SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3919-22

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| | : | CRIMINAL ACTION |
| STATE OF NEW JERSEY, | : | |
| | : | On Appeal from a Judgment of |
| | : | Conviction of the Superior |
| Plaintiff-Respondent, | : | Court, Law Division, |
| | : | Bergen County |
| | : | |
| v. | : | Ind. No. 18-12-195-S |
| | : | |
| | : | |
| JIMMY CORREA, | : | Sat Below: |
| | : | Hon. Robert M. Vinci, J.S.C., and |
| | : | Hon. Gary N. Wilcox, J.S.C |
| Defendant-Appellant. | : | |

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# BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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Dated: February 9, 2024

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## PRELIMINARY STATEMENT

Acting on a tip from a criminal informant, police opened an investigation into Jimmy Correa, whom the informant alleged to be a heroin dealer operating out of a storage unit. The investigation revealed that Mr. Correa indeed rented and regularly accessed a storage unit -- but that's about it. Police never saw Mr. Correa carry anything that looked like packaged heroin into or out of the unit, nor did they execute a controlled buy in an attempt to corroborate the informant's allegations.

Despite the lack of corroborating information, and despite the fact that the tip pertained only to Mr. Correa, police surveilling the storage unit decided to pull over Douglas Watson, who rented the storage unit with Mr. Correa, and Wellington Moya, whom police believed to be accompanying Watson to the storage facility. During the stop, Moya consented to a search of his car and narcotics were found inside. Shortly thereafter, police applied for a warrant to search Mr. Correa's storage unit, which they secured.

The trial court's denial of Mr. Correa's motion challenging the search of his storage unit must be reversed. First, the stop of Moya's car was illegal because police lacked reasonable and articulable suspicion that Moya was involved in criminal activity. The evidence seized from Moya's car was thus illegally obtained and cannot be considered in evaluating whether there was

probable cause to authorize a search of Mr. Correa's storage unit. Second, without the evidence seized from Moya's car, the warrant affidavit submitted by police falls far short of establishing probable cause to search the storage unit. Even if the evidence from Moya's car could be considered, the affidavit fails to satisfy the probable cause standard. Accordingly, the search of the storage unit was unconstitutional, and the evidence seized from the unit must be suppressed.

## PROCEDURAL HISTORY

On December 12, 2018, a State Grand Jury returned Indictment Number 18-12-195-S, charging defendant Jimmy Correa with first-degree maintaining or operating a controlled dangerous substance production facility, N.J.S.A. 2C:35-4, 2C:2-6 (Count 9); first-degree possession with intent to distribute a controlled dangerous substance, N.J.S.A. 2C:35-5a(1), 2C:35-5b(1), 2C:2-6 (Count 11); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), 2C:2-6 (Count 12); second-degree conspiracy to commit the aforementioned crimes, N.J.S.A. 2C:5-2 (Count 8); third-degree possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)(1), 2C:2-6 (Count 10); second-degree possession of a firearm during the commission of certain crimes, N.J.S.A. 2C:39-4.1, 2C:2-6 (Count 13); and second-degree possession of a weapon by a convicted person, N.J.S.A. 2C:39-7(b) (Count 17).[1] (Da 9-15, 19) The indictment charged Mr. Correa's co-defendants, Douglas Watson and Wellington Moya, with several of these offenses and others. (Da 1-20)

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[1] Da — Defendant's appendix
Dca – Defendant's confidential appendix
1T – Transcript of January 24, 2020 suppression hearing
2T – Transcript of March 5, 2020 oral decision on suppression motion
3T – Transcript of April 8, 2021 suppression hearing
4T – Transcript of April 26, 2021 suppression hearing
5T – Transcript of February 22, 2023 plea hearing
6T – Transcript of March 31, 2023 sentencing
PSR – Presentence Report

On March 27, 2019, Mr. Correa filed a motion to suppress all evidence seized from his storage unit. (Da 21-23) Mr. Correa also moved to suppress all evidence seized from his person and statements he made during a traffic stop that occurred on August 30, 2018 -- just after police sought a warrant to search the storage unit -- as well as all evidence seized from his person and his vehicle on September 17, 2018, when police went to arrest him. (Da 21-25) No evidentiary hearing was held on the motions. (1T 4-12 to 20; 2T 26-5 to 8) In an oral decision on March 5, 2020, the Honorable Robert M. Vinci, J.S.C., granted the motions in part, suppressing all evidence seized and statements made during the course of the August 30 traffic stop, and otherwise denied them. (2T 26-15 to 45-5; Da 24-25)

On April 8 and April 26, 2021, an evidentiary hearing was held before the Honorable Gary N. Wilcox, J.S.C., on co-defendant Watson's motion to suppress all evidence seized during the traffic stop of Moya. (3T, 4T) During the hearing, Judge Wilcox ruled that Mr. Correa did not have standing to join Watson's suppression motion. (4T 8-7 to 9-10) Judge Wilcox denied Watson's motion on August 3, 2021. (Da 26-39)

On February 22, 2023, Mr. Correa entered a guilty plea to first-degree possession with intent to distribute a controlled dangerous substance, N.J.S.A. 2C:35-5a(1) (Count 11), and second-degree unlawful possession of a firearm,

