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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1250-19
A-2436-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DIAAB SIDDIQ, a/k/a
MARSHALL DAVIS, MIKELL
DAVIS, DIABB SIDDIQ, and
KERRY SPROUSE,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMAL HALL,

Defendant-Appellant.

Argued (A-1250-19) and Submitted (A-2436-19)
March 7, 2022 – Decided May 5, 2022

Before Judges Messano and Accurso.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment Nos. 16-11-2641 and 19-04-0991.

Robin Kay Lord argued the cause for appellant Diaab Siddiq in A-1250-19.

Gamburg & Benedetto, LLC, attorneys for appellant Jamal Hall in A-2436-19 (Robert M. Gamburg, on the briefs).

Adam D. Klein, Deputy Attorney General, argued the cause for respondent in 1250-19 (Matthew J. Platkin, Acting Attorney General, attorney; Adam D. Klein, of counsel and on the brief).

Cary Shill, Acting Atlantic County Prosecutor, attorney for respondent in A-2436-19 (Nicole Lynn Campellone, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

We consolidated these appeals, calendared back-to-back, to issue a single opinion. Originally co-defendants in a thirty-four-count indictment alleging a vast narcotics distribution conspiracy, Diaab Siddiq and Jamal Hall separately moved to suppress certain evidence seized by law enforcement pursuant to two different search warrants. Siddiq additionally challenged a warrantless search of his person at the time of his arrest. After the judge denied both defendants' motions, the State returned a superseding twelve-count indictment against

Siddiq alone. He and Hall subsequently pled guilty pursuant to plea agreements with the State.

Hall pled guilty to conspiring with Siddiq and others to distribute controlled dangerous substances, N.J.S.A. 2C:5-2 and 2C:35-5(b), and possession of cocaine with intent to distribute, N.J.S.A. 2C:35-5(b)(2). In accordance with the plea agreement, the judge sentenced Hall to a ten-year period of imprisonment with a three-year period of parole ineligibility. Before us, Hall raises the following points for our consideration:

I. THE AFFIDAVIT FAILED TO ESTABLISH PROBABLE CAUSE THAT DRUGS WOULD BE FOUND IN THE HOUSE

II. THE AFFIDAVIT FAILED TO ESTABLISH PROBABLE CAUSE THAT [DEFENDANT] WAS ENGAGED IN DRUG DEALING

Siddiq pled guilty to money laundering, N.J.S.A. 2C:21-25(a); maintaining a narcotics production facility, N.J.S.A. 2C:35-4; possession with the intent to distribute heroin, N.J.S.A. 2C:35-5(b)(2); and certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b)(1). In accordance with the plea agreement, the judge sentenced Siddiq to an aggregate twelve-year prison term with an eight-year period of parole ineligibility.

Siddiq raises the following arguments for our consideration:

POINT I

[DEFENDANT]'S CONVICTION MUST BE REVERSED BECAUSE THE LIPS OF A DEFENSE WITNESS WERE IMPROPERLY SEALED DURING HIS SUPPRESSION HEARING, WHICH DEPRIVED THE DEFENDANT OF HIS UNFETTERED RIGHT TO PRESENT A WITNESS.

POINT II

THE EVIDENCE FOUND [AT] 30 CLUBHOUSE LANE SHOULD HAVE BEEN SUPPRESSED BECAUSE THE SEARCH WARRANT WAS IMPROPERLY EXECUTED WHEN THE POLICE, BY THEIR OWN ADMISSION, FAILED TO SIMULTANEOUSLY KNOCK AND ANNOUNCE THEIR PRESENCE PRIOR TO ENTERING INTO THE RESIDENCE.

POINT III

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED AT THE TIME OF HIS ARREST AS THERE WAS NO PROBABLE CAUSE FOR [DEFENDANT]'S WARRANTLESS ARREST.

