failed to describe her training and experience, which would have allowed the magistrate to rely on the officer's identification of intoxication as the cause of Stephens' slurred speech. None of the cases Stephens cites in support of these arguments discuss blood draws.

[18] In any event, probable cause means a probability of criminal activity, not a prima facie showing. *Seltzer v. State*, 489 N.E.2d 939, 941 (Ind. 1986). Stephens does not deny she was driving on the afternoon at issue and became involved in a one-car accident. Further, Officer Brahaum stated in the blood draw affidavit she believed Stephens was intoxicated based on the following observations: (1) slurred speech; (2) "could not recall which direction she was going, how the crash occurred"; and (3) "would not look at me when I asked about any alcohol or drug consumption prior to the crash." *Tr. Vol. 3* at 4. We conclude this evidence and the reasonable inferences drawn from the evidence provided the magistrate with a substantial basis to conclude evidence of intoxication would be found in Stephens' blood. *See, e.g.*, *Copas v. State*, 891 N.E.2d 663, 667 (Ind. Ct. App. 2008) (affirming issuance of warrant for blood draw where the supporting affidavit alleged the defendant: (1) was in an auto accident; (2) could not consent; and (3) was found on the ground next to her vehicle, which

smelled of the odor of alcohol and contained alcoholic beverage containers), *trans. denied*.

B. Reverse-Franks Claim

[19] Stephens next argues evidence from the blood draw must be suppressed because Officer Brahaum intentionally omitted material facts from the blood draw affidavit. She further claims the omitted facts, if they had been included in the affidavit, would have shown a lack of probable cause to sample her blood for evidence of intoxicants.

[20] Stephens frames her claim of error as a violation of the good-faith exception to the exclusionary rule. In general, a search warrant issued without probable cause is invalid, and evidence obtained from a search executed pursuant to the warrant must be suppressed. *See Heuring*, 140 N.E.3d at 274 (stating the exclusionary rule bars evidence obtained under an invalid search warrant). But evidence obtained under a defective search warrant need not be suppressed "if the police relied on the warrant in objective good faith." *Spillers*, 847 N.E.2d at 957. The good-faith exception to the exclusionary rule applies to searches and seizures under both the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution. *Hopkins v. State*, 582 N.E.2d 345, 351 (Ind. 1991). The General Assembly has codified the exception at Indiana Code section 35-37-4-5 (1983).

[21] The good-faith exception to the exclusionary rule does not apply "where (1) the magistrate is 'misled by information in an affidavit that the affiant knew was

false or would have known was false except for his reckless disregard for the truth'; or (2) the warrant was based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Jaggers*, 687 N.E.2d at 184 (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)).

[22] Stephens ties her discussion of the good-faith exception to a similar, but distinct, legal doctrine: affiants are prohibited from intentionally or recklessly including false information in probable cause affidavits, and also from intentionally or recklessly omitting material information from probable cause affidavits. In *Franks v. Delaware*, 438 U.S. 154, 171 (1978), the United States Supreme Court noted, "[t]here is, of course, a presumption of validity with respect to the affidavit supporting the search warrant." Even so, the Court stated a defendant may request a hearing to challenge the warrant if 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[.]" *Id.* at 155–56. If the defendant proves the allegation by a preponderance of the evidence, the search warrant must be voided where, "with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause[.]" *Id.* at 156.

[23] *Franks* focused on falsehoods and reckless misstatements in probable cause affidavits, but a defendant may also claim a warrant is invalid if an affiant omits from an affidavit "information essential to a finding of probable cause[.]"

Keeylen v. State, 14 N.E.3d 865, 872 (Ind. Ct. App. 2014), *clarified on reh'g*, 21 N.E.3d 840 (2014), *trans. denied*. This type of claim, which Stephens raises here, is sometimes known as a "reverse-*Franks*" claim. *Id.* The omission of information may invalidate a search warrant if the defendant shows: (1) "the police omitted facts with the intent to make, or in reckless disregard of whether they thereby made, the affidavit misleading," and (2) "the affidavit if supplemented by the omitted information would not have been sufficient to support a finding of probable cause." *Ware v. State*, 859 N.E.2d 708, 718 (Ind. Ct. App. 2007) (quoting *United States v. Lakoskey*, 462 F.3d 965, 978 (8th Cir. 2006)), *trans. denied*. In seeking a search warrant, the affiant is obligated to include material facts, "which are those facts that 'cast doubt on the existence of probable cause.'" *Ware*, 859 N.E.2d at 718 (quoting *Query*, 745 N.E.2d at 772). A defendant bears the burden of proving an affiant's intent to mislead and does not meet the burden of proof "simply by showing the omission itself." *State v. Allen*, 187 N.E.3d 221, 230 (Ind. Ct. App. 2022), *trans denied*.