N.J.S.A. 2C:39-5(b) (Count 12). (5T 11-11 to 18; Da 40-45) In exchange, the State agreed to dismiss all remaining counts in the Indictment and recommend a sentence of 14 years flat on the controlled dangerous substance charge and five years with a 42-month parole ineligibility period on the firearm charge, to be served concurrently. (5T 7-3 to 6; Da 42)

On March 31, 2023, Judge Wilcox sentenced Mr. Correa in accordance with the plea agreement to an aggregate term of 14 years with a 42-month parole ineligibility period. (6T 24-16 to 20; Da 46-49) Judge Wilcox imposed all appropriate fines and assessments and dismissed the remaining counts in the Indictment. (6T 26-2 to 13, 20-22; Da 46-49)

Mr. Correa filed a notice of appeal on August 22, 2023, as within time. (Da 50-54)

## STATEMENT OF FACTS

### A. The Investigation Leading Up To The Traffic Stop Of Moya[2]

On June 19, 2018, while conducting an unrelated investigation, State Police arrested Elvisaul Nunez Vasquez after he was found to be in possession of approximately 12 kilograms of heroin. (Dca 5) After his arrest, Nunez Vasquez provided information to police about an individual known to him as "Primo Slim," whom police later determined was the defendant, Jimmy Correa. (Dca 5)

Nunez Vasquez told police that Mr. Correa is a large-scale heroin distributor in Paterson. (Dca 5) According to Nunez Vasquez, Mr. Correa stored large amounts of heroin for street-level distribution inside a storage unit in Fair Lawn. (Dca 5-6) Nunez Vasquez further informed police that, on at least a few occasions, he delivered one kilogram or more of heroin from New York to Mr. Correa's storage unit. (Dca 5-6) The warrant affidavit does not specify or approximate the dates on which he made these deliveries.

Nunez Vasquez accompanied police to Life Storage, a storage unit facility located in Fair Lawn. (Dca 6) While there, Nunez Vasquez identified storage unit number 126 as the unit where he had delivered heroin to Mr. Correa. (Dca

[2] These facts are derived from the affidavit in support of a search warrant for the storage unit. (Dca 1-17)

6) Documents subpoenaed from Life Storage revealed that Mr. Correa was the principal tenant of unit 126 and had been for the last six years. (Dca 6) In addition, the telephone number on Mr. Correa's account with Life Storage matched the cellphone number that Nunez Vasquez told police that he had used to contact Mr. Correa in the past. (Dca 6) The subpoenaed records also listed Douglas Watson as an alternate tenant for unit 126. (Dca 6)

As a result of surveillance footage subpoenaed from Life Storage and physical surveillance conducted between July and August 2018, police learned that Mr. Correa and Watson accessed the storage unit over 40 times in a one-month period and occasionally multiple times a day. (Dca 6-7) When each of them accessed the unit, he remained inside for a short period of time. (Dca 7) Police did not observe either Mr. Correa or Watson bring any items either into the storage unit or out of it.

While conducting surveillance at Life Storage on August 23, 2018, police observed Mr. Correa drive into the facility and park his vehicle. (Dca 7) He walked to unit 126, remained inside for less than ten minutes, and then left in his car. (Dca 7) Detective Taylor Bonner and other officers followed Mr. Correa as he drove to Paterson. (Dca 7) Bonner observed Mr. Correa park his car and saw a man walk up to the passenger side of Mr. Correa's vehicle. (Dca 7) The man leaned into the car with his hands. (Dca 7) Bonner circled the block to get

a better view of the interaction, but Mr. Correa had departed by the time Bonner returned to the location. (Dca 7)

**B. The Traffic Stop Of Moya**[3]

At some point prior to August 30, 2018, Bonner had entered the registration information of Watson's vehicle into the New York Police Department's license plate reader system. (3T 22-25 to 24-17) That system has a license plate reader on the bridges between New York and New Jersey. (3T 24-14 to 17)

On August 30, 2018, Bonner received notifications from the license plate reader system that Watson's vehicle traveled from New Jersey to New York via the George Washington Bridge at approximately 2:40 p.m. and traveled from New York to New Jersey via the Bridge at approximately 3:29 p.m. (3T 29-13 to 30-9) In response to this information, Bonner and two other officers established surveillance in and around the Life Storage facility. (3T 31-25 to 32-22)

Detective Flora, who was positioned outside the facility, observed Watson drive towards the facility on a nearby road. (3T 32-15 to 20, 34-5 to 7) A Toyota Camry with New York plates was "in close proximity" to Watson's vehicle

[3] These facts are derived from Bonner's testimony during the hearing on the motion challenging the stop of Moya's car. (3T, 4T)

traveling in the same direction. (3T 34-7 to 10) Both vehicles turned right towards the entrance to Life Storage, and Flora followed them. (3T 34-19 to 22) Watson entered a code into the keypad to open the access gate, and both Watson's vehicle and the Camry then entered the facility. (3T 34-23 to 35-1)