POINT IV

PROBABLE CAUSE DID NOT EXIST TO SUPPORT THE SEARCH WARRANT FOR 30 CLUBHOUSE LANE AND[,] AS SUCH[,] ALL EVIDENCE SEIZED FROM THAT RESIDENCE SHOULD HAVE BEEN SUPPRESSED.

Having considered these arguments in light of the record and applicable legal standards, we affirm denial of Hall's motion to suppress and his conviction in A-2436-19. In A-1250-19, Siddiq's appeal, we affirm in part and remand in part to the Law Division for further proceedings consistent with this opinion.

I.

The search warrants

The charges lodged against both defendants followed a year-long joint state and federal investigation into alleged drug distribution in Atlantic County. Investigators used pole cameras and GPS tracking devices to monitor the movements of some of the targets of the investigation; they also secured wiretap authorization for several communication facilities, allowing them to monitor phone conversations and text messages between alleged co-conspirators.

On June 28, 2016, investigators secured a search warrant for a Chevy truck, a residence in Mays Landing, and an apartment in Egg Harbor Township. The affidavit from Atlantic City Police Detective Darrin Lorady outlined the nearly twelve-month investigation into two "criminal street gangs" in Atlantic City. Investigators identified the "two main distributor[s]" of cocaine, and, in turn, other members of the distribution network. In wiretapped conversations, investigators monitored daily meetings by Siddiq, and witnessed those meetings

through surveillance. Police monitored one suspected transaction between Siddiq and co-defendant Ameer Stephens in the Chevy truck; Stephens then immediately met with a third person. After the meeting, police stopped the third party who was found to be in possession of three ounces of cocaine.

The affidavit also cited "source information" that Siddiq was distributing multiple kilos of cocaine and had alternative sources for the drug. It noted Siddiq's involvement in another recent multi-jurisdictional investigation. The affidavit cited "direct recorded buys" between Stephens and a confidential informant, "intercepted conversations" and GPS monitoring demonstrating Siddiq's use of the Chevy truck to conduct his distribution operation, and his use of cryptic, coded language. The affidavit said Siddiq, a "primary target" of the investigation, had been involved in a sophisticated distribution network for twenty years, and utilized "stash locations" throughout Atlantic County. Although Siddiq's legal address and main residence was in Atlantic City, Lorady swore Siddiq stayed at the Mays Landing and Egg Harbor locations and "dealt with a small circle of individuals" including Jamal Hall. Siddiq's "primary co-conspirator," however, was Stephens.

The affidavit recounted Siddiq's movements on June 19, 2016, when using intercepted calls and surveillance, investigators saw him drive to the "New

York/North Jersey area," and return to the Mays Landing address. Investigators saw him entering the front door "carrying a large bag." Siddiq then contacted another alleged co-conspirator and met him in Atlantic City. During the week of June 20, using a court-authorized microphone installed in the Chevy truck, investigators intercepted a call between Siddiq and Stephens. Siddiq said he was going away and intended to supply Stephens with additional drugs. On Siddiq's return from Florida on June 27, he immediately left for Philadelphia. Police surveilled him and intercepted telephonic and in-vehicle conversations. After a brief stay in North Philadelphia, Siddiq drove to the Mays Landing house, and then to the Egg Harbor apartment.

Intercepted phone calls led investigators to surveil a meeting between Siddiq and Stephens at their "primary meeting spot" in Atlantic City later that day. Police monitored the conversation with Stephens inside Siddiq's Chevy truck and heard Siddiq say he had "Four" in his pocket and would give Stephens the rest the following day. Siddiq then warned Stephens "the cops were behind him," and told Stephens to put an envelope with "10 grand" in the glove compartment. Police moved in, stopped Siddiq's truck, ordered him out, and found four ounces of heroin in his pocket. We discuss below that seizure in the context of Siddiq's third point on appeal.

