

# The Burger Court Opinion Writing Database

## *Franks v. Delaware*

438 U.S. 154 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543


CHAMBERS OF  
THE CHIEF JUSTICE

June 19, 1978

Re: 77-5176 - Franks v. Delaware

Dear Bill:

I join your dissent.

Regards,  


Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 7, 1978

RE: No. 77-5176 Franks v. Delaware

Dear Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

June 8, 1978

Re: No. 77-5176, Franks v. Delaware

Dear Harry,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 12, 1978

Re: 77-5176 - Franks v. Delaware

Dear Harry,

I agree.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 7, 1978

Re: No. 77-5176 - Franks v. Delaware

Dear Harry:

Please join me.

Sincerely,

*TM.*  
T.M.

Mr. Justice Blackmun

cc: The Conference

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No. 77-5176 - Franks v. Delaware

From: Mr. Justice Blackmun

Circulated: JUN 7 1978

Recirculated: \_\_\_\_\_

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an important and longstanding issue of Fourth Amendment law. Does a defendant in a criminal proceeding ever have the right, under the Fourth and Fourteenth Amendments, subsequent to the ex parte issuance of a search warrant, to challenge the truthfulness of factual statements made in an affidavit supporting the warrant?

In the present case the Supreme Court of Delaware held, as a matter of first impression for it, that a defendant under no circumstance

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 7, 1978

MEMORANDUM TO THE CONFERENCE:

Re: No. 77-5176 - Franks v. Delaware

I propose a few changes on pages 2, 21 and 32 of the typed draft circulated this morning. New pages are enclosed and should replace the earlier ones.

*HAB.*  
—



No. 77-5176

- 2 -

may so challenge the veracity of a sworn statement used by police to procure a search warrant. We reverse, and we hold that, where 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, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: JUN 12 1978

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-5176

Jerome Franks, Petitioner, v. State of Delaware.	}	On Writ of Certiorari to the Supreme Court of Delaware.
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[June —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an important and longstanding issue of Fourth Amendment law. Does a defendant in a criminal proceeding ever have the right, under the Fourth and Fourteenth Amendments, subsequent to the *ex parte* issuance of a search warrant, to challenge the truthfulness of factual statements made in an affidavit supporting the warrant?

In the present case the Supreme Court of Delaware held, as a matter of first impression for it, that a defendant under *no* circumstances may so challenge the veracity of a sworn statement used by police to procure a search warrant. We reverse, and we hold that, where 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, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 22, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 77-5176 - Franks v. Delaware

Two cases are being held for Franks:

1. No. 77-306 - Hall v. Illinois. Petitioner Hall challenges the Illinois practice of signing search warrant affidavits with a fictitious name and challenges the conclusion of the Illinois Court of Appeals that sufficient probable cause was shown on the face of the affidavit.

An unknown affiant signing his name as "John Doe" signed and swore an affidavit for a search warrant before an Illinois circuit court judge, alleging that he had been inside an apartment at 729 West Wood Street in Decatur, Illinois, on two different occasions within the preceding seven days; that on each occasion he observed a substance that he believed to be marijuana; and that "David Weller, occupant of said premises" had stated to him that the substance was in fact marijuana. (Petition 5.) A warrant for search of 729 West Wood Street and the person of David Weller was issued. The police conducted the search pursuant to the warrant and seized marijuana and capsules of a controlled substance, ethchlorvynol. Petitioner William D. Hall, occupant of the apartment who was home at the time, was arrested. He made a timely but unsuccessful motion for disclosure of the name of the affiant, asking in the alternative for dismissal of the complaint. He also moved for suppression of the warrant on the ground that the affidavit did not establish probable cause, that the search exceeded the scope of the warrant, that the affidavit had falsely stated that a David Weller resided at petitioner's apartment, and that the warrant was defective because the affidavit was based on a fictitious name for the affiant in violation of Fourth and Fourteenth Amendment rights.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 8, 1978

No. 77-5176 Franks v. Delaware

Dear Harry:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 9, 1978

Re: No. 77-5176 - Franks v. Delaware

Dear Harry:

As I told you on the telephone yesterday, the Chief has asked me to try a dissent in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

TO: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Stevens

No. 77-5176 - Franks v. Delaware

From: Mr. Justice Rehnquist

Circulated: JUN 9 1978

MR. JUSTICE REHNQUIST, dissenting.

Recirculated: \_\_\_\_\_

The Court's opinion in this case carefully identifies the factors which militate against the result which it reaches, and emphasizes their weight in attempting to limit the circumstances under which an affidavit supporting a search warrant may be impeached. I am not ultimately persuaded, however, that the Court is correct as a matter of constitutional law that the impeachment of such an affidavit must be permitted under the circumstances described by the Court, and I am thoroughly persuaded that the barriers which the Court believes that it is erecting against misuse of the impeachment process are frail indeed.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated:                     

1st PRINTED DRAFT

Recirculated:                     

# SUPREME COURT OF THE UNITED STATES

No. 77-5176

Jerome Franks, Petitioner, v. State of Delaware.	}	On Writ of Certiorari to the Supreme Court of Delaware.
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[June —, 1978]

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion in this case carefully identifies the factors which militate against the result which it reaches, and emphasizes their weight in attempting to limit the circumstances under which an affidavit supporting a search warrant may be impeached. I am not ultimately persuaded, however, that the Court is correct as a matter of constitutional law that the impeachment of such an affidavit must be permitted under the circumstances described by the Court, and I am thoroughly persuaded that the barriers which the Court believes that it is erecting against misuse of the impeachment process are frail indeed.

## I

The Court's reliance on *Johnson v. United States*, 333 U. S. 10, 13-14 (1948), for the proposition that a determination by a neutral magistrate is a prerequisite to the sufficiency of an application for a warrant is obviously correct. In that case the Court said:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

Personal

June 8, 1978

Re: 77-5176 - Franks v. Delaware

Dear Harry:

Purely as a suggestion, I wonder if the word "integrity" might be substituted for "good faith" at the end of page 32 of the typed draft.

I think your opinion is excellent.

Respectfully,



Mr. Justice Blackmun



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 8, 1978

Re: 77-5176 - Franks v. Delaware

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference