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Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A- 3395-24T3
CRIMINAL *ACTION*

STATE OF NEW JERSEY, Plaintiff-Appellant, v. CARLENE HARRIS AND NORMAN A. THOMAS 4TH, Defendant's-Respondent's.	:	*ON APPEAL* From an Order in the Superior Court of New Jersey, Law Division, Ocean County *SAT BELOW* Hon. David M. Fritch, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

On August 29, 2024, Defendants Carlene Harris and Norman Thomas IV ("Defendant") were indicted by an Ocean County grand jury as follows,

COUNT ONE, possession of a controlled dangerous substance – cocaine - contrary to N.J.S.A. 2C:35-10a(1) a third degree crime.

COUNT TWO, possession with intent to distribute a controlled dangerous substance – cocaine - contrary to N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(2) a second degree crime.

COUNT THREE, possession of a controlled dangerous substance – fentanyl - contrary to N.J.S.A. 2C:35-10a(1) a third degree crime.

COUNT FOUR, possession with intent to distribute a controlled dangerous substance – fentanyl - contrary to N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(5) a second degree crime.

COUNT FIVE, possession of a controlled dangerous substance – oxycodone - contrary to N.J.S.A. 2C:35-10a(1) a third degree crime.

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[1]
1T designates transcript of proceedings dated April 17, 2025. (motion to suppress)
2T designates transcript of proceedings dated May 22, 2025. (motion to reconsider)
"A" designates the State's appendix attached hereto.
"CA" designates the State's confidential appendix attached hereto.

The procedural history and statement of facts are combined herein because they are inextricably linked, and for purposes of clarity.

COUNT SIX, possession of a firearm while engaged in certain drug activity, namely a GSG Firefly while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.A. 2C:35-3, N.J.S.A. 2C:35-4, N.J.S.A. 2C:35-5, section 3 or section 5 of P.L.1997, c.194, N.J.S.A. 2C:35-6, section 1 of P.L.1987, c.101, section 1 of P.L.1997, c.327, N.J.S.A. 2C:35-11 or N.J.S.A. 2C:16-l, contrary to the provisions of N.J.S.A. 2C:39-4.1a, a second degree crime.

COUNT SEVEN, possession of a firearm while engaged in certain drug activity - namely a Ruger P89 handgun while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.A. 2C:35-3, N.J.S.A. 2C:35-4, N.J.S.A. 2C:35-5, section 3 or section 5 of P.L.1997, c.194, N.J.S.A. 2C:35-6, section 1 of P.L.1987, c.101, section 1 of P.L.1997, c.327, N.J.S.A. 2C:35-11 or N.J.S.A. 2C:16-1, contrary to the provisions of N.J.S.A. 2C:39-4.1a, a second degree crime.

COUNT EIGHT, possession of a firearm while engaged in certain drug activity - namely a Smith and Wesson long gun while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.A. 2C:35-3, N.J.S.A. 2C:35-4, N.J.S.A. 2C:35-5, section 3 or section 5 of P.L.1997, c.194, N.J.S.A. 2C:35-6, section 1 of P.L.1987, c.101, section 1 of P.L.1997, c.327,

N.J.S.A. 2C:35-ll or N.J.S.A. 2C:16-l, contrary to the provisions of N.J.S.A. 2C:39-4.la, a second degree crime.

COUNT NINE, possession of large capacity ammunition magazine- namely, a long rifle caliber "Plinker Tactical" ammunition magazine, contrary to the provisions of N.J.S.A. 2C:39-3j, a fourth degree crime.

COUNT TEN, certain person not to possess weapon, namely, a GSG Firefly contrary to the provisions of N.J.S.A. 2C:39-7b(l), a second degree crime.

COUNT ELEVEN, certain person not to possess weapon, namely, a Ruger P89 handgun contrary to the provisions of N.J.S.A. 2C:39-7b(l), a second degree crime.

COUNT TWELVE, certain person not to possess weapon, namely, a Smith and Wesson long gun, contrary to the provisions of N.J.S.A. 2C:39-7b(I) a second degree crime. (A 29-36)

On March 7, 2023 the Hon. Guy P. Ryan, P.J.Cr. issued the search warrant at issue in this case, (CA 10-12), based upon the certification of Lakewood Patrolman Alexander Guzman. (CA 1-9). The warrant was executed on March 9, 2023. (CA 13-18) The Hon. David M. Fritch, J.S.C. was the reviewing Judge.

On January 26, 2025, Defendant filed a motion to suppress evidence seized with a warrant based on a claim of staleness inasmuch as the warrant was issued on March 7, 2023, and Defendant claimed that the investigation by the Lakewood Police Department was set forth in the certification and

conducted on various dates in January and February 2022. The State claimed the investigation occurred on the same dates in January and February 2023 due to a scrivener's error made in the last digit of the year.

On April 17, 2025, the Court heard oral arguments in the matter. The State responded from the very beginning of the case that the year 2022 instead of 2023 was clearly a scrivener's error – a "technical irregularity" and that the error does not render the search warrant invalid. The State pointed out that the warrant was not stale because "the State's position is ***supported by information that is contained within the four corners of this search warrant and the certification itself."*** (1T7-18 to 8-1) (emphasis added) Further, the State maintained that the dispute as to the year as to when the Lakewood Police Department conducted the investigation in this case would constitute a "material dispute of facts" under Rule 3:5-7 and a hearing could be held.

On April 17, 2025 the Judge entered an order suppressing all evidence seized via the search warrant. (A 28) (1T24-1 to 24-6, 1T21-8 to 21-20)

Thereafter, the State filed a motion for reconsideration of the April 17, 2025 order. As part of the motion, the State submitted computer printouts and narrative material that demonstrated conclusively that the correct year was 2023 rather than 2022. (2T 4-5 to 5-12) (A 18-27) The State renewed its request for a hearing based on disputed facts. (2T 4-15 to 5-12) (2T6-19 to 6-

22) The State also renewed its argument that there is enough in the four corners of the warrant to show that the investigation took place in 2023 despite the scrivener's error denoting the year as 2022. (2T18-4 to 18-7)

In denying the motion the Judge found his "review is limited to the four corners of the document that was presented." (2T12-19) He stated, ". . . the only information that I see that was in front of the judge who signed the warrant at the time was that this information was a year old." (2T 13-21 to 13-23)

On June 30, 2025, this Court granted the State's motion for leave to appeal.

Additional facts are set forth in the body of this brief as appropriate.

LEGAL DISCUSSION

PRELIMINARY STATEMENT

In POINT I, the State will show that the reviewing Judge failed to adhere to the proper standard of review – that is whether the issuing judge had a substantial basis to make *his determination* that probable cause was present at the time of the application for the search warrant - and that the reviewing Judge engaged in a prohibited de novo review of the search warrant.

In POINT II, the State will show that the nature of the judicially confirmed scrivener's error in this case does not taint probable cause for the

search warrant because, in part, of the technical nature of the error, and because a finding of a "typo" in a certification does not necessarily lead to a conclusion of staleness, and a hearing should have been held under Rule 3:5-7 concerning the scrivener's error resulting in the disputed year.

In POINT III, the State will show that evidence from within the four corners of the certification defeats staleness.

In POINT III A, it will be shown that it was not possible that probable cause was developed on certain dates in in 2022 but was developed on those same dates in 2023; in POINT III B it will be shown via a common sense reading of the certification that the reference to 2022 was intended to be 2023 via LaFave's modes of analysis applicable in circumstances such as here, as well as other tools.

In POINT IV, the State will show authority from other jurisdictions supports the vitality of the warrant in this case inasmuch as they illustrate how a scrivener's error in a date may be overcome by other evidence in the affidavit.

POINT I

THE REVIEWING JUDGE FAILED TO ADHERE TO THE PROPER SUBSTANTIAL BASIS STANDARD OF REVIEW BY CONDUCTING A DE NOVO REVIEW OF PROBABLE CAUSE (A1-17)(1T12-1 to 26-22) (2T4-2 to 18-9)

The issue before the reviewing Judge in this case was whether the issuing Judge had a substantial basis for his conclusion that the warrant reflected probable cause. "The duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclud[ing]" that probable cause existed. Illinois v. Gates, 462 U.S. 213, 238–39, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983) Instead, the reviewing Judge conducted a de novo review of probable cause in this case.

The New Jersey Supreme Court, when it adopted the "totality of circumstances" test of Illinois v. Gates, stated in State v. Novembrino,

> [W]e have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit ***should not take the form of de novo review.*** A magistrate's "determination of probable cause should be paid great deference by reviewing courts." "A grudging or negative attitude by reviewing courts towards warrants," is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant; "courts should not invalidate warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner." Id. at 118. See also, State v. Kasabucki, 52 *N.J.* 110, 116, (1968).

> [State v. Novembrino, 105 N.J. 95, 108–09, (1987) (citing, Illinois v. Gates, supra, 462 *U.S.* at 231. (emphasis supplied)]

The reason for this substantial deference toward the conclusion of the issuing judge is obvious. It is that issuing judges must base a probable cause determination on the totality of the circumstances and consider the probabilities. State v. Jones, 179 N.J. 377, 389 (2004), citing Schneider v. Simonini, 163 N.J. 336, 361 (2000). The issuing court must also apply a qualitative analysis to the unique facts and circumstances of any given case. State v. Keyes, 184 N.J. 541, 556 (2005), citing Jones, 179 N.J. at 390. The analysis comes down to a "practical, common-sense decision." Jones, 179 N.J. at 390, quoting State v. Smith, 155 N.J. 83, 93 (1998). "[W]hether or not probable cause exists '***involves no more than a value judgment upon a factual complex rather than an evident application of a precise rule of law***, and indeed a value judgment which inevitably reflects the seasoning and experience of the one who judges.' " Schneider, 163 N.J. at 362, quoting State v. Funicello, 60 N.J. 60, 72-73 (1972) (Weintraub, C.J., concurring). (emphasis added)

For these reasons, a reviewing judge "should pay substantial deference" to the discretionary determination of the issuing judge. State v. Kasabucki, 52 N.J. 110, 117 (1968). Review of a warrant's adequacy "is guided by the flexible nature of probable cause and by the deference shown to issuing courts that apply that doctrine." Sullivan, 169 N.J. at 217.

It is therefore well settled that a search executed pursuant to a warrant is presumed valid, and the defendant bears the burden of proving lack of probable cause in the warrant application. Sullivan, 169 N.J. at 211, citing State v. Valencia, 93 N.J. 126, 133 (1983).

The degree of deference a reviewing judge must give an issuing judge in a warrant case was strongly stated by our Supreme Court in Kasabucki,

> . . . a reviewing court, especially a trial court, should pay substantial deference to his determination. In fact, another trial judge of equal jurisdiction should regard as ***binding*** the decision of his brother that probable cause had been sufficiently shown to support a warrant, unless there was ***clearly no justification*** for that conclusion.
>
> [State v. Kasabucki, supra 52 N.J. at 117.] (emphasis added)

When the reviewing Judge decided the year 2022 stated in the certification was a scrivener's error, he fell into error when he wrote the error, "***forces the Court to review the affidavit as presented for adequate probable cause.***" (A 11) (emphasis added) Instead, the Judge should have determined whether the issuing Judge had a substantial basis for his decision regarding probable cause, or whether there was "clearly no justification" for the issuing Judge's conclusion.

Examples of the reviewing Judge's de novo review occur throughout his opinion. As one example, the Judge rejected one of the State's arguments that

this case was obviously investigated by the Lakewood Police Department and that Guzman was not a Lakewood police officer in 2022 since he was an undercover agent with another agency in 2022, but he was a Lakewood officer beginning in January 2023. The Judge wrote, "There is no obvious reason why he could not have participated in this investigation into narcotics sales ***either*** as a member of the Ocean County Narcotics Strike Force ***or*** from his latter assignment with the Lakewood Police Department's Street Crimes Unit to provide any evidence that the events being described were actually 2023 and not 2022." (A 12) (emphasis added) He therefore obviously rejected the issuing Judge's inference that this matter was investigated after January 2023 when Guzman was in fact with the Lakewood Police Department and not the Ocean County Narcotics Strike Force acting as a Detective in an undercover capacity. Indeed, Guzman certified at the time he dated the warrant on March 2, 2023 that he was "currently" assigned to the Lakewood Police Department as a Lakewood patrolman and had been since January 2023. The issuing Judge made his own representations on the face of the warrant that it was "Patrolman" Guzman who submitted the warrant to him. We will consider this in much more detail below. The point is that the reviewing Judge no doubt conducted a prohibited de novo review in this case as this example and others which occur throughout his opinion illustrate.

Hence, the Judge should not have been concerned that the typo "goes directly to the probable cause that is at the heart of this warrant application" (1T21-8 to 21-20) or that he was "forced to review the affidavit ***as presented for probable cause***" because the reviewing judge's role is not to conduct a de novo review of probable cause. Indeed, the only issue is whether the issuing Judge *could have* decided there was probable cause under these circumstances.