The judge issued a search warrant for the Chevy truck and the two addresses noted. A search of the truck's glove compartment yielded \$10,000 in cash. Although Lorady sought a "no-knock warrant" for the two residences, the judge denied that request; the warrant required police to knock and announce before entering the premises in Mays Landing and Egg Harbor. Police executed the search warrant at the Mays Landing residence in the early morning hours of the following day and seized two handguns, ammunition, about \$40,000 in cash, and a money counter. We discuss below the search warrant and its execution at the Mays Landing address in the context of Siddiq's Points I, II and IV.

On July 5, 2016, police applied for a search warrant for nineteen locations; Hall's residence in Pleasantville was one of them. They also sought a search warrant for eleven vehicles, and the affidavit stated Hall used two of the cars "in furtherance of his crimes." The affidavit in support of the warrant was sixty-four pages long, Lorady again was the affiant, and it provided much of the same detailed history of the investigation.

In more than eight pages of specific facts regarding Hall, the affidavit described video surveillance from a stationary pole camera in front of defendant's home that captured people entering and leaving his house, as well as Hall's frequent comings and goings to meetings with Stephens and others.

Police saw Hall meet with a known drug dealer from whom police had made undercover purchases; a subsequent search warrant executed at that individual's residence yielded more drugs and paraphernalia. Police intercepted phone calls and text messages between defendant and Stephens discussing narcotics transactions.

On July 6, 2016, the same judge that issued the search warrant in Siddiq's matter issued a search warrant for Hall's Pleasantville residence, the two vehicles listed in the affidavit which Hall allegedly used, and numerous other locations and vehicles involving other co-conspirators. The search warrant was executed the next day at the Pleasantville address, and police seized first-degree weight cocaine and \$10,285 in cash from Hall's residence.

Hall's Motion to suppress

Hall filed a motion to suppress the evidence seized, arguing the affidavit failed to establish probable cause as to the Pleasantville address. Focusing on the text messages intercepted from the wiretap and law enforcement's interpretation of "code language" used during narcotics transactions, defense counsel argued the phrases were just "regular language," used in the African American community.

The judge reserved decision, ultimately issuing a written opinion in support of the order denying defendant's motion to suppress. Defendant retained new counsel, who filed a motion for reconsideration. Successor counsel contended the judge failed to address the adequacy of information within "the four corners" of the affidavit, which, he contended, failed to establish probable cause for its issuance. The judge denied the motion in an oral decision, and as already noted, defendant pled guilty pursuant to a negotiated plea agreement.

Siddiq's motion to suppress

Siddiq challenged the warrantless search and seizure of drugs from his person following the traffic stop on June 27, 2016, arguing police had sufficient time and probable cause to obtain "anticipatory" arrest and search warrants before stopping Siddiq's Chevy truck. Regarding the search of the Mays Landing residence with a warrant, defense counsel argued there was no probable cause supporting the warrant, insufficient grounds justified nighttime execution of the warrant, and police essentially executed the warrant as a no-knock warrant, despite the issuing judge's denial of that request.

After considering the testimony of two Atlantic City Police detectives, the judge issued an oral opinion, concluding police had probable cause to stop Siddiq's car because they reasonably concluded a drug transaction was in

progress; she said the State did not need to secure an "anticipatory" arrest or search warrant under the circumstances. She entered an order denying Siddiq's motion to suppress evidence seized at the time of the motor vehicle stop.

The judge also determined the affidavit established sufficient probable cause to search the Mays Landing property, and the warrant did not restrict its execution to daylight hours. However, the judge agreed to take testimony regarding the actual execution of the warrant.

We discuss below the hearing that followed, after which the judge entered an order denying Siddiq's motion to suppress evidence seized from the Mays Landing residence.

II.

A.

Both defendants contend the search warrants were not supported by sufficient probable cause. Hall argues the affidavit in his case lacked sufficient information linking him to alleged drug transactions or that probable cause existed to search his Pleasantville residence. Siddiq contends the warrant in his case failed to establish probable cause to search the Mays Landing property. We disagree.