[24] Stephens claims Officer Brahaum intentionally omitted three circumstances from the blood draw affidavit: (1) Stephens denied consuming drugs or alcohol; (2) Stephens said she had not slept for two days before the crash; and (3) Officer Brahaum did not describe the severity of the crash. Stephens argues these omissions rendered the warrant misleading on several grounds, including an implication that Stephens essentially admitted to consuming alcohol or drugs when she refused to look at the officer during questioning. Stephens further

argues the officers' discussion at the accident scene proves Officer Brahaum knew she did not have probable cause.

[25] During the evidentiary hearing, Officer Brahaum denied intentionally omitting Stephens' denial of consuming alcohol or drugs. She acknowledged officers "common[ly]" include a suspect's denial of consuming intoxicants in a probable cause affidavit, *Tr. Vol. 2* at 20, but she claimed the omission here was not a "conscious decision," *id.* at 15. She also stated she had never included a suspect's alleged sleeplessness in a probable cause affidavit. And as to the third omission, although Officer Brahaum did not describe the extent of the crash, she also omitted Stephens' denial of hitting her head during the accident or having any head pain. Finally, Officer Brahaum's discussion with her fellow officers generated several opinions as to whether she should continue with her investigation, but none of the officers discussed withholding evidence from the magistrate. Based on these facts and circumstances, the trial court did not err in rejecting Stephens' claim Officer Brahaum intentionally omitted material information from the blood draw affidavit. *See Rotz v. State*, 894 N.E.2d 989, 992 (Ind. Ct. App. 2008) (determining officer did not intentionally or recklessly exclude the date of a drug shipment from the probable cause affidavit; the officer testified the omission was an oversight and a departure from his standard practice), *trans. denied*.

[26] We need not address the second element of the reverse-*Franks* standard because Stephens failed to show entitlement to relief under the first element. *See, e.g., Allen*, 187 N.E.3d at 230 n.3 (noting the defendant's failure to show "intent to

deceive was fatal to her claim"). In any case, we turn to whether Stephens' denial of consuming alcohol or drugs, if it had been included in the blood draw affidavit, would have rendered the search warrant invalid due to a lack of probable cause.

[27] We find guidance in *Ware*, 859 N.E.2d at 714. In that case, an officer obtained a search warrant for the defendant's property. In the probable cause affidavit, the officer stated an eyewitness had spoken with a male at the scene of the offenses. The officer failed to mention the eyewitness later looked at a photographic array and identified someone other than the defendant as the person she had met. In challenging the search warrant, the defendant argued the officer's omission was intentional and material, because the omitted fact would have suggested someone other than the defendant had committed the offenses. The Court disagreed, noting the officer explained at the suppression hearing he and his colleagues had investigated the person misidentified by the eyewitness and excluded him as a suspect. Further, a second eyewitness to the offenses had stated the person misidentified by the first eyewitness was not the person he had observed. The Court determined if the officer had included in the affidavit the eyewitness's mistaken identification from the photographic array, the officer would have also described the investigation the officers performed to exclude the misidentified person as a suspect, as well as other evidence. Under those circumstances, the Court concluded the excluded information would not have shown a lack of probable cause.

[28] In Stephens' case, if Officer Brahaum's affidavit had included Stephens' denial of consuming intoxicants, it is reasonable to assume the affidavit would have also mentioned Stephens' inability to look Officer Brahaum in the eye during questioning was a sign of deception, based on the officer's training and experience, as noted in the probable cause affidavit. Thus, under the totality of the circumstances, presenting Stephens' denial to the magistrate in the probable cause affidavit would not have shown a lack of probable cause.

[29] As for whether Officer Brahaum should have informed the magistrate about the severity of the accident and Stephens' claim she had not slept for two days before the crash, we cannot conclude presenting these matters to the magistrate would have shown a lack probable cause, in context with the other facts and circumstances set forth in the blood draw affidavit. These two factors invite speculation as to alternative causes for the accident and Stephens' behavior during questioning, but the magistrate would not have been required to credit Stephens' assertion about a lack of sleep. Further, Stephens did not present any evidence during the suppression hearing describing the extent of her injuries, which would have shown whether the severity of the accident was relevant to the magistrate's probable cause determination.

[30] To prevail on a reverse-*Franks* claim, the defendant must demonstrate: (1) an affiant's intentional or reckless omission of material facts from a probable cause affidavit; and (2) the affidavit, if supplemented by the omitted information, would not have been sufficient to support a finding of probable cause. Stephens

has not met her burden of proof on either point, and she is not entitled to relief in her challenge to the search warrant.

Conclusion

[31] For the reasons stated above, we affirm the trial court's denial of Stephens' motion to suppress evidence obtained through the blood draw.

[32] Affirmed.

Crone, J., concurs.

Robb, Sr. J., concurs in result without opinion.