POINT II

ONCE THE JUDGE FOUND THE ERROR TO BE A "TYPO" HIS VIEW THAT IT FATALLY TAINTED PROBABLE CAUSE IN THIS CASE WAS IN AND OF ITSELF ERROR AND ADDITIONALLY HIS FAILURE TO CONDUCT A HEARING WAS ALSO ERROR (A1-27)(1T 12-1 to 27-7)(2T 12-15 to 18-9)(CA1-12)

Once the Judge made a finding that the error here was a "typo" he should have considered other evidence within the four corners of the warrant under the *substantial basis standard*, rather than de novo, or alternatively, he should have considered extrinsic evidence adduced at a hearing under Rule 3:5-7.

In his initial opinion the Judge reasoned,

> The information relays that this distribution enterprise spans the period of two months, from January through February, 2022. The warrant, however, was not issued until March 2023, over a year after the events detailed in the affidavit on – based on the information provided.
> [1T24-1 to 24-6]

. . .

> [T]his ***typo goes directly to the probable cause that is at the heart of this warrant application***. . . . [T]he State avers that there's other data [within the four corners of the warrant] . . . making it obvious that the inclusion of 2022 instead of 2023 is a scrivener's error. State brief at 7. ***A review of the affidavit does not show sufficient information that is presented within the four corners of that warrant to make it clear to a reviewing judge that the key dates here should have been 2023 instead of 2022.***
> [1T21-8 to 21-20 (emphasis added]

Once again, as argued above, the "key dates" do not have to be "clear to a reviewing judge." The issue is only weather the issuing Judge could have found probable cause.

In any case, we submit that a judicially confirmed scrivener's error such as the one here does not affect the warrant as much as the Judge thought it did and it certainly does not by itself indicate the issuing Judge did not have a substantial basis to make his determination for two reasons.

First, when the warrant is viewed in its entirety the typo here is not vital to probable cause because it is merely an affirmative error, not an omission of probable cause, or a mistake as to what facts are sufficient to constitute probable cause.

Second, stale probable cause is probable cause that would have justified a warrant at some earlier time that has already passed by the time the warrant is

sought. Speaking of the probable cause as "stale" in such a case merely reflects the requirement that the police must show that at the time of the application for the warrant there is a substantial likelihood of finding the evidentiary material specified. In this case, however, that some information may be *characterized by Defendant* as stale because of a typographical error in the year does not concern events that occurred well before the date of the application for the warrant. A typographical error is no taint on probable cause where, as here, it is demonstrated that probable cause existed at the time of the application.

The point is that once there is a judicial finding of a typo in the certification, it does not necessarily follow that a staleness finding must be made. This is true in our case since we will cabin probable cause from within the four corners of the warrant to the correct time period. It should be noted that the cabining of probable cause in this case reflects the fact that the issuing Judge had a substantial basis for his decision that probable cause existed at the time the application was made and the warrant was issued.

In any case, equally true is that the warrant need not have been invalidated because of an obvious typographical error had the reviewing judge conducted a hearing under rule 3:5-7

Rule 3:5-7 contemplates the inevitability of mistakes in warrants. Part (g) of the rule states, "In the absence of bad faith, ***no search or seizure*** made

with a search warrant ***shall be deemed unlawful*** because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution." (emphasis supplied) The rule's operation is mandatory.

Rule 3:5-7(c) provides that "if material facts are disputed, ***testimony thereon shall be taken*** in open court." (emphasis supplied) Because of the typo Defendant maintained the events at issue occurred in 2022 and the State claimed they occurred in 2023. This was a material dispute of fact appropriate for a hearing under Rule 3:5-7, and is the kind of technical error within the ambit of the rule.

At the motion to reconsider, the State provided computer printouts and narrative police reports reflecting the correct year of the controlled buys - 2023. (see, A 18-27) The Judge, however, stated the reports could "not be considered retrospectively." (A13-14)

In his written decision on the motion to reconsider, the Judge once again found the year 2022 was a "typo" and wrote, (while committing a typographical error), "While R. 3:57(g), (sic), allows courts to address 'technical insufficiencies or irregularities' in a warrant, this typo goes directly

to the probable cause (sic) at the heart of the warrant application." (A10-11)[2]

A hearing should have been conducted on the scrivener's error *restricted to the nature of the error itself - and not to bolster probable cause.* The correct year could have easily been determined via a very short exchange with Guzman about what the correct year was, or simply by referring to the material the State submitted at the reconsideration motion and the typo either could have been corrected, or understood as a mistake that does not necessarily lead to a finding of staleness given the information within the four corners of the warrant. Yet, the reviewing Judge declined to hold a hearing to consider any extrinsic material because he felt bound to the four corners rule – even though the four corners of the warrant demonstrate conclusively the existence of a typo – as he so found.

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[2] We do not point to the Judge's typographical error regarding R. 3:5-7(g) in a disrespectful way. On the contrary, as stated by the U.S. Supreme Court,

> An officer who drafts an affidavit, types up an application and proposed warrant, and then obtains a judge's approval naturally assumes that he has filled out the warrant form correctly. Even if the officer checks over the warrant, he may very well miss a mistake. We all tend toward myopia when looking for our own errors. ***Every lawyer and every judge can recite examples of documents that they wrote, checked, and double-checked, but that still contained glaring errors. Law enforcement officers are no different.*** It would be better if the officer recognizes the error, of course. It would be better still if he does not make the mistake in the first place. In the context of an otherwise proper search, however, ***an officer's failure to recognize his clerical error on a warrant form can be a reasonable mistake.***
> [Groh v. Ramirez, 540 U.S. 551, 567–68, 124 S. Ct. 1284, 1296, 157 L. Ed. 2d 1068 (2004)] (emphasis added)

Via his de novo review, the reviewing Judge decided that the issuing Judge *could not have determined probable cause in the face of the typo*. As stated, a typo does not necessarily denote staleness. A hearing could have provided certainty that the correct year was 2023, although that certainty is also provided by other evidence within the certification itself.

To recognize there was *a mere typo in the year* and then to refuse to recognize any other evidence contained within the four corners of the certification under the proper substantial basis standard of review, or alternatively evidence which could have been adduced via a hearing, was the type of hyper-technical error our courts have consistently prohibited.

As our Supreme Court has stated,

> [A] judge would be short in realism if he did not understand that the evidence he is asked to suppress is evidence of guilt and that the judgment of not guilty which will ensue will likely be false. To justify so serious an insult to the judicial process, some compensating gain should be incontestable.
>
> [State v. Bisaccia, 58 N.J. 586, 589, (1971)]

The entire prosecution of significant and armed and dangerous drug distributors will not be possible without the evidence seized via this warrant – because of a typo.

POINT III

EVIDENCE CONTAINED WITHIN THE FOUR CORNERS OF THIS WARRANT DEFEATS STALENESS (A1-17) (1T 12-1 to 26-22)(2T12-15 to 18-9)(CA1-12)

A. IT IS NOT POSSIBLE THAT PROBABLE CAUSE WAS DEVELOPED DURING THE WEEK OF JANUARY 29, **2022,** FEBRUARY 19, **2022**, AND FEBRUARY 26, **2022**, RATHER, PROBABLE CAUSE IS CABINED TO THOSE SAME DATES IN **2023** FROM THE FOUR CORNERS OF THE WARRANT

The logical construct that exists from the warrant and certification based upon the dates and representations of the affiant as well as the issuing judge contained within the four corners of the warrant conclusively demonstrates that the 2022 date is nothing more than a common typographical error made on the last digit of a relatively new year, and the remaining entirety of the certification defeats the claim of staleness as follows. [3]

According to his own representations, Patrolman Guzman was not a "Lakewood Patrolman" until January 2023 when he was assigned to the "Street Crimes Unit."

Guzman signed and dated his certification in support of the warrant, "Ptl. Alexandar Guzman Jr. #404, Lakewood Township Police Department, Street Crimes Unit." He dated it "03/02/**2023**" (CA 9) As of that date, Guzman

[3] Many of the cases from other jurisdictions discussed infra involve incorrect dates made at the beginning of a new year, as here.

certified that he "***is currently assigned*** to the ***Lakewood Street Crimes unit*** as a ***Patrolman***." (CA 4 par. 2 and 3) (emphasis added).

The issuing Judge made representations on the face of the warrant reflecting that he issued it "having taken the certification in lieu of affidavit of ***Patrolman*** Alexandar Guzman Jr. . . ." (CA 11, emphasis added) The issuing Judge also wrote in the warrant that it was "***Patrolman*** Alexandar Guzman Jr, [who] submitted electronically to me . . ." an application for the issuance of the warrant, (CA 10), and the Judge dated it March 7, 2023. (CA 12)

It is beyond any doubt whatsoever that Guzman was – in January and February 2023 - a Lakewood Police Department Street Crimes Unit patrolman just before the March 7, 2023 warrant was issued, as sworn to by him and as formally recognized by the issuing Judge.

Guzman was not, however, a Lakewood Police Department patrolman in January and February 2022. He certified that in "***January of 2022***" he was assigned to the Ocean County Narcotics Strike Force (hereafter "OCNSF") "for ***one*** year as a ***Detective***" and acted "in an ***undercover capacity*** . . . ." (CA 4-5, par. 3) He certified, "In ***January of 2023*** this applicant was ***assigned back*** to the Lakewood [police department], more specifically into the Street Crimes Unit as a Patrolman." (CA 5, par. 3) (emphasis added)

The fact that Guzman was an "undercover" buyer of CDS when he was with the OCNSF in 2022 is significant, because, as he pointed out, "While acting in an undercover capacity, this Applicant has successfully purchased a large quantity amount of narcotics such as cocaine and methamphetamine which has led to the arrest of individuals in the drug distribution community within the State of New Jersey." (CA 5, par. 3) Indeed, an undercover agent purchasing large quantities of narcotics from narcotics distributors is certainly not working with a confidential informant of a local police department at the same time he is making these purchases – for obvious reasons – and as an undercover agent he is definitely not disposed to file a certification in support of a search warrant knowing the information will become public. That would be contrary to common sense and likely police protocol. Indeed, in the small community of drug distribution, law enforcement carefully guards the identities of undercover operatives as well as police informants for reasons of safety and to maintain their "covers." Certainly Patrolman Guzman was not working with the C.I. in this case in January and February of 2022 while he was an undercover Detective in 2022.

According to Guzman's March 2, 2023 certification, this operation was clearly a Lakewood Police Department operation, not an OCNSF operation. Indeed, Guzman was then "***currently assigned***" to this case with "***Detective***

Austin Letts of the Lakewood Police Department Street Crimes Unit . . . ." (CA 4, par.3; see also A 5, par. 4) (emphasis supplied) Neither Letts nor Guzman were with the OCNSF at the time of the activities reflected in the certification. Rather, both were Lakewood officers. According to the certification, the Lakewood officers used Lakewood Police Department resources to develop probable cause such as "confidential funds with which to make the purchases and stored the purchases in the Lakewood Police Department evidence locker." (CA6-7) They used Lakewood Police Department computers to further their investigation of Defendant Thomas. (e.g., "Once back at the Lakewood Police Department an inquiry was then conducted of [MVC files] which revealed a current address [in Lakewood]" (CA6, par. 4) The inquiry was described in the certification as an "in-house inquiry." (CA 6, par. 4) The "meet locations" for the controlled buys were in Lakewood. (CA 6, par 5) The evidence seized was done with "Lakewood Police Department confidential funds" (CA 7, par. 6) and the crack cocaine bought was "packaged, labeled, sealed, submitted as evidence and stored within the Lakewood Police department's Drug Safe." (CA 8, par 6)

It was Lakewood Street Crimes Unit personnel, Lakewood Detective Letts along with Lakewood Patrolman Guzman, who first met with the C.I. ("During the week of January 29, 2022 (sic) this Applicant and Detective

Austin Letts of the Lakewood Police Department Street Crimes Unit, met and spoke with C.I. 23-02 in regards to CDS distribution ***occurring*** in the Lakewood Township New Jersey area." (CA 5, par. 4) Further, the C.I. was a Lakewood Police Department C.I. appearing in the Departments C.I. registry as "23-02." ("C.I. 23-02 is a documented reliable confidential ***informant of the Lakewood Police Department*** . . . ." (CA 5, par 4) (emphasis added) The C.I. provided a physical description of Defendant and that he "is ***currently engaged*** in the distribution of crack cocaine [in Lakewood.]" (CA5 par. 4) (emphasis added)

The C.I.'s first controlled buy was arranged by Letts. ("During the week of February 19, 2022 (sic) Detective Letts met with C.I. 23-02" (CA 6, par. 5) At that time, Lakewood personnel were conducting surveillance, witnessed the controlled buy, and retrieved and stored the CDS in the Lakewood Police Department evidence drug safe. (CA 6-7, par. 5)

The C.I.'s second controlled buy was also arranged by Letts "during the week of February 26, 2022." (sic). During that transaction, Detective Nathan Reyes and Guzman conducted surveillance and witnessed the arranged transaction as well as other CDS transactions. Letts provided "constant observation" of the C.I. while "location detectives" conducted stationary, mobile, and electronic surveillance of the transaction. Officers observed

Defendant conduct "numerous hand to hand transactions with multiple individuals" at that time as well as their own controlled buy. The recovered CDS was stored in Lakewood's drug safe. (CA 7-8 par. 6)

Additionally, the **C.I. 23-02** described as a "reliable" "Lakewood Police Department informant," and was likely the second C.I. in the Lakewood C.I. registry for the year 2023.