"Our constitutional jurisprudence expresses a decided preference that government officials first secure a warrant before conducting a search of a home or a person." State v. Watts, 223 N.J. 503, 513 (2015). An application for a search warrant "must satisfy the issuing authority 'that there is probable cause to believe that . . . evidence of a crime is at the place sought to be searched.'" State v. Boone, 232 N.J. 417, 426 (2017) (quoting State v. Jones, 179 N.J. 377, 388 (2004)). "Probable cause for the issuance of a search warrant requires 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993)). "[T]he probable cause determination must be . . . based on the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony before the issuing judge that is recorded contemporaneously." Boone, 232 N.J. at 427 (alteration in original) (quoting State v. Marshall, 199 N.J. 602, 611 (2009)).

A search warrant is presumed valid, and the defendant bears the burden to show that it was issued without probable cause or that the search was "otherwise unreasonable." Chippero, 201 N.J. at 26 (quoting State v. Evers, 175 N.J. 355, 281 (2003)). "Reviewing courts 'accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant.'"

Boone, 232 N.J. at 427 (alteration in original) (quoting Jones, 179 N.J. at 388). "[W]hen the adequacy of the facts offered to show probable cause is challenged after a search made pursuant to a warrant, and their adequacy appears to be marginal, the doubt should ordinarily be resolved by sustaining the search." Jones, 179 N.J. at 388–89 (emphasis added) (quoting State v. Kasabucki, 52 N.J. 110, 116 (1968)).

Hall relies on Boone for support. There, police surveilled the defendant for two months and observed him engage in drug-related activities, including hand-to-hand sales of suspected narcotics. 232 N.J. at 422. A subsequently issued search warrant for the defendant's suspected residence did not describe how police knew defendant lived in a specific unit in the apartment complex; yet the warrant asserted the "investigation reveal[ed] that [the defendant wa]s distributing Controlled Dangerous Substances" from his residence. Id. at 422–23.

The defendant sought to suppress evidence seized after execution of the warrant, arguing it lacked a factual basis establishing probable cause. Id. at 423. "[T]he State concede[d] . . . it did not provide a factual basis . . . why [the residence] should be searched, [bu]t counter[ed] . . . the totality of the circumstances justified the issuance of a search warrant because surveillance

placed [the defendant] at [the residence] before and after drug transactions." Id. at 425. The Court stressed the investigation may have been "sufficient to issue a warrant to arrest [the defendant]; however, there was nothing in the affidavit to indicate where [the defendant] lived, how police knew which apartment was his, or how the apartment was connected to his drug dealing." Id. at 430. The Court reversed the defendant's convictions, stating, "We emphasize that judges issuing search warrants must scrutinize the warrant application and tie specific evidence to the persons, property, or items the State seeks to search." Id. at 431.

In this case, Hall did not reside in an unidentified apartment in a multi-family apartment complex; he lived in a single-family home in Pleasantville that was under continuous surveillance by investigators using a pole camera. The affidavit specifically mentioned people were seen coming and going from Hall's residence, and Hall was seen meeting Stephens at a location where police knew narcotic transactions were ongoing. The affidavit included extensive detail regarding Stephens' interactions with others and cited drug-related intercepted conversations and text messages between Hall and Stephens. It contained information regarding two specific meetings Hall had with others after leaving his home. Police secured evidence of narcotics-related offenses from those other

individuals either immediately after the meeting with Hall or within days thereafter.

If in hindsight the "adequacy" of the affidavit's contents "appears to be marginal," we would nevertheless be obligated to accord substantial deference to the issuing judge's determination that the totality of circumstances established probable cause and recognize that any "doubt should ordinarily be resolved by sustaining the search." Jones, 179 N.J. at 388–89 (quoting State v. Kasabucki, 52 N.J. 110, 116 (1968)). We conclude there was sufficient facts alleged within the four corners of the affidavit to permit the issuing judge, who days earlier had issued the warrant in Siddiq's case, to conclude not only was Hall involved in narcotics transactions, but also that his Pleasantville home probably contained evidence of those transactions. We therefore affirm the denial of Hall's motion to suppress and affirm the judgment of conviction in A-2436-19.