Once inside the facility, both vehicles turned right into the row of storage units where unit 126 is located. (3T 36-8 to 11) The third surveilling officer, Detective Sergeant Constance, had positioned his vehicle by unit 126. (3T 36-14 to 15) Watson pulled up to the unit and the Camry pulled up alongside Watson's car, then both vehicles continued driving past the unit. (3T 36-15 to 17, 36-25 to 37-1) Constance told Bonner that it appeared to him that Watson motioned to the Camry driver to keep going. (3T 36-18 to 24) Both vehicles then traveled towards the facility entrance, and Bonner initiated traffic stops of both cars at that time. (3T 37-4 to 7, 42-8 to 21)

### C. The Search Of Moya's Car And The Subsequent Request, Authorization, And Execution Of A Search Warrant For The Storage Unit[4]

Police questioned Moya, the driver of the Camry, after pulling him over. When he denied knowing Watson and could not provide a reason for his

[4] These facts are derived from the affidavit in support of a search warrant for the storage unit and from Judge Vinci's decision on the motion challenging the search of the storage unit. (Dca 1-17; 2T 26-15 to 45-5)

presence at the storage facility, police asked Moya for consent to search his vehicle, which Moya provided. (Dca 9) Upon searching, Bonner found a bag of what appeared to be a kilogram of suspected cocaine, smaller baggies of suspected heroin and cocaine, approximately $245, and some paraphernalia. (Dca 9-10) Moya was arrested, at which point he stated that he had followed Watson from New York to the storage facility at Watson's request. (Dca 10) Bonner questioned Watson, who denied knowing Moya and denied having ever been at the storage facility before that day. (Dca 10) Watson was asked to provide consent to search his vehicle, which he did, but no illegal contraband was found.[5] (Dca 10)

Following the vehicle searches, K-9 "Nidas" was instructed to sniff storage unit numbers 110 to 128. (Dca 11) According to the warrant affidavit, "Nidas" alerted to the presence of narcotics at unit 126. (Dca 11) The affidavit does not indicate that "Nidas" is trained in detecting narcotics.

Although the affidavit does not specify when, police conducted database inquiries at some point during the investigation and learned that Mr. Correa has twelve prior arrests with six felony convictions in New Jersey, most of which are for drug-related offenses. (Dca 6) Police also learned that Watson has three

[5] Police found $1,043 on Watson's person. (Dca 10)

prior arrests and three felony convictions for drug-related offenses in New Jersey. (Dca 7)

Based on the foregoing information, Bonner applied for a search warrant for storage unit 126. (Dca 3, 11) Police secured the unit while the warrant application was pending. (2T 29-15 to 17) During that time, Mr. Correa arrived at Life Storage in his vehicle. (2T 29-17 to 19) Police stopped him and questioned him, eventually seizing his key to unit 126. (2T 29-20 to 31-1)

The search warrant was authorized by the Honorable Estela M. De La Cruz, J.S.C., on August 31, 2018. (Dca 17) Upon executing the search, police seized 337 bricks of heroin, a small amount of marijuana, a handgun, and various paraphernalia. (2T 31-5 to 14) On September 17, 2018, Mr. Correa was arrested at his home. (2T 31-15 to 16) A cell phone was seized from his person and another cell phone was seized from his car after he gave police consent to search it. (2T 31-16 to 19)

**D. Motion To Suppress Evidence Seized From The Storage Unit**

In his oral decision on March 5, 2020, Judge Vinci ruled that the search warrant for Mr. Correa's storage unit was supported by probable cause. (2T 44-23 to 45-5) As there was no evidentiary hearing on Mr. Correa's suppression motion, Judge Vinci relied exclusively on the affidavit authored by Detective

Bonner, which details the tip from Nunez Vasquez and the subsequent investigation. (Dca 1-17)

Judge Vinci noted that the affidavit sets forth Bonner's substantial training and experience in narcotics investigations. (2T 40-4 to 7) In addition, the affidavit states: that Mr. Correa and Watson were seen accessing unit 126 over 40 times in a one-month period; that, on August 23, 2018, Bonner observed Mr. Correa engage in what he believed to be a hand-to-hand narcotics transaction; and that, on August 30, 2018, police found narcotics inside Moya's vehicle during a traffic stop at the Life Storage facility, after which a K-9 alerted to the presence of narcotics at unit 126. (2T 41-25 to 42-6, 42-16 to 43-5, 43-6 to 44-17) The affidavit also indicates that Mr. Correa and Watson both have drug-related criminal histories. (2T 41-18 to 24) Judge Vinci ruled that, considering its contents, the affidavit is sufficient to support the magistrate judge's finding of probable cause. (2T 44-23 to 45-5)

**E. Motion To Suppress Evidence Seized From Moya's Car**

Bonner was the sole witness at the hearing on the validity of the traffic stop of Moya. (3T, 4T) Among other things, Bonner was asked about his decision to enter Watson's vehicle into the NYPD license plate reader system. Bonner testified that, based on his training and experience, narcotics travel into New Jersey from New York, and Nunez Vasquez had mentioned that he traveled

from New York to New Jersey to deliver heroin to Mr. Correa's storage unit. (3T 24-18 to 25) Bonner further