In addition to Guzman's representations, the issuing Judge's representations in the warrant confirming Guzman's identity and professional capacity as Lakewood patrolman as of March 7, 2023 – not undercover Detective Guzman of the OCNSF - narrows the probable cause recited in the certification in this case to when Patrolman Guzman and Detective Letts were working together as Lakewood Police officers in the Lakewood Police Department Street Crimes Unit – specifically between the "week of January 29," the "week of February 19," and "the week of February 26," **2023.** Hence, the last controlled buy occurred only 4 days before Guzman dated his certification March 2, 2023 and a short time before the warrant was issued.

Significantly, because Guzman's job with the OCNSF began in January 2022 and ended after "one year," the activities with the C.I. and the two controlled buys could not have occurred in February of 2022, but could only have occurred in February 2023. What is reasonable and in accord with

common sense is that Guzman was working "as a duly sworn Law Enforcement Officer of the Lakewood Police Department. . . ." as a "patrolman," (CA 2), along with Detective Letts in the Lakewood Street Crimes Unit in January and February 2023 when the meetings with the C.I. and the two controlled buys occurred.

Guzman's supporting certification was initially reviewed and approved by Assistant Prosecutor Alec DeBari on March 7, 2023 at 4:45pm. (CA 9) Two hours later the Hon. Guy P. Ryan, P.J.S.C. reviewed the certification and issued the search warrant. The Judge dated the warrant March 7th 2023. (CA 12) He authorized execution of the warrant within 10 days of its issuance. (CA 11) The obvious purpose of the 10 days constraint was to prevent staleness.

The issuing Judge is the Presiding Criminal Judge in Ocean County which reflects a measure of experience with search warrants and knowledge of the criminal law particularly suited to make the initial probable cause determination which our Supreme Court has described as a "value judgment upon a factual complex rather than an evident application of a precise rule of law, and indeed ***a value judgment which inevitably reflects the seasoning and experience of the one who judges.'*** " Schneider, supra, 163 N.J. at 362. (emphasis supplied) The Judge saw fit under the circumstances to protect the warrant

against staleness via the 10-day constraint he placed on its execution. He did not think the information presented to him was stale when he issued it.

It is beyond doubt that probable cause was developed by the Lakewood Police Department while Guzman was a patrolman there, as well as his partner Lakewood Detective Letts in 2023 and not 2022. Neither of them were with the OCNSF – in fact, that agency is never mentioned in the certification except when Guzman talks about his experience in law enforcement.

B. A COMMON SENSE READING OF THE AFFIDAVIT "FAIRLY INDICATES" THAT THE 2022 REFERENCE WAS INTENDED AS 2023

In circumstances such as these, Professor LaFave sets forth modes of analysis to be employed to arrive at a "commonsense reading" of the affidavit which could justify a conclusion that first, a stated date was an error, and second, what date was intended.

As stated by Professor LaFave,

> [I]f it is clear from the available facts that some undated but critical event must of necessity have occurred after some other event for which a date is supplied, then ***it is permissible for the court to conclude that the undated event occurred no earlier then the dated event and to make the staleness judgment on that basis.***
>
> [W. LaFave, Search and Seizure, (Fifth Ed. 2012 section 3.7(b) p. 496. (emphasis added)

We submit that the same reasoning would apply to an erroneously dated event such as the year reflected in our warrant. The dated event is January 2023 when Guzman became a Lakewood patrolman working with other Lakewood officers in the Lakewood Police Department. Therefore the probable cause had to have "occurred no earlier" than the dated event – January 2023. The buys and meetings with the C.I. had to have occurred after the week of January 29, 2023 as Guzman was a Lakewood patrolman at that time but not before, and before March 7, 2023, the date of the warrant. The only available February that accommodates the controlled buys is February 2023 since Guzman was not a Lakewood officer during the previous February 2022. It was not February 2024 since the warrant was obtained on March 7, 2023.

According to LaFave, this "fairly indicates" that 2022 was an error, and another year was intended.

As for which year was intended, LaFave shows how a judge could conclude the "current year" in an affidavit could be the intended year. This is the precise issue presented in this case.

> ***Finally, brief mention must be made of those situations in which the affidavit does particularize the date of the critical events but the defendant asserts that there is some error or incompleteness in that particularization.*** In such situations, the guiding principle should be the admonitions of Justice Fortas

> that a policeman's affidavit should not be judges as an entry in an essay contest" and that it is "entitled to a common-sense evaluation." citing, Spinelli v. United States 393 U.S. 410 (1969) (dissenting opinion) This means, for example, that when an affidavit dated January 20, 1971, refers to events on January 19 of an unspecified year and the car to be searched is a 1971 model, it unquestionably may be assumed that the events occurred just the day before. (citation omitted). ***Similarly, reference to a year other than the current year will not invalidate the warrant if the circumstances fairly indicate that the intended reference was to the current year.*** (citing cases)
>
> [LaFave, supra, section 3.7(b) at 495-496 (emphasis added)]

The then-current year directly referenced in the warrant was 2023, the year Guzman made his representations and dated his certification, the year the Judge made his representations on the face of the warrant and dated it, and the year the warrant was issued and executed with its 10-day constraint on its execution.

This, in conjunction with the fact that the probable cause had to have occurred no earlier than January 2023 cabins probable cause to the correct year, to 2023. This is true for the additional following reasons.

1. USE OF THE PRESENT TENSE REFERS TO THE THEN CURRENT YEAR

As of March 2, 2023, the date he signed his certification, Guzman related that Lakewood officers met with the C.I. about CDS distribution that

was then "***occurring*** in the Lakewood Township" area. (CA5, par. 4) Similarly, the reliable confidential informant explained to the Lakewood officer that a male known to the C.I. "***is currently engaged*** in the distribution of crack/cocaine in the Lakewood, New Jersey area" (CA 6, par. 4) (emphasis added) Guzman certified there is "now" located certain property obtained in violation of the law. (CA 3)

Use of language in a warrant such as "is presently under the influence," U.S v. Clark, 685 F.3d 72 (Ist Cir. 2012) or "a continuing drug business was being operated" Jones v. State, 364 S.W. 3d854 (Tex. Crim. App. 2012), suffices if it connects with information "tied to specific and recent dates." United States v. Cioni, 649 F. 3d 276 (4th Cir. 2001). The specific recent date is January 2023 when Guzman certified he became a Lakewood patrolman, as well as March 2, 2023 when he signed his certification in that capacity, and March 7, 2023 when the issuing Judge confirmed those facts and issued and dated the warrant.

As stated in State in Int. of R. B. C., 183 N.J. Super. 121, 132, (Juv. & Dom. Rel. 1981), a judge,

> . . . may consider other facts in determining sufficient definiteness as to the time at which critical but undated events occurred. Use of words such as "recently" (Waggener v. McCanless, 183 Tenn. 258, 191 S.W.2d 551 (Sup.Ct.1946)); "within" (a named period) (Hicks v. State, 194 Tenn. 351, 250 S.W.2d 559 (Sup.Ct.1952)),

> "during" (a named period) (Rugendorf v. United States, 376 U.S. 528, 84 S.Ct. 825, 11 L.Ed.2d 887 (1964), reh. den. 377 U.S. 940, 84 S.Ct. 1330, 12 L.Ed.2d 303 (1964)), or "on many occasions" (Jones v. United States, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960); 78 A.L.R.2d 233) have been held to be sufficient to save affidavits from indefiniteness as to time. It has also been held that dates in affidavits may be abbreviated (Grace v. State, 198 Tenn. 626, 281 S.W.2d 641 (Sup.Ct.1955); 100 A.L.R.2d 525, 533, s 5f), and that time may sufficiently be indicated by use of the present tense (Borras v. State, 229 So.2d 244 (Fla.1969), app. dism. and cert. den. 400 U.S. 808, 91 S.Ct. 70, 27 L.Ed.2d 37 (1970); 68 Am.Jur.2d at 725).

We submit that the same considerations apply in the circumstances here where it is clearly demonstrated that a scrivener's error was contained in the certification.

2. USE OF "THE WEEK OF" LANGUAGE IN THE CERTIFICATION REFERS TO THE THEN CURRENT YEAR

The State argued to the reviewing Judge that a "week" begins on a Sunday and runs to Saturday, and indeed it does. See, Webster's Collegiate Dictionary, (Tenth Ed2 001) p. 1335 under the entry for "week." A look at the dates in question – the week of January 29, the week of February 19, and the week of February 26, supports the position that entering "2022" instead of "2023" was a scrivener's error, and 2023 is the correct date.

January 29, 2022 was a Saturday, February 19, 2022 was a Saturday, and February 26, 2022 was a Saturday.

On the other hand, January 29, **2023** was a Sunday, February 19, **2023** was a Sunday, and February 26, **2023** was a Sunday.

It is clear that Guzman made an error when typing the last digit of the year, as a "week" starts on a Sunday, not on a Saturday, and therefore the intended correct year is 2023.

3. THE RIGHT TO ARREST DEFENDANT AFTER WITNESSING MULTIPLE DRUG DEALS INVOKES THE THEN CURRENT YEAR AND NOT THE YEAR BEFORE

The certification reveals that "During the week of February 19, 2022 (sic) Detective Letts met with C.I. 23-02." Further, it is certified that "During the meeting, Detective Nathan Reyes and this applicant began conducting surveillance of [Defendant's address]. Under the constant observation of Detective Letts. . . [and] while conducting stationary, mobile, and electronic surveillance . . . This applicant then observed C.I. 23-02 and Norman Thomas 4th engage in a brief hand to hand exchange indicative of a CDS transaction." Once the exchange had been completed Detective Letts debriefed the C.I. and surveillance was terminated. (CA 6, par. 5)

In the next paragraph the certification reveals, "During the week of February 26, 2022 (sic)," Detective Letts again met with the C.I. and again, during the meeting, Sergeant Nathan Reyes and Guzman conducted stationary, mobile, and electronic surveillance of Defendant's residence. At that time, the officers

observed Defendant "conduct ***numerous hand to hand transactions*** with multiple individuals. . . ." (CA 7, par. 6) (emphasis added). Reyes also observed a separate CDS transaction between Defendant and the C.I., and subsequent to that transaction, yet another hand to hand CDS transaction, all while defendant was under the "constant surveillance" of Detective Letts. (Ibid.)

Police could have arrested and searched Defendant on the spot after witnessing these CDS transactions. It makes no sense that police would wait approximately a year before applying for a warrant – and the issuing judge could surely have taken this into account.

In State v. Novembrino our Supreme Court made clear,

> If the officers had a reasonable suspicion that they were in fact witnessing drug transactions, they would have been authorized to arrest defendant on the spot. *Adams v. Williams,* 407 *U.S.* 143, 148–49, 92 *S.Ct.* 1921, 1924–25, 32 *L.Ed.*2d 612, 618 (1972); *127 *Beck v. Ohio,* 379 *U.S.* 89, 91, 85 *S.Ct.* 223, 225, 13 *L.Ed.*2d 142, 145 (1964); *State v. Macuk,* 57 *N.J.* 1, 8, 268 *A.*2d 1 (1970); *State v. Doyle,* 42 *N.J.* 334, 349, 200 *A.*2d 606 (1964).
>
> [State v. Novembrino, supra, 105 N.J. 95, at 125–27,]

A common sense reading of the certification is that the multiple Lakewood Police Department officers – each and every one of them - after expending significant Department resources, time and effort, and after witnessing multiple crimes occurring in their presence, did not wait a full year before applying for a warrant, but rather applied for it right away. To read it

otherwise would require a belief that all the officers involved in the investigation ignored the fact that no warrant had been applied for a full year after all the time and effort put into this case. Instead, the certification was crafted, the warrant was applied for, and the Judge issued it in a matter of days, and it was executed soon after its issuance.

POINT IV
AUTHORITY FROM OTHER JURISDICTIONS SUPPORTS THE VITALITY OF THE WARRANT HERE
(A1-17)(1T12-1 to 26-22)(2T12-15 to 18-9)

There are plenty of cases from other jurisdictions that support the analysis of this case here – not all of them will be digested herein. See for example the cases cited in Leed, infra, as well as cases cited in Lafave, supra, section 3.7(b) at 495-496.

The Second Circuit stated clearly as to how certain dating errors appearing in an affidavit should be treated,

> In general, minor errors in an affidavit are not cause for invalidating the warrant that it supports. As the Supreme Court explained in *United States v. Ventresca,* 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965), "affidavits for search warrants ... must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion." *Id.* at 108, 85 S.Ct. 741. It follows that "courts should not invalidate [a] warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner." *Id.* at 109, 85 S.Ct. 741. We do not test the validity of search warrants and their supporting affidavits

> in a vacuum. Indeed, this Court has explained that ***when information within a search warrant permits the establishment of intended—but imperfectly scribed—dates, the document is not rendered deficient.*** *See Velardi v. Walsh,* 40 F.3d 569, 576 (2d Cir.1994) (***"Warrants have been upheld despite 'technical errors,' ... when the possibility of actual error is eliminated by other information,*** whether it be ... supplemental information from an appended affidavit, or knowledge of the executing agent derived from personal surveillance of the location to be searched.").
> Here, the dating errors in both Officer Granville's affidavit and the warrant itself were harmless because each document in which they occurred contained accurate information from which one could easily establish the intended dates. First, the magistrate judge used the correct date when signing the jurat on Officer Granville's supporting affidavit. The magistrate judge again recorded the correct date when signing the search warrant itself. Second, reference to Officer Granville's affidavit, which discussed a related federal arrest warrant obtained on April 22, 2005, eliminates any doubt as to the correct year of the relevant events, and ***it cabins the analysis of the possible staleness of the officer's information*** to a three-day period between April 22 and April 25.
>
> [United States v. Waker, 534 F.3d 168, 171 (2d Cir. 2008) (emphasis added)]

In the context of minor errors in the description of premises to be searched, the reviewing Judge pointed to State v. Daniels, 46 N.J. 428, (1966). (see, A 11). LaFave, collecting cases of which Daniels is one, points out, where an innocent mistake as to a house number occurs, "the cases reflect an understanding of the fact that ***errors can easily occur in the use of numbers***, such as an

apartment or house number, and that it should be presumed that such an error did occur when other descriptive facts fit a different location." LaFave, supra, sect. 4.5(a) p. 722. (emphasis added) The typo here occurred because Guzman was one digit off in typing a relatively new year. But the rest of the facts in our case fit a different year.

As for cases from other jurisdictions, in the context of claimed staleness of a warrant based on an incorrect date, in Commonwealth v. Leed, 646 Pa. 602; 186 A.3d 405 (2018) the Pennsylvania Supreme Court affirmed the published decision of that State's intermediate appellate court refusing to suppress drug evidence on staleness grounds. The warrant in that case reflected that a canine sweep of the defendant's storage unit as having been conducted one year before the warrant was applied for. The canine sweep was said in the affidavit to have occurred on March 21, 2013, although the affiant spoke with the manager of the storage units on March 21, 2014 and discovered the defendant had last accessed the unit on March 20, 2014. The affidavit however, reflected that on "***March 21, 2013***, your affiant requested Officer Billiter and his K9 partner Ruger. . . to conduct a sweep of unit #503. . . ." The affidavit states that the K9 alerted on the unit at that time. 646 Pa. at 608-609. (emphasis in original)

The Court rejected the defendant's position that the probable cause was stale because the affidavit on its face stated the canine sniff was conducted a year before the warrant was applied for. The Court pointed out that that same affidavit stated the defendant did not rent the unit until 5 months later in August 2013. 646 Pa. at 610. The Court rejected the defendant's position that a reviewing court is prevented from discerning the existence of a typographical error and from evaluating the circumstances surrounding the error to determine an issue of fact material to probable cause. In upholding the warrant it reasoned,

> At the outset, we observe that the issue before us is not whether "March 21, 2014" versus "March 21, 2013" is more logical or a more correct reading of the probable cause affidavit as a whole. Rather, the discrete issue before this Court is whether the Fourth Amendment permitted the reviewing courts to make that conclusion, when the affidavit on its face stated the date of the canine sniff was "March 21, 2013."
>
> Although the instant case presents a question of first impression in Pennsylvania, we do not write on a completely blank slate. As the Superior Court pointed out, Pennsylvania courts have previously addressed other forms of errors contained within affidavits of probable cause. See *Leed*, 142 A.3d at 26 (collecting cases). We focus our discussion on cases that involve affirmative errors in affidavits of probable cause, rather than omissions. To this end, we look for

> guidance to cases that have considered the effect of providing an incorrect address in an affidavit.
>
> [Commonwealth v. Leed, 646 Pa. 602, 616-617 (2018)]
>
> * * *
>
> Search warrant affidavits can sometimes be quite long, spanning pages detailing the extent of the officers' investigation up to that point in time. It would indeed be elevating "form over substance" to permit one error in one paragraph to spill over and void all of the other information contained within the additional paragraphs. This is especially true here, where the specific temporal indicia contained in the other paragraphs eliminated any reasonable possibility the officers wrongfully searched Leed's constitutionally-protected area based on stale information.

[Id at 619-620]

* * *

> Therefore, we hold that where the substance of an affidavit, read as a whole, evidences that there is a substantial likelihood that a specific paragraph contains an error, such that any reasonable possibility that the police will act without the requisite probable cause is eliminated, the error will not be viewed in isolation and the warrant will be deemed valid, as long as the probable cause affidavit is otherwise sufficient.
>
> [Id. at 620]

In resolving the case, the Leed Court considered the error a "drafting error" and not an error involving an officer's "mistaken belief." Id. at 618-619. Further, the Court noted "several temporal guideposts throughout the entire

affidavit" to enable the reviewing judge to conclude there was a substantial basis for the issuing judge to have found probable cause. Id. at 624. Finally, the Court, relying on the reasoning of Maryland's highest court, the Court of Appeals, in Greenstreet v. State, 392 Md 652, 898A.2d 961 (2006), stated,

> Contrary to Leed's assertion, Greenstreet actually supports the rule we adopt today. The Maryland high court drew a line between affidavits that include only one specific date, which, if stale, would be insufficient to establish probable cause, and an "affidavit [that] presents enough internal, specific, and direct evidence from which to infer a clear mistake of a material date upon which the affiant police officer depended for probable cause." Id. at 973–74. In the latter case, the warrant may still be valid.
>
> [Leed, 646 Pa. at 620]

The Leed Court cited multiple cases from other jurisdictions in support of the rule it crafted,

> Several other states have drawn the same distinction as we do in this case. See *State ex rel. Collins v. Super. Ct. of Ariz.*, 129 Ariz. 156, 629 P.2d 992, 994–95 (1981); *People v. Lubben*, 739 P.2d 833, 836 (Colo. 1987); *State v. Rosario*, 238 Conn. 380, 680 A.2d 237, 240–41 (1996); *Baker v. Commonwealth*, 204 Ky. 536, 264 S.W. 1091, 1092 (1924); *State v. White*, 368 So.2d 1000, 1002 (La. 1979); *State v. Chandler*, 119 N.M. 727, 895 P.2d 249, 256 (Ct. App. 1995), *cert. denied*, 119 N.M. 617, 894 P.2d 394 (1995); *State v. Gomez*, 107 Or.App. 698, 813 P.2d 567, 569 (1991); *Lane v. State*, 971 S.W.2d 748, 753–54 (Tex. Ct. App. 1998);

> *State v. Mitchell*, 318 P.3d 238, 242–43 (Utah Ct. App. 2013); *State v. Vickers*, 148 Wash.2d 91, 59 P.3d 58, 68 (2002).
>
> [Id. 646 Pa. at 622]

Similar to the defendant in Leed not owning the storage unit at the time of the misdated canine sweep but in fact owning it a year later, Guzman was not a Lakewood Police Department officer in 2022 but was in 2023. Also similar to Leed, the certification here contained one specific erroneous date, but the certification here "presents enough internal, specific, and direct evidence from which to infer a clear mistake of a material date upon which the affiant police officer depended for probable cause." Hence the mistake is not fatal to the warrant.

In State v. Rosario 238 Conn. 380, 680 A2d 237 (1996) the Connecticut Supreme Court reversed a published decision of that State's intermediate appellate court suppressing drug evidence because of what it called a "scrivener's error." The affidavit reflected that detectives met with a confidential informant "on January 6, 1992" who told them about the defendant's drug activity. The Court wrote,

> The informant worked with the affiants to conduct a controlled purchase of narcotics from the defendant's residence. Information about the controlled purchase formed the basis for a search warrant that, according

> to the affidavit, was executed on ***January 6,*** **239 ***1992.*** The affidavit does not describe the controlled purchase but provides the following: 'See Hartford Police Case Number 93–922 for information concerning the controlled purchase.' The affidavit also provides that when the affiants executed the first of two search warrants on ***January 6, 1992***, a woman named Alida Nieves, who lived with the defendant, said that the drugs were in *383 the basement. On the basis of that information, the affiants obtained a second search warrant for the basement area of 57 Benton Street. The affidavit was signed and dated ***January 6, 1993***, by the affiants and the issuing judge. The warrant was also signed and dated ***January 6, 1993.***
>
> The defendant moved to suppress the evidence obtained pursuant to the second warrant on the ground that the information contained in the supporting affidavit was stale. In support of his motion he noted that the affidavit supporting the second warrant was signed on January 6, 199***3***, but referred to information allegedly obtained on January 6, 199***2***. The state responded that the references to 1992 in the challenged affidavit were obvious scrivener's errors that did not invalidate the warrant. [Rosario 238 Conn. at 383, 680 A.2d at 238-239] (emphasis in original)]

The evidence was suppressed in that case and the appellate court, strictly applying the four corners rule, affirmed the suppression with one dissent. It concluded that there was no basis within the four corners of the affidavit to conclude the year 1992 was a scrivener's error and therefore the information was stale.

The Connecticut Supreme Court saw the issue in the case as "whether the issuing magistrate ***could have*** reasonably inferred from the information contained in the affidavit" that the affidavit contained a scrivener's error. It concluded that there was such an error, that the error did not invalidate the warrant, and that the reviewing judge should have deferred to the issuing judge's decision on the issue of probable cause.

Significantly, the Court reasoned,

> Not every discrepancy in an affidavit supporting a search warrant is fatal. "[R]eference to a year other than the current year will not invalidate the warrant if the circumstances fairly indicate that the intended reference was to the current year." 2 W. LaFave, Search and Seizure (3d Ed.1996) § 3.7(b), p. 362. Indeed, other jurisdictions **241 have held in cases similar to the present *387 one that a commonsense reading of the affidavit justified the conclusion that a misstated date was mere scrivener's error. See State v. White, 368 So.2d 1000, 1001 (La.1979) (although affidavit stated that underlying information was obtained on January 12, 1977, commonsense reading justified conclusion that proper date was January 12, 1978, when warrant was issued); State v. Marquardt, 43 Or.App. 515, 517, 603 P.2d 1198 (1979) (where affidavit stated that certain observations occurred on February 3, 1978, and search warrant was obtained on February 3, 1979, it was proper to assume that there was scrivener's error because it "hardly seems likely that the affiant would wait exactly one year from the date he obtained his information and then seek a

> warrant at 11 p.m."); Green v. State, 799 S.W.2d 756, 759 (Tex.Crim.App.1990).
>
> Further, a hypertechnical application of the "four corners" rule that governs the judicial review of the adequacy of search warrant affidavits should not preclude the application of common sense to conclude that probable cause supports the warrant. [Rosario, 238 Conn. 386-387; 680 A.2d at 240-241]

The Rosario Court said there was "strong evidence" that the 1992 date was a scrivener's error pointing to the fact that,

> [T]he affidavit refers to a controlled purchase of narcotics that the affiant used as a basis for obtaining a prior search warrant. The affidavit states that this warrant was executed on January 6, 1992, but refers to a 1993 Hartford police case number for information concerning the controlled purchase. ***It is illogical to conclude that a 1992 controlled purchase would carry a 1993 case number."*** (238 Conn. 387-388; 680 A.2d 241., emphasis added). Thus the Court reasoned, the issuing judge "reasonably could have inferred that the inadvertent scrivener's error was at play and accordingly, have upheld the validity of the affidavit and issued the warrant.
> [Ibid.]

Our case is similar to Rosario, where the Rosario Court recognized "strong evidence" of a scrivener's error because the warrant there was said to have been executed in 1992 when there was a 1993 case number. Our **C.I. 23-02** was obviously the second C.I. in the Lakewood C.I. registry for the year 2023. The reviewing Judge in our case rejected that argument, while examining the

warrant de novo, and adhering to a hyper technical application of the four corners rule.

The Louisiana Supreme Court in State v. White, 368 So. 2d 1000 (La. 1979), held that where it was apparent from a common sense reading of search warrant affidavit that the affiant intended to state that information from a C.I. that had been received on January 12, 1978 rather than January 12, 1977, the affidavit was not insufficient despite the officer's erroneous entry of 1977 as the year when information was received from an informant. The Court wrote,

> On January 12, 1978, Adrian Lamkin, a narcotics officer, took a completed search warrant and affidavit to Judge George M. Foote of the Alexandria City Court. The affidavit states as follows:
> "Affiant was contacted by a proven reliable and confidential informant on January 12, 1977, and was told the following information: . . . .
> * * *
> The subscription by Judge Foote at the bottom of the affidavit bore the date January 12, 1978. The search warrant itself signed by Judge Foote was dated January 12, 1977. A search of defendant's residence on January 12, 1978 produced phencyclidine which was the subject of the motion to suppress.

Defendant's position was "that because the affidavit states that the affiant was contacted by a confidential informant on January 12, 1977 the judge could not have determined that probable cause existed on January 12, 1978. However, the Court ruled, the issuing judge "subscribed January 12, 1978 at

the bottom [of the affidavit]" and the affidavit contained a representation that the informant was reliable such that he or she had prior experiences prior to the twelve month period prior to January 12, 1978, the date the affidavit was presented to the judge. The court wrote,

> [A] common sense reading of the affidavit makes it evident that the affiant intended January 12, 1978 rather than January 12, 1977. When the officer presented this affidavit to Judge Foote on January 12, 1978 and when Judge Foote subscribed January 12, 1978 at the bottom, the affidavit contained affiant's assertion in support of the informant's reliability that the informant knew the drug marijuana because of his prior experience with the drug within the past one year. The officer is obviously stating that the information secured on the date this affidavit was presented to the judge, January 12, 1978, is reliable in part because the informant has had prior experiences, i. e. prior experiences within the past year or within the twelve month period prior to January 12, 1978, the date the affidavit was presented to the judge. Thus ***from the face of the warrant itself*** it is evident that affiant is relating that the confidential information was obtained on January 12, 1978. There is thus no merit to this assignment. [State v. White, 368 So. 2d 1000, 1001-1002 (La. 1979)] (emphasis in original)

Similar to White, our informant was denoted a "reliable confidential informant" in the warrant such that it could be concluded that there was a well-developed past history with the Lakewood Police Department and when Lakewood officers approached the C.I. he/she told them of Defendant's drug distribution activities which were then occurring – as of March 2, 2023 the

date of the certification. Further, the issuing judge in our case made multiple particular representations in the warrant which were clearly dated by him as of March 7, 2023.

In State v. Marquardt, 43 Or. App. 515, 603 P.2d 1198 (1979), a search warrant was obtained on February 3, 1979 but the affidavit said the observations occurred on February 3, 1978. The Oregan appellate court held,

> Relying on the rule that probable cause must be determined from the "four corners" of the affidavit, i. e., the information properly before the magistrate, defendant contends the information was stale as a matter of law and the warrant invalid. This argument is without merit. It hardly seems likely that the affiant would wait exactly one year from the date he obtained his information and then seek a warrant at 11 p. m. Based on this circumstance, ***the magistrate, if he noticed the error at all, could properly conclude that it was a clerical error and that the date referred to was February 3, 1979.*** There is no contention that the affidavit was otherwise insufficient to establish probable cause. ***The error was a result of the haste of criminal investigation and to treat it in any other manner is to apply a hypertechnical standard of review disapproved by the United States Supreme Court. United States v. Ventresca***, 380 U.S. 102, 108, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965). See also State v. Diaz, 29 Or.App. 523, 528, n. 3, 564 P.2d 1066 (1977).
>
> [State v. Marquardt, 43 Or. App. 515, 516, 603 P.2d 1198, 1199 (1979) (emphasis added)]

In Marquardt, as here, "it hardly seems likely" that the Lakewood Police Department would wait a year from the date the information in the certification

was obtained, and then engage in a flurry of activity to seek its approval. As that Court stated that was as a result of the haste of criminal investigation and to treat it in any other manner is to apply a hyper-technical standard disapproved by the courts.

CONCLUSION

For the reasons stated above, the reviewing Judge's decision suppressing the evidence seized via the search warrant in this case should be reversed.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3395-24

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	On Leave to Appeal from an Interlocutory Order of the Superior
v.	:	Court, Law Division, Ocean County.
NORMAN A. THOMAS 4th,	:	Indictment. No. 24-08-1460
Defendant-Respondent.	:	Sat Below:
	:	Hon. Hon. David M. Fritch, J.S.C.

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DEFENDANT IS NOT CONFINED

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PRELIMINARY STATEMENT

The warrant requirement protects individual liberty by requiring police to show their work to a neutral judge before receiving authorization to search private areas. In this case, the State concedes that the work police presented to secure the warrant was badly flawed. The sole certification supporting the warrant application detailed two drug sales by defendant Norman Thomas to a confidential informant during a two-week period more than a year before the warrant was sought. The law is clear that such stale information would not continue to provide viable probable cause after such a lengthy lapse in time. Yet, without further inquiry, the issuing judge granted police authorization to conduct wide-ranging searches of two apartments, a car, and defendant's person.

When defendant Norman Thomas moved to suppress the evidence found, the motion court properly limited its review of the warrant to the four corners of the application that had been reviewed by the issuing judge. Beginning with the presumption that the warrant was valid, the motion court nonetheless found that the application was so lacking in probable cause that it should not have been approved.

The State now argues that the dates in the warrant application were "typos" or "scrivener's errors." According to the State, it would have been apparent to the judge who reviewed the warrant application that the sales had in fact occurred less than a month prior to the application and not over a year before, as the application

expressly stated. But the State never told the issuing judge that the dates were wrong at the time, and the judge did not clarify the correct dates before issuing the warrant.

This Court should not assume that the issuing judge acted on the basis of information directly contrary to the information that the State actually provided. There is no reason to speculate now that the judge would have detected – but never clarified or corrected – the errors in the warrant application before approving the warrant. The State's arguments to the contrary would completely undermine the very purpose of the warrant requirement: having a neutral arbiter carefully review the State's investigatory work before authorizing intrusion into private areas.

Because the information within the four corners of the warrant application failed to establish probable cause, this Court should affirm the motion court's decision suppressing the evidence.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

A. The Warrant Application.

In a certification dated March 2, 2023, Patrolman Alexander Guzman, Jr. of the Lakewood Township Police Department stated his belief that he had probable

[1] Because they are intertwined, the Statement of Facts and Procedural History have been combined.

cause to search 144 John Street Apt. 205 and Apt. 207 in Lakewood, NJ, as well as the person of Norman A. Thomas and a Black 2013 Hyundai Sonata. (Ca 2-3, 9)[2]

The following facts are drawn from the warrant certification:

On January 29, 2022, Guzman and Detective Austin Letts met with a documented reliable confidential informant (C.I. 23-02) who told them that Thomas was engaged "in the distribution of crack cocaine [] in the Lakewood, New Jersey area." (Ca 5-6)

On February 19, 2022, Detective Letts met with the informant, who called Thomas to arrange a purchase of CDS. (Ca 6) Letts searched the informant to ensure he did not have any money or contraband, then provided funds to make a CDS purchase. Ibid. Letts then followed the informant to the prearranged meeting location. Ibid. Meanwhile, Guzman surveilled the 144 John Street address, where he saw Thomas leave apartment 207 and enter apartment 205, before driving to the prearranged meeting location. Ibid. At the location, Guzman saw Thomas meet the informant and engage "in a brief hand to hand exchange indicative of a CDS transaction." Ibid. The informant then met Letts at a prearranged debrief location, where he provided Letts with "a quantity of suspect crack cocaine" and confirmed

[2] A: State's appendix
Ca: State's confidential appendix
Sb: State's brief.

that he had given the provided funds to Thomas in exchange for crack cocaine. (Ca 6-7) The affidavit does not disclose the quantity of crack cocaine purchased. Ibid.

On February 26, 2022, Letts met with the informant, who again called Thomas to arrange a purchase of CDS. (Ca 7) Guzman saw Thomas leave from apartment 207 and "travel directly to the parking lot of 144 John Street." Ibid. Guzman saw Thomas "conduct numerous hand to hand transaction with multiple individuals within the parking lot." Ibid. Guzman then saw Thomas get into the Hyundai Sonata, before going into apartment 207, then apartment 205. Ibid. Thomas then traveled to the previously arranged meeting location, where he met the informant and engaged in a "brief hand to hand exchange indicative of a CDS transaction." Ibid. After the exchange with the informant, officers saw Thomas engage in another apparent CDS transaction with an unknown individual. Ibid. The informant then met Letts at a prearranged debrief location, provided Letts with "a quantity of suspect crack cocaine," and confirmed that he had given the provided funds to Thomas in exchange for crack cocaine. Ibid. The affidavit does not disclose the quantity of crack cocaine purchased. Ibid.

On an unidentified date, Guzman conducted a computer search of the New Jersey Department of Motor Vehicles Commission, which revealed Thomas's physical address as listed at 144 John Street Apartment 207, Lakewood, New Jersey 08701. (Ca 8) Guzman conducted a search of Thomas's criminal history that

revealed nine arrests, five indicatable convictions, and one violation of probation. Ibid.

The Honorable Guy Ryan, J.S.C., approved the warrant on March 7, 2023. (Ca 10-12)

B. The Motion Court's Ruling

Following the execution of the warrant, Thomas and co-defendant Carlene Harris moved to suppress the evidence, arguing that the information contained in the warrant certification relating to two February 2022 drug purchases was stale at the time of the warrant application in March 2023 and therefore did not provide viable probable cause to search the locations listed.

The Honorable David M. Fritch, J.S.C., heard argument on the motion on April 17, 2025. (1T) The State did not seek to call any witnesses at the hearing. The State argued that the purchases had in fact occurred in February 2023, but that Guzman's repeatedly references to the sales as occurring in February 2022 were a "scrivener's error." (1T:7-18 to 8-1) The State characterized this as a "highly technical irregularity within the warrant" that did not warrant suppression of the evidence "in the absence of bad faith." (1T:7-18 to 25; 10-5 to 7)

Judge Fritch acknowledged that searches conducted pursuant to a warrant are "presumptively valid and a defendant challenging the issuance of that warrant has the burden of proof to establish a lack of probable cause."

(1T:17-13 to 19 (citing State v. Boone, 232 N.J. 417, 427 (2017)). Judge Fritch also noted that, "[e]ven if a judge reviewing the issuance of a warrant finds the supporting information marginal, they would have to resolve the doubt by sustaining the validity of the search." (1T:19-16 to 20-1 (citing State v. Kasabucki, 52 N.J. 110, 116 (1968)).

Nonetheless, Judge Fritch stated that he was confined to reviewing the "four corners" of the warrant application when assessing whether probable cause existed "at the time the warrant [was] issued." (1T:18-11 to 19-9 (citing State v. Blaurock, 143 N.J. Super. 476, 479 (App. Div. 1976)). Judge Fritch disagreed with the State's characterization of the mistaken dates in the warrant certification as "technical insufficiencies," explaining that the incorrect dates went "directly to the probable cause that is at the heart of this warrant application." (1T:21-6 to 15) Judge Fritch concluded that "[a] review of the affidavit does not show sufficient information that is presented within the four corners of that warrant to make it clear to a reviewing judge that the key dates here should have been 2023 instead of 2022." (1T:21-16 to 20) Judge Fritch noted the timeline presented in the affidavit was internally consistent and did not present any "inherent inconsistency within the four corners of the warrant." (1T:21-20 to 25)

Turning to an assessment of the information contained within the four corners of the warrant application, Judge Fritch found the two controlled buys from February 2022 no longer provided viable probable cause at the time of the March 2023 warrant application. Quoting this Court's decision in Blaurock, 143 N.J. Super. at 479, Judge Fritch explained that "staleness is a question of whether the probable cause still exists when a warrant is issued and at the time of the search." (1T:22-10 to 14) "The issue of staleness often depends more on the nature of the unlawful activity alleged in the affidavit than the dates and times specified therein." (1T:22-15 to 17)

Judge Fritch noted the cases distinguish between description of "a mere isolated violation" where "probable cause dwindles rather quickly with the passage of time" and "facts . . . indicating activity of a protracted and continuous nature," where "the passage of time becomes less significant." (1T:23-3 to 11 (quoting United States v. Johnson, 461 F.2d 285, 287 (10th Cir. 1972)). Because the warrant affidavit described just two controlled purchases in February 2022, Judge Fritch found the facts no longer supported probable cause by the time the warrant was issued over a year later. (1T:24-1 to 12 (citing State v. Sager, 169 N.J. Super. 38, 45 (Law Div. 1979)).

Judge Fritch acknowledged that Thomas's prior convictions for CDS charges listed in the certification and could be considered as part of the

probable cause analysis under State v. Valentine, 134 N.J. 536, 550 (1994). But he concluded that the application's reference to Thomas's 2023 CDS conviction further suggested that probable cause to search the locations would have dissipated between the time of the February 2022 controlled buys and the March 2023 warrant application. (1T:25-1 to 19) Judge Fritch therefore granted defendants' motion to suppress all evidence recovered from the searches.

The State moved for reconsideration, asking the court for the first time to hold evidentiary hearing so the State could present evidence that the controlled purchases had in fact taken place in February 2023. (2T:4-5 to 6-13) Denying reconsideration, Judge Fritch again explained he was bound by the four corners of the warrant application and could not consider "[e]xtraneous information which would otherwise modify the information set forth in the four comers of the warrant affidavit." (A 9) Reviewing the four corners of the affidavit, Judge Fritch against concluded that, "based on the totality of the circumstances and the nature of the unlawful activity alleged, there was not sufficient probable cause to issue a search warrant based on the facts stated in the affidavit presented on March 7, 2023." (A 16)

POINT I:

REVIEWING THE INFORMATION WITHIN THE FOUR CORNERS OF THE WARRANT CERTIFICATION, THE MOTION COURT CORRECTLY DETERMINED THAT THE STATE FAILED TO PRESENT PROBABLE CAUSE FOR THE SEARCH OF THOMAS'S HOME BASED ON TWO DRUG SALES HE MADE OVER A YEAR EARLIER.

In March 2023, the State obtained a warrant to search two apartments, a car, and defendant Thomas's person based on a certification describing two drug sales Thomas made to a confidential informant in February 2022. Thomas moved to suppress the evidence, arguing that the certification depended on stale information that failed to establish ongoing probable cause. In response, the State did not argue that two controlled purchases from February 2022 still provided viable probable cause in March 2023. Instead, the State claimed that the dates in the certification were wrong, and that the issuing judge should have intuited that the controlled purchases had actually occurred in February 2023. The motion court properly limited its review to the four corners of the warrant application, see State v. Marshall, 199 N.J. 602 (2009), concluding that the issuing judge had no way of knowing that the purchases had occurred more recently than the dates listed in the affidavit. The motion court's well-reasoned decision that the warrant was not supported by probable cause should be affirmed.

A. Legal Standard.

Under both the Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution, "no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized." N.J. Const. art. I, para. 7. Our State and Federal Constitutions are especially protective of the right of privacy in the home. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." State v. Radel, 249 N.J. 469, 494 (2022). The United States Supreme Court has recognized that "when it comes to the Fourth Amendment, the home is first among equals" because "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion" is at "the very core" of the Amendment. Florida v. Jardines, 569 U.S. 1, 6 (2013) (quoting Silverman v. United States, 365 U.S. 505, 511 (1961)).

"A search that is executed pursuant to a warrant is presumptively valid, and a defendant challenging the issuance of that warrant has the burden of proof to establish a lack of probable cause or that the search was otherwise unreasonable." Boone, 232 N.J. at 427 (internal quotations and citation omitted). Nonetheless, a

reviewing court "should sustain the validity of a search only if the finding of probable cause relies on adequate facts." Ibid.

When considering whether a judge properly issued a warrant based on probable cause, a reviewing court must confine its consideration to "the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony before the issuing judge that is recorded contemporaneously." Marshall, 199 N.J. at 611 (2009) (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000). "It is not sufficient that police officers are aware of facts adequate to support a warrant if they fail to communicate these facts to the issuing judge." State v. Novembrino, 105 N.J. 95, 128 (1987). "[L]imiting consideration to the 'four corners' of the evidence before the issuing magistrate assures that the magistrate was in a position to adequately perform the constitutional function of providing independent judicial review prior to executive intrusions on individual privacy." Ibid. (quoting Kevin G. Byrnes, New Jersey Arrest, Search, & Seizure § 5:2–5 at 78 (2008–09)).

The remedy for a search conducted by a warrant issued without probable cause is suppression of the evidence. The New Jersey Supreme Court does not exempt searches conducted pursuant to a warrant from the exclusionary rule. Id. at 145-158. The United States Supreme Court created a "good-faith exception" in United States v. Leon, 468 U.S. 897 (1984), providing that "evidence seized

pursuant to a warrant issued without probable cause need not be excluded if the police officer who executed the warrant, judged by the objective standard of a reasonably well-trained police officer, relied in good faith on the defective warrant in gathering the evidence." Novembrino, 105 N.J. at 99. Our Supreme Court struck a different course. Rejecting the "good faith" exception, the Court in Novembrino emphasized that, under our State Constitution, the exclusionary rule plays a critical role in guaranteeing that judges ensure "that search warrants will not issue without probable cause" and in "vindicating the constitutional right to be free from unreasonable searches." Id. at 157.

B. On Its Face, the Information in the Warrant Certification Was Stale.

The motion court properly applied the "four corners" rule to its consideration of the warrant application. The warrant application described information relayed by a confidential informant in January 2022 and two controlled purchases by the informant over a two-week period in February 2022. The certification did not describe any police observation or further investigation of Thomas after February 2022 that would have provided reason to believe that he continued to sell drugs out of his home over a year after the latest documented controlled purchase. The motion court therefore correctly concluded the certification did not provide ongoing probable cause for the search "at the time the

warrant was issued" in March 2023. (A 9) (citing Blaurock, 143 N.J. Super. at 479).

A warrant affidavit may not rely on outdated information to justify a search. "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 proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." Sgro v. United States, 287 U.S. 206, 210 (1932); see also Blaurock, 143 N.J. Super. at 479 ("[P]robable cause to justify the issuance of a search warrant must exist[] at the time the warrant is issued.").

In Novembrino, our Supreme Court suppressed evidence recovered pursuant to a warrant where the warrant affidavit had "furnishe[d] no information whatsoever as to when the informant allegedly 'witnessed' the drug sales." 105 N.J. at 124. Without information about when the alleged criminal activity had occurred, "the informant's allegations, standing alone, were inadequate to provide a neutral judicial officer with a reasonable basis for suspicion that a present search of Novembrino's premises would yield evidence of criminal activity." Ibid. (emphasis in original). The Novembrino Court cited favorably to a First Circuit decision that had found inadequate "a similar affidavit, which contained no time

reference other than the fact that the affidavit was phrased in the present tense," observing that the informant's observations "could have been a day, a week, or months before the date of the affidavit." Ibid. (quoting Rosencranz v. United States, 356 F.2d 310, 314-15 (1st Cir.1966)). The Court explained that approving a warrant based on "information of questionable recency" would degrade the "neutral and detached" function intended for a magistrate judge, turning them effectively into "a rubber stamp." Ibid.

Here, the warrant certification presented information that was not merely "a day, a week, or months" old, but was in fact more than a year old at the time of the warrant application. Two controlled purchases of an unspecified amount of drugs more than a year before the warrant application did not provide "a reasonable basis for suspicion that a present search of [Thomas's] premises would yield evidence of criminal activity." See ibid. Courts have routinely held that such isolated information about the sale of contraband during a short period of time does not provide probable cause for searches conducted substantially later in time. See Sgro, 287 U.S. at 212-13 (statement from July 6 affidavit that affiant had purchased illegal beer from defendant was too stale to support probable cause for issuance of July 27 warrant); Hemler v. Superior Ct., 118 Cal. Rptr. 564, 566 (Cal. Ct. App. 1975) (information regarding drug sale at residence was stale at the time warrant was sought 34 days later); Greenstreet v. State, 392 Md. 652, 677, 898 A.2d 961,

976 (2006) (information based on drugs found in trash seizure that affidavit stated was made one year prior to warrant application was stale because "the sale of illicit drugs has been recognized as creating easily transferable, perishable, and incriminating evidence").

In some cases, detailed documentation of a sustained drug-selling business over a period of many months may support probable cause for a period after the last observed sale. See, e.g., Com. v. Rice, 714 N.E.2d 839, 843 (Mass App. Ct. 1999) (affidavit stating "defendant consistently sold certain drugs in the same manner and location for fifteen months" provided probable cause to believe he "would still be in business there, along with the trappings of his trade, a month and one-half" after last sale). Here, nothing in the affidavit indicated Thomas's sale of drugs was part of such a large or long-running operation as to provide probable cause for a search more than a year later. The certification did not indicate that Thomas sold a particularly large volume of drugs to the informant, did not indicate that Thomas made any representations to the informant about the size of his supply or the duration of his business, and did not indicate that police engaged in any follow-up surveillance of Thomas to confirm he continued to sell drugs from his home at any point after February 2022.

Instead, the affidavit's certification at most supported the conclusion that Thomas was, in February 2022, someone "who effectuate[d] the occasional sale

from his [] personal holdings of drugs to known acquaintances." See United States v. Hython, 443 F.3d 480, 485 (6th Cir. 2006) (explaining that the sale of drugs is not "inherently ongoing"). The certification detailed information provided by an informant in January 2022 and two sales to the same informant over a two-week period in February 2022. The certification also described an unspecified number of unconfirmed apparent hand-to-hand drug transactions to unknown individuals on the same date as one of the controlled purchases.

The motion court properly found the certification as written failed to provide viable probable cause to believe that evidence of drug sales could continue to be found in the identified locations over a year later in March 2023. Contrary to the State's argument (Sb 8-10), the motion court's determination that the warrant application failed to establish probable cause applied the appropriate deferential standard of review. The court made this standard the foundation of its decision, referencing it throughout. The motion court first acknowledged that "[a] search executed pursuant to a warrant is presumptively valid and a defendant challenging the issuance of that warrant has the burden of proof to establish a lack of probable cause or the search was otherwise unreasonable." (1T:17-13 to 19 (citing Boone, 232 N.J. at 427); A 8). The court then explained that, "[e]ven if a judge reviewing the issuance of a warrant finds the supporting information 'marginal' they would have to resolve the doubt by sustaining the validity of the search." (A 10 (quoting

Kasabucki, 52 N.J. 110, 116 (1968)). The motion court likewise acknowledged that "[a]nalysis of a search warrant's validity 'must be approached on a common sense basis rather than upon a super-technical basis requiring elaborate specificity.'" (A 11) (quoting State v. Daniels, 46 N.J. 428, 437 (1966)).

But, as the motion court explained, the errors in the warrant affidavit in this case were not merely technical, but went "directly to the probable cause that is at the heart of the warrant application." (1T:21-6 to 15; A 10) Because all of its information regarding Thomas's drug sales was over a year old, the certification simply did not provide "adequate facts" to sustain the finding of probable cause at the time the warrant was issued. (A 8) (quoting State v. Jones, 179 N.J. 377, 388 (2002)). Given the large gap in time, the "situation could have certainly changed" in the intervening period. (A 15) (quoting State v. Sager, 169 N.J. Super. 38, 45 (Sup. Ct. 1979)). The motion court also noted the warrant certification claimed Thomas had 2023 convictions, further suggesting Thomas's drug distribution may have been disrupted or ceased in the time since the last documented purchases in February 2022.[3]

[3] Reflecting the lack of care that went into drafting the warrant certification, the certification inaccurately described Thomas as having indictable convictions from November and December 2023 – dates that were still many months in the future when the warrant application was submitted to the magistrate judge. (Ca 8) The magistrate also did not seek to clarify the correct dates of these convictions before issuing the warrant.

The State effectively concedes that the warrant, as written, was invalid. It does not argue that two controlled purchases observed in February 2022 would provide viable probable cause for a search conducted over a year later. Instead, the State argues that the motion court erred in failing to allow it to introduce evidence that was never considered by the issuing judge in the form of witness testimony about the actual dates of the controlled purchases. (Sb 11-17) But there was no need for such testimony because the validity of the warrant hinged 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" at the time of the warrant application. Marshall, 199 N.J. at 611. The State is not permitted to inject facts into this case for the first time at the motion to suppress stage where those facts were never presented to the issuing judge. Doing so would fail to ensure that the issuing judge "adequately perform[ed] the constitutional function of providing independent judicial review prior to executive intrusions on individual privacy." Novembrino, 105 N.J. at 128 (quoting Kevin G. Byrnes, New Jersey Arrest, Search, & Seizure § 5:2–5 at 78 (2008–09)).

The information within the four corners of the warrant application was stale and did not provide sufficient probable cause to justify the search. Because the

State cannot now bring in new facts from outside the four corners of the warrant application, this should be the end of the inquiry.

C. Nothing in the Four Corners of the Warrant Application Indicated the Sales Had Actually Occurred in 2023.

Rather than arguing that information in the four corners of the warrant application supported the magistrate's finding of probable cause, the State now attempts to alter critical facts from its application. The State claims that the issuing judge should have known the references to February 2022 were "scrivener's errors" and the sales in fact occurred in February 2023. But a reviewing court should not "rewrite deficient or inaccurate warrants after the search has been executed, especially where there is no evidence the issuing judge noticed the problem and, in any event, failed to correct it when appropriate to do so." Greenstreet, 898 A.2d at 972.

The State contends that amending the dates in the certification is consistent with the "four corners" rule because the repeated references to controlled buys in February 2022 were obvious typos that would have been apparent to the issuing judge. As an initial matter, New Jersey has never adopted a rule that a warrant certification that is on its face devoid of probable cause can be salvaged by speculation that the issuing judge intuited – without expressly stating – that facially stale information was actually obtained recently enough to furnish viable probable cause. This Court should not adopt such a rule, as it would be contrary to the

reasoning that animated our Supreme Court's refusal to apply the good faith exception to shield searches conducted pursuant to a warrant from the exclusionary rule.

As our Supreme Court explained, overlooking police errors in a warrant application undermines the purpose of the warrant requirement by "inevitably and inexorably diminish[ing] the quality of evidence presented in search-warrant applications" in the future. Novembrino, 105 N.J. at 153. To ensure that police and magistrate judges take care in preparing and approving warrants, our Supreme Court chose to apply the full force of the exclusionary rule to searches based on warrants, rather than to "eliminat[e] any cost for noncompliance with the constitutional requirement of probable cause." Ibid.; see also Greenstreet, 898 A.2d at 974 (explaining that "[i]t is not the legitimate role of a reviewing court to rewrite material portions of a deficient, but issued, search warrant," as that would "abrogate the responsibilities of the issuing authority whom the law entrusts to be a detached and neutral judge of whether the Constitution authorizes search of a person's property in a given case").

Magistrate judges considering a warrant application are meant to scrutinize them closely, not to function as a mere "rubber stamp." Novembrino, 105 N.J. at 124. "Close review of the affidavit supporting the warrant is the purpose of the warrant process itself." Greenstreet, 898 A.2d at 972. If a judge considering a

warrant application believes that a typo in the application impacts a material fact bearing on probable cause, the proper procedure is for that judge to clarify the correct date with the State prior to issuing the warrant. Ibid. (explaining that "issuing judges or magistrates are permitted to grasp such errors, interrogate the affiant about the true facts, and correct the affidavit with the signature or initials of the affiant").

The State argues that our Supreme Court's sixty-year-old decision in State v. Daniels, 46 N.J. 428 (1966), supports its position that numerical mistakes in a warrant application never require suppression. But Daniels did not involve "any dispute that probable cause for the issuance of the warrant was established." Id. at 437. Instead, the defendant in Daniels argued that the warrant failed to identify the particular place to be searched because the address searched was 35 Avon Place, not 31 Avon Place as listed in the warrant. 46 N.J. at 434-35. This discrepancy arose from the fact that "no house number was visible" on the exterior of the building at the time of the investigation. Id. at 433. The Court found the particularity requirement was still satisfied because the warrant described the place to be searched as a confectionary store on a particular street and the building searched had "all the outward appearances and characteristics of being a confectionery store," unlike any other buildings in the vicinity. Id. at 435-36. Therefore, the warrant "furnishe[d] a sufficient basis for identification of the

property so that it is recognizable from other adjoining and neighboring properties." Id. at 437. Daniels was therefore about whether the warrant sufficiently identified the location to be searched, not about whether the issuing judge had adequate facts to conclude probable cause existed to authorize the search of that location.

In contrast, in State v. Marshall, 199 N.J. 602, 613 (2009), the Court found a warrant invalid where "the State's affidavit in support of the search warrant clearly indicated that the police did not know in which of the two apartments" at a particular address criminal activity had taken place. The Court found this deficiency was not cured by the officers' "verification" of the address associated with defendant's criminal activity after the warrant was issued. Id. at 606. The Court explained that, at the time of the warrant application, "the probable cause determination could not be made within the four corners of the affidavit as the anticipated conditions listed were to be satisfied after the warrant was issued." Id. at 613. The Court "reiterate[d] that a neutral and detached magistrate must determine probable cause that contraband will be found at a particular location, or that an offense is being committed there" before they can issue a warrant. Id. at 617.

As in Marshall, the State's warrant certification in this case failed to provide the issuing judge with sufficient information to make a finding of probable cause at

the time the warrant was issued. The face of the warrant described stale information that did not provide viable probable cause for a search in March 2023. Nothing within the four corners of the certification made obvious to the issuing judge that the February 2022 dates were typos and that police had meant to base their application on more recent controlled purchases. Just as the police in Marshall could not fix the certification's deficiencies by referencing information outside the affidavit, the State here cannot fix facially stale dates in the affidavit by asking the court to take notice of the dates that the State now claims police actually observed the sales. "It is not sufficient that police officers are aware of facts adequate to support a warrant if they fail to communicate these facts to the issuing judge." Novembrino, 105 N.J. at 128.

Confronting this exact issue, other courts throughout the country have refused to rewrite stale dates in a warrant application where the State later contends the dates were typos and that the issuing judge should have known the investigatory actions described had taken place closer in time to the warrant application. In Stroud v. Commonwealth, the Court of Appeals of Kentucky considered a warrant affidavit submitted on January 23, 1942 that stated: "On Jan. 23rd, 1941, Raymond D. Stegall told the affiant that alcoholic beverages was being stored and sold from the above described premises, and had been stored at this premises and sold from the above described premises within the last ten days." 175

S.W.2d 368, 369 (Ky. 1943). This year-old allegation "was much too remote to create in the mind of the county judge issuing the search warrant that there was probable cause to believe appellant was violating the liquor law at the time the affidavit was made and the search warrant was issued." Ibid. Although the court acknowledged the date that the informant told the affiant about the sales was "in all probability" the day the affidavit was submitted and not a year prior, it still refused to rewrite the affidavit because "whether or not the affidavit is sufficient must be determined by what appears on its face." Ibid.

Likewise, in Greenstreet, the Court of Appeals of Maryland held that the issuing judge should not have granted a warrant that police sought on April 15, 2004, where the warrant affidavit stated that police had seized trash from an address that contained apparent drug residue on April 14, 2003. 898 A.2d at 965. The Court held that the officer should not be permitted "to testify to a different date of the trash seizure and search than contained in the affidavit" because such testimony would violate "the four corners rule and the purpose for its existence." Id. at 972.

The Court further explained that, on review, it could not be "inferred that the issuing judge recognized the purported typographical error in the affidavit, ignored it, and found a substantial basis to support her finding of probable cause based upon a trash search conducted on 14 April 2004, rather than 14 April 2003." Ibid.

The Court noted that this was not a case where the date listed was "contradicted by another factual time or date more likely to be true, also contained within the four corners of the affidavit." Id. at 973. The Court disagreed with the intermediate appellate court's reasoning that the issuing judge likely would have intuited that the year was written in error because: "(1) the narrative in the affidavit probably was constructed in chronological order; (2) reasonable police officers would not wait one year to get a warrant after a revealing trash seizure; and (3) the days of the week for normal trash pick-up given in the affidavit are consistent with 14 April 2004, but not 14 April 2003." Ibid. The Court explained these were not "enough internal, specific, and direct evidence from which to infer a clear mistake of a material date upon which the affiant police officer depended for probable cause." Ibid. "It is not the legitimate role of a reviewing court to rewrite material portions of a deficient, but issued, search warrant," because doing that would "abrogate the responsibilities of the issuing authority whom the law entrusts to be a detached and neutral judge of whether the Constitution authorizes search of a person's property in a given case." Id. at 974.

Similarly, in Bathrick v. State, 504 S.W.3d 639, 641-42 (Ark. App. 2016), the Arkansas Court of Appeals found invalid a warrant that was issued based on a February 5, 2015, affidavit describing a confidential informant's interactions with a defendant on November 5, 2015 – a date that was still in the future at the time the

warrant was sought. Even though the date was obviously a "scrivener's error," "the trial court had no basis upon which to determine which dates were intended in place of the incorrect dates in the affidavit." Id. at 643-44. Moreover, the issuing magistrate did not appear to notice the error or take "any testimony to clear up the discrepancy." Id. at 644. Because it was "impossible to ascertain from the affidavit when the CI allegedly observed marijuana in [defendant's] home," the Court of Appeals concluded that "the affidavit was insufficient to support the issuance of the search warrant," and suppressed the evidence. Ibid.

Even if in an extreme case a reviewing court might be justified in surmising that an issuing judge noticed and silently revised obvious typos in a warrant application, the State cannot point to any evidence in the four corners of this warrant application that shows the listed dates were obviously wrong and that the correct dates were more recent. The three references to January and February 2022 dates, spread over three pages of the warrant certification, were not clearly scrivener's errors. Unlike in Bathrick, the dates were in the past. The affidavit proceeded in chronological order, telling a cohesive story where police first learned about Thomas from a confidential informant in January 2022, arranged controlled purchases in February 2022, yet waited until March 2023 to seek a warrant. The 2022 dates were not "contradicted by another factual time or date more likely to be true, also contained within the four corners of the affidavit." Greenstreet, 898 A.2d

at 973. Therefore, as the motion court explained, the timeline presented in the affidavit was coherent and did not present any "inherent inconsistency within [its] four corners." (1T:21-20 to 25)

The State attempts to analogize this case to the Pennsylvania Supreme Court's decision in Commonwealth v. Leed, 186 A.3d 405, 416 (Pa. 2018), however the facts are highly distinguishable. In Leed, police sought a warrant on March 21, 2014. Id. at 409. The warrant affidavit stated that a confidential informant told police in September 2012 that defendant was "in the business of selling large amounts of powder cocaine and Marijuana." Id. at 408. In March 2014, a different informant told police that Leed "was making frequent short term trips to storage unit # 503 located within Lanco Mini Storage located at 1813 Old Philadelphia Pike, Lancaster, PA." Id. at 409. Ibid. After noting in one paragraph that Leed had been the sole lessee of the unit since August 2013, the affidavit stated in a subsequent paragraph that, "on March 21, 2013," police conducted a K9 sweep of units at the storage facility and the dog "alerted on the unit, indicating the presence of narcotics." Ibid.

Defendant challenged the warrant, arguing "that because the affidavit on its face stated that police conducted a canine sniff on March 21, 2013, a year before the warrant was applied for, the warrant's information was stale, especially considering the same affidavit stated [he] did not rent the unit until five months

later in August 2013." Id. at 410. Splitting 4-3, a sharply divided Pennsylvania Supreme Court concluded that "the affidavit, when read in its totality, contained 'enough internal, specific, and direct evidence from which to infer a clear mistake of a material date upon which the affiant police officer depended for probable cause.'" Id. at 418 (quoting Greenstreet, 898 A.2d at 973-74). The majority noted that the erroneous date was contained to a single paragraph and clearly at odds with the chronology contained throughout the affidavit. Id. at 418. The Court noted that the warrant correctly dated several critical investigative steps as occurring in March 2014, which "give rise to the inference that paragraph 10's listing of March 21, 2013 was an inadvertent error." Id. at 419. The Court therefore held "that where the substance of an affidavit, read as a whole, evidences that there is a substantial likelihood that a specific paragraph contains an error, such that any reasonable possibility that the police will act without the requisite probable cause is eliminated, the error will not be viewed in isolation and the warrant will be deemed valid, as long as the probable cause affidavit is otherwise sufficient." Id. at 416.

Three justices dissented, concluding that "nothing appearing on the face of the affidavit here [] provides specific and direct evidence that the March 21, 2013 date of the dog sweep is clearly mistaken." Id. at 420 (Saylor, J., dissenting). The lead dissent contended that "a reviewing court cannot, consistent with its constitutional role as neutral arbiter, reform facts on the basis that, as stated, they

fail to support a finding of probable cause." Ibid. One dissenting judge wrote separately to underscore her belief that "rewrit[ing] an affidavit of probable cause after a search to provide a post hoc justification for its constitutionality" is "a dangerous threat to the constitutional rights of our citizens." Id. at 421-22 (Donohue, J., dissenting). Justice Donohue expressed particular alarm that the majority assumed the magistrate had "simply glossed over the obvious typo," because such reasoning improperly "excuses the magisterial district judge's failure to perform his or her important function in the review process leading to the issuance of a search warrant." Id. at 422.

Even if this Court were to accept the reasoning of the Leed majority rather than the dissent, the certification in this case does not, "read as a whole, evidence[] that there is a substantial likelihood that a specific paragraph contains an error, such that any reasonable possibility that the police will act without the requisite probable cause is eliminated." Id. at 416. Unlike in Leed, the errors in this case were not limited to a "single paragraph." Three separate paragraphs in the certification detail steps taken in 2022 that the State now contends actually occurred in 2023. Unlike in Leed, no paragraphs prior to the 2022 dates referenced later investigative steps or otherwise suggested that the repeated references to 2022 dates were typos. In fact, no paragraphs anywhere in the certification state that any

investigative steps – other than the warrant application itself – were taken after February 2022.

The State's argument that its error in referencing 2022 rather than 2023 over the span of three pages of the certification would have been obvious to the issuing judge depends on elaborate speculation. The State argues that the certification's "use of the present tense refers to the then current year." (Sb 26) But much of the warrant certification is in fact written in the past tense, not the present tense, including the critical allegations about the controlled purchases. (See Ca 6-7) In any event, our Supreme Court has already expressly rejected the argument that a magistrate should assume that undated, present tense assertions in a warrant affidavit refer to dates recent enough to furnish present ongoing probable cause:

> The present tense is suspended in the air; it has no point of reference. It speaks, after all, of the time when an anonymous informant conveyed information to the officer, which could have been a day, a week, or months before the date of the affidavit. To make a double inference, that the undated information speaks as of a date close to that of the affidavit and that therefore the undated observation made on the strength of such information must speak as of an even more recent date would be to open the door to the unsupervised issuance of search warrants on the basis of aging information. Officers with information of questionable recency could escape embarrassment by simply omitting averments as to time, so long as they reported that whatever information they received was stated to be current at that time. Magistrates would have less opportunity to perform their "neutral and detached" function. Indeed, if the affidavit in this case be

> adjudged valid, it is difficult to see how any function but that of a rubber stamp remains for them.
>
> [Novembrino, 105 N.J. at 124 (quoting Rosencranz, 356 F.2d at 316-17)]

Novembrino involved an affidavit with no time references whatsoever. There was even less basis for the magistrate in this case to infer from the limited use of present tense that this warrant certification's repeated, specific references to dates in January and February 2022 were in fact meant to refer to events occurring in January and February 2023.

The State also claims that Guzman's assignment change from the Ocean County Narcotics Strike Force to the Lakewood Police Department in January 2023 would have signaled to the issuing judge that the controlled purchases must have happened in 2023, not in 2022. But, as the trial court explained, the "affidavit section discussing the tip from the C.I. which dates it at January 29, 2022 [] or the controlled purchases which it dates as 'during the week of February 19, 2022' [] and '[d]uring the week of February 26, 2022' [] make no mention of Ptl. Guzman's current assignment on those dates." (A 12) There was no obvious reason for the issuing judge to conclude Guzman could not have worked on the investigation while assigned to the Ocean County Narcotics Strike Force, especially because the investigation involved the purchase of narcotics within Ocean County. Guzman's own certification stated that, in both roles, he "conducted and/or assisted with

investigations relative to Controlled Dangerous Substances . . . related offenses." (Ca 4) The State's brief implies that Guzman exclusively worked in an undercover capacity while assigned to OCNSF. But this claim is contradicted by Guzman's own certification, which states that, in his OCNSF role, he "participated in numerous drug investigations as a case agent, as well as in an undercover capacity." (Ca 4 (emphasis added))

The State also contends that, because the C.I. was assigned the number "23-02," they were "likely the second C.I. in the Lakewood C.I. registry for the year 2023." (Sb 22) But, as the motion court explained, the numbering system for confidential informants is "not contained within the four corners of the warrant affidavit." (A 13) The issuing judge would have had to make several inferential leaps to conclude the informant number meant the controlled purchases had occurred in 2023, not 2022 – none of which were documented or verified before the judge issued the warrant. Nothing on the face of the warrant certification made clear: 1) that any of the numbers in a four-digit C.I. number are intended to represent a calendar year; 2) that the relevant numbers for that purpose are the first two rather than the last two numbers; and 3) that the year represented is the first year the C.I. ever worked with police, such that any controlled purchase attributed to the C.I. prior to that year is clearly an error. Even if the issuing judge knew how C.I. numbers were assigned and grasped a contradiction between the C.I. number

and the dates of controlled buys, there would have been just as much reason to believe the State made a typo in the C.I. number as there was to believe the State made a typo in the dates of the controlled purchases. If the issuing judge had actually perceived a discrepancy between the C.I. number and the date of the two controlled purchases, then he should have questioned the State about that discrepancy and clarified the correct information prior to issuing the warrant.

The State also argues that the issuing judge should have known the repeated reference to sales that occurred in February 2022 were typos because the certification described "the week of January 29, the week of February 19, and the week of February 26," and each of these dates fell on a Saturday in 2022, but fell on a Sunday in 2023. (Sb 28) Critically, the certification never actually claimed these dates fell on a Sunday. The State argues that "a week begins on a Sunday and runs to Saturday," so therefore the dates in the certification were obviously wrong. (Sb 28) But, again, the certification described "the week of" these dates, not "the week beginning" with these dates. (Ca 5-7) By claiming the affidavit made clear these dates were the beginning of their respective weeks, the State is yet again seeking to inject new information into the case that did not appear within the four corners of the warrant application.

Furthermore, even if the affidavit had stated the listed dates were the "beginning" of their respective weeks, there is no reason to assume the issuing

judge consulted a calendar, noticed the discrepancy, and revised the dates to the present year without confirming the correct dates with the State. The Maryland Court of Appeals rejected a similar argument in Greenstreet, where the warrant affidavit described a trash seizure as occurring on April 14, 2003, which was a Monday, even though the affidavit elsewhere stated regular trash collection occurred in the area on Wednesday and Saturday. 898 A.2d at 973 n. 2. Although April 14, 2004, was a Wednesday, the Court concluded that "[t]his information is not a sufficient basis from which the issuing judge or a reviewing court could infer that the date 14 April 2003 given in the warrant application clearly was a typographical error because the correspondence of stated trash days is not the caliber of direct information that should be accepted as a contradiction of a precise material date giving rise to probable cause." Ibid.

The State notes that the repeated error in dating the sales as having occurred in 2022 was explained by the fact Officer Guzman "was one digit off in typing a relatively new year." (Sb 33) But, in several locations, the affidavit correctly identified the present year as 2023, not 2022. Patrolman Guzman properly dated his signature on the affidavit as March 2, 2023. (Ca9) Likewise, Ocean County Assistant Prosecutor Alec T. DeBari properly dated his review and approval of the affidavit as March 7, 2023. Ibid. Therefore, nothing within the four corners of the warrant affidavit would have led the issuing judge to believe that the drafting

officer and prosecutor who reviewed the certification were both incapable of realizing that the present year was 2023, not 2022.

Before issuing a search warrant, judges must hold police to their burden to present "facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." Sgro, 287 U.S. at 210. Police should take care to ensure that critical dates in warrant applications are accurate, and issuing judges should carefully scrutinize warrant applications before they are granted. Judges should not reflexively assume the information that the application is based on is recent, rather than stale, where the warrant application does not make that clear. Novembrino, 105 N.J. at 124. Even if a judge presented with a warrant application suspects that a date in a certification is an error, the judge should not assume, without eliciting confirmation from the affiant, that it is meant to refer to a more recent date than the one expressly listed. To do so would be to presume that police would never seek to act based on stale information. Such a presumption would void the very purpose of the warrant requirement by turning judges into mere rubber stamps rather than a check against "unreasonable governmental intrusion." Jardines, 569 U.S. at 6.

Although deficiencies in a warrant application in some cases may be the result of "innocent oversight by the police," our Supreme Court has made clear that a reviewing court cannot retroactively validate a warrant that was issued by a judge

who was not presented with evidence of probable cause. Boone, 232 N.J. at 431. Because they were "not supported by a valid warrant or justified by an exception to the warrant requirement," the searches in this case were unconstitutional. Ibid. This Court should affirm the suppression of the evidence.

CONCLUSION

For all these reasons, this Court should affirm the motion court's well-reasoned decision suppressing the evidence.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender

BY: Zachary G. Markarian
ZACHARY G. MARKARIAN
Assistant Deputy Public Defender
Attorney ID. No 279272018

Dated: September 29, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET A-003395-24

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	On Leave to Appeal from an Interlocutory Order of the Superior Court,
v.	:	Law Division, Ocean County.
CARLENE HARRIS AND	:	
NORMAN A. THOMAS 4TH,	:	Indictment. No. 24-08-1460
Defendant-Respondent.	:	Sat Below:
	:	Hon. David M. Fritch, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT

Francis R Hodgson III, Esq.
Attorney for Carlene Harris,
Defendant
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Of Counsel
and On the
Brief
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October 6, 2025

DEFENDANT IS NOT CONFINED

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PRELIMINARY STATEMENT

Post execution of a search warrant, the State attempted to inject additional facts into the warrant application to establish probable cause. A "four corners" review of the sufficiency of the basis for a search warrant does not permit an infusion of supplemental information to revive an otherwise deficient application. As the facts actually contained in the warrant application provided to the issuing judge did not establish probable cause to permit the search of Carlene Harris' home, the trial court appropriately granted the motion to suppress evidence.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Respondent adopts the Statement of Facts and Procedural History recited in the co-defendant's brief. Db2 - Db8.

POINT I:

THE MOTION COURT CORRECTLY DETERMINED THAT THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE

In March of 2023, the State obtained a search warrant to search Defendant's home. The affidavit submitted in support of the State's application

[1] Because they are intertwined, the Statement of Facts and Procedural History have been combined.

for the search warrant describes two purchases of drugs by a confidential informant in February of 2022. Defendant Carlene Harris moved to suppress the evidence obtained as a result of that search warrant, arguing the information contained in the affidavit did not establish probable cause to search her home in March of 2023. The State responded by claiming the dates contained in the affidavit were incorrect, and that the purchases actually occurred in February of 2023. The motion court appropriately reviewed the four corners of the warrant affidavit and found that it did not establish probable cause for the issuance of the search warrant.

A. Legal Standard

The Fourth Amendment of the United States Constitution and Article I of the New Jersey Constitution provides that "no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized." N.J.Const. art I, para 7. "The probable cause standard is a well-grounded suspicion that a crime has been or is being committed." State v. O'Neal, 190 N.J. 601, 612 (2007). In determining whether probable cause exists, a court must "make a practical, common sense determination whether, given all the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Ibid (quoting State v. Moore, 181 N.J. 40, 46 (2004)).

When considering whether a warrant was properly issued, a review of the sufficiency of the information "must be made 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." Schneider v. Simonini, 163 N.J. 336, 363 (2000).

Here, at the time of the motion, the State attempted to supplement the warrant application with outside information not contained within the warrant affidavit. The motion court properly limited its review to that which was before the issuing judge at the time of the warrant application.

B. Warrant Affidavit Did Not Establish Probable Cause Supporting Issuance of the Search Warrant

The facts contained in the warrant application described information provided by a confidential informant in January of 2022, and two controlled purchases of narcotics by the Lakewood Police Department over a two-week period in February of 2022. The application was made to the issuing judge and issued in March of 2023, over a year later.

A warrant to search may not issue on the basis of stale or outdated information. "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 proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time. Sgro v. United States, 287 U.S. 206, 210 (1932); see also State v. Blaurock, 143 N.J.Super. 476, 479 (App.Div. 1976) ("[P]robable cause to justify the issuance of a search warrant must exist at the time the warrant is issued.").

Information provided by a confidential informant and just two controlled purchases of an unspecified amount of narcotics more than a year prior to the warrant application/issuance clearly does not establish a fair probability that contraband or evidence of a crime will be found in the place to be searched - here, the Defendant's home. Therefore, the motion court appropriately found that search warrant was not supported by probable cause and suppressed the evidence obtained as a result of the search warrant.

CONCLUSION

For all these reasons, this Court should affirm the motion court's well-reasoned decision suppressing evidence.

Respectfully submitted,

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Attorney for Carlene Harris, Defendant

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Dated: Oct. 6, 2025

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November 5, 2025

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

RE: Re: State of New Jersey (Plaintiff-Appellant) v.
Carlene Harris and
Norman A. Thomas 4th (Defendant's-Respondent's)
Docket No. A-3395-24T3

Criminal Action:
On Appeal from an Order in the Superior Court of New Jersey,
Law Division, Ocean County

Defendant(s) are not confined.

Honorable Judges:

Please accept this letter as a reply to Defendant Thomas's brief dated September 29, 2025 in the referenced matter. This letter in effect will also serve as a reply to Defendant Harris's October 2, 2025 brief.

Defendant argues "staleness" throughout his brief – in other words past probable cause can no longer be relied upon because of the passage of time. He claims the State "does not argue that the two controlled purchases observed in February 2022 would provide viable probable cause for a search conducted over a year later." (Db18) Yet, whether the facts reflected probable cause or not is an entirely different issue than whether past probable cause can be relied upon via application of the staleness doctrine because of a scrivener's error. Hence, the issue here is what effect does a typographical error in the year have on the staleness doctrine in an otherwise valid warrant where an error in the year is clearly shown from the four corners of the affidavit to be another specific year – all other possibilities having been eliminated.

It is odd that Defendant never recognizes that the warrant contained a typo in the year. It is obvious that a mistake was made by the affiant – as recognized by the reviewing judge. Yet, Defendant claims the references to the year 2022, "were not clearly scrivener's errors." (Db26) This is the only position that could be taken because the facts amply demonstrated probable cause and there has been no judicial finding that there was no probable cause, apart from the scrivener's error. Indeed, apart from that error, Defendant does not even argue that the facts contained in the warrant do not reflect probable cause. Rather, throughout his brief, he attempts to shift his burden to

demonstrate there is no probable cause in the warrant to the State. He is the burdened party to show this presumed valid warrant is lacking. He has not argued anything along those lines except staleness.

We have shown in our main brief that the two controlled buys, among other things in this case could not have occurred on specific dates in 2022 or in 2024 but could only have occurred in 2023. See the discussion in Point III, at pages 17-31. Therefore the question is how this obvious typographical mistake is to be handled under the staleness doctrine where all other years are eliminated except the correct one via the four corners of the warrant.

Respectfully submitted,

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Submitted: November 5, 2025