Siddiq makes a similar argument in Point IV of his brief, claiming there was insufficient probable cause supporting the warrant for the Mays Landing residence. Lorady's affidavit explained that immediately upon his return from Florida, Siddiq drove to Philadelphia to likely obtain drugs to re-supply Stephens as promised. He returned to the Mays Landing property carrying a large bag and shortly thereafter went to the Egg Harbor apartment. Police

monitored Siddiq's conversation setting up a meeting with Stephens, surveilled the meeting and ultimately stopped Siddiq's truck, seizing drugs and cash. Siddiq's argument on this point requires no further discussion in a written opinion, Rule 2:11-3(e)(2), and we reject his claim the search warrant for the Mays Landing residence lacked sufficient probable cause.

B.

In Point III, Siddiq argues the judge erred in denying the motion to suppress the drugs seized when police arrested him because "there was no probable cause for [his] warrantless arrest." Defendant never made this argument in the Law Division, instead asserting a somewhat contrary claim that police had probable cause and should have obtained an anticipatory warrant for Siddiq's arrest. We could properly refuse to consider Siddiq's newly framed contention. State v. Witt, 223 N.J. 409, 419 (2015) (citing State v. Robinson, 200 N.J. 1, 20 (2009)). Nevertheless, we address it because the judge made specific findings as to probable cause, and we conclude the argument lacks sufficient merit to warrant discussion. R. 2:11-3(e)(2). We add only the following.

"For probable cause to arrest, there must be probable cause to believe that a crime has been committed and 'that the person sought to be arrested committed

the offense.'" Chippero, 201 N.J. at 28 (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)). "Probable cause exists where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed." State v. Moore, 181 N.J. 40, 46 (2004) (alterations in original) (quoting Schneider, 163 N.J. at 361).

As noted, the judge heard the testimony of Lorady and Detective William Warner III. The officers explained the background information, observations and intercepted conversations known to them before stopping Siddiq's vehicle on June 27, 2016. In her oral opinion, the judge cited extensively to their testimony and found after stopping the car and ordering Siddiq out of the vehicle, Warner noticed a prominent bulge in Siddiq's pants pocket and asked what it was. Siddiq replied, "It is what it is." The officer removed the object which was four ounces of cocaine. We agree with the judge's conclusion that police had probable cause to stop the vehicle in the first instance, order Siddiq out of the car based on the prior investigation and arrest him based on a reasonable belief that a drug transaction was transpiring.

III.

We set the context for the two points Siddiq raises requiring us to remand the matter to the Law Division for further proceedings.

As noted, the judge agreed to take further testimony regarding the execution of the warrant at the Mays Landing residence. Lorady testified he led a team of officers executing the warrant. Lorady described "the fairly standard procedure" he used.

We knocked on the door, . . . obviously loud enough so someone could hear. A couple of bangs on the door Wait approximately ten seconds to see if anyone answers. Another knock, a couple of knocks, . . . wait. Nothing. Then you set the tool. . . . [A]nd then we would be able to make entry. . . . [T]hat's basically what happened there.¹

Lorady did not recall announcing "police" at the front door. At a later point, he testified to announcing police presence "[a]fter the door [wa]s open." He reiterated more than once again later, the announcement was made "[o]nce we made entry." With the door open, Lorady saw an adult woman dart into another room; police followed her to a rear bedroom and conducted their search of the

¹ Lorady said the "tool" was a "piston-driven mechanism. It's placed in the door and . . . the pistons will separate . . . the door from the frame."

entire home. They seized two handguns, ammunition, about \$40,000 in cash, and a money counter.

On cross-examination, Lorady said he knocked on the door and waited thirty seconds without any response. But, in answering the next question, Lorady said, "By knocking and announcing and eventually opening the door . . . and then announcing our presence as police officers again," he attempted to get the attention of the homeowner.

When Lorady completed his testimony, defendant sought to have Chaka James, who was present in the courtroom, testify. The prosecutor immediately addressed the judge, noting James would likely testify her clothes and shoes were in the closet at the Mays Landing residence where police seized a weapon. The prosecutor asserted, "[T]his witness should be advised of her Fifth Amendment rights prior to proceeding based upon my understanding of the testimony that's going to be elicited." Defense counsel immediately accused the prosecutor of intimidating James.

The judge excused James, after which the prosecutor said James "could just as easily be superseded and added on this indictment . . . given the facts and the evidence and where the gun was seized in relation to her . . . that's her bedroom. Those are her things in the closet." The judge agreed that James

needed to be advised of her rights before testifying. Defense counsel stated he would limit his questioning of James to the entry by police and whether they announced their presence before entering, but the judge stated James would "open[] herself to every bit of cross-examination" if she testified. The judge brought James back into the courtroom and said:

Ms. James, there's been discussion among counsel with the Court with respect to an aspect of this that frankly is of concern to the Court. In order for you to testify here today, I would have to administer your Fifth Amendment rights. You are possibly exposed to some criminal liability in this case going forward. I'm not saying this to scare you. I am not saying this to keep you from testifying. What I would ask you to do, ma'am is I'm going to give a new date for this hearing to continue. That will give you time to consult with an attorney.

On the return date, James indicated she did not wish to testify. Defense counsel requested time to submit a brief and motion seeking judicial immunity for James's testimony; the judge agreed and adjourned the proceedings.

On the next return date, the judge said James had not requested immunity, the prosecutor had not agreed to immunize James, and defense counsel failed to file anything with the court to support the grant of immunity. The attorneys briefly summarized their positions, with defense counsel arguing Lorady's testimony was unreliable, and the judge should conclude "the way and manner

of entry was not consistent with" the knock and announce provisions of the warrant.

However, without specifically recounting any details of Lorady's testimony, the judge found "the detective's credibility in this particular matter was intact." She found the testimony was "internally consistent," "straightforward" and "believable," and any "inconsistencies and . . . gaps in [Lorady's] memory [we]re not material" because execution of the warrant was "almost three years ago." The judge found "the execution of the search warrant did not violate any laws or any procedural aspects"; but notably the judge never made a specific finding that Lorady knocked and announced the presence of police prior to opening the door with the pneumatic device. The judge entered an order denying Siddiq's motion to suppress evidence seized pursuant to the warrant executed at the Mays Landing residence.

Siddiq contends in Point I that the judge improperly interfered with his ability to produce a witness at the suppression hearing by acceding to the prosecutor's threat of potential criminal prosecution if James took the witness stand. In Point II, Siddiq argues we should reverse the order denying the motion to suppress because Lorady admitted that he failed to knock and announce before entering the house.

The State counters by asserting any failure by police to announce their presence prior to entry does not require or justify suppression of the evidence. The State segues into opposing Siddiq's first point by arguing any alleged "interference with [James'] choice to testify was inconsequential," because even if she testified that police failed to announce their presence before entry, suppression was not justified.

We agree the judge's intervention at the prosecutor's insistence as James was about to take the witness stand was clearly error. We said in State v. Blazas:

It is well-established that access to witness testimony falls within this constitutional guarantee [to present a complete defense]. Our Supreme Court held that a "defendant's due process rights are violated when there is substantial government interference with a defense witness'[s] free and unhampered choice to testify[.]" In Feaster, a key prosecution witness recanted his trial testimony and was slated to testify at the defendant's post-conviction relief hearing. After a veiled threat to prosecute him for perjury, the witness did not testify. The Court held that "the State may not use threats or intimidating tactics that substantially interfere with a witness's decision to testify for a defendant. Such conduct, even if motivated by good faith, cannot be tolerated[.]"

[432 N.J. Super. 326, 339 (App. Div. 2013) (all but first alteration in original) (quoting State v. Feaster, 184 N.J. 235, 251, 262 (2005)).]

We recognize it may be appropriate for a judge "to apprise a witness, who has been subpoenaed to appear, of his privilege against self-incrimination." State v. Johnson, 223 N.J. Super. 122, 130–31 (App. Div. 1988) (citing Van Horn v. City of Trenton, 80 N.J. 528, 535–36 (1979)). But, "such authority should be exercised sparingly and with great caution, particularly where . . . the prospective witness is not in imminent peril of being charged with a criminal offense, and assertion of the privilege will have the effect of suppressing evidence." Id. at 131. "Obviously, the paramount interest, in the context of a criminal trial, is the free flow of relevant information. Weighed against that interest, the prospect that a witness may ultimately be charged with an offense by reason of what he says on the stand pales in significance." Id. at 130 n.3.

We explained in State v. Smith the appropriate procedure to be followed by the judge "when the privilege against self-incrimination may be implicated." 322 N.J. Super. 385, 393–94 (App. Div. 1999) (citing State v. Jennings, 126 N.J. Super. 70, 75–78 (App. Div. 1972)). That procedure was not followed here.

The prosecutor's assertion that James faced criminal prosecution because she resided in the house where evidence was seized bordered on the preposterous. The prosecutor first raised the possibility at the second hearing on Siddiq's motion on November 1, 2018, more than two years after his arrest

and execution of the warrant, and two years after the return of the first indictment. Had the State ever intended to prosecute James, it surely had the time to do so. Moreover, as we noted, Siddiq was a major target of the extensive investigation from its inception, and, when the State returned a superseding indictment after Siddiq's motion to suppress was denied, Siddiq was the sole defendant. Lastly, it is for the judge, not the witness and certainly not the prosecutor, "to evaluate the claimed hazard" of self-incrimination. In re Boiardo, 34 N.J. 599, 602 (1961).

Before addressing an appropriate remedy for this error, we consider the argument in Point I of Siddiq's brief, specifically, that Lorady admitted to not announcing the presence of police before opening the door to the residence with the aid of a pneumatic device. We initially reject the certitude of defendant's claim.

Our standard of review requires us to "defer to a trial court's factual findings in deciding a motion to suppress, 'so long as those findings are "supported by sufficient credible evidence in the record.'"" State v. Radel, 249 N.J. 469, 493 (2022) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). In this case, however, the judge failed to make any findings on the critical issue. Concluding Lorady was "believable" was insufficient, nor was the conclusory

statement that the execution of the warrant "did not violate any laws or any procedural aspect." We also fail to see how the judge found Lorady's testimony "internally consistent" when it clearly was not.

We disagree with the State that a potential violation of the "knock-and-announce" rule is insignificant and does not require application of the exclusionary rule. See, e.g., State v. Caronna, 469 N.J. Super. 462, 497–98 (App. Div. 2021) (finding violation of the knock and announce rule must be considered in evaluating the reasonableness of a search and the exclusionary rule is the appropriate remedy for a violation). However, on the record before us, given the judge's lack of specific factual findings, we refuse to decide that police violated the knock and announce rule in this case.

We conclude a remand is necessary to conduct an entirely new suppression hearing focused on the execution of the search warrant at the Mays Landing residence and whether law enforcement violated the terms of the warrant. Because the judge made credibility determinations, we order the remand to take place before a different judge. See, e.g., State v. Camey, 239 N.J. 282, 312 (2019) (remanding for a hearing before a different judge because the original judge made extensive credibility findings, including as to a witness not before the court).

Siddiq may produce witnesses, including James, at the remand hearing, which shall be limited solely to the facts surrounding the execution of the search warrant and law enforcement's entry into the Mays Landing residence. Because we cannot divine whether James will testify at the hearing, we offer no specific remedy if she refuses based upon an assertion of the privilege against self-incrimination. Given the passage of time, we view that possibility as quite remote. If the court again denies Siddiq's motion to suppress evidence seized pursuant to the search with a warrant of the Mays Landing residence, defendant may again file an appeal; otherwise, we affirm Siddiq's conviction.

On A-2436-19, we affirm. On A-1250-19, we affirm in part and remand in part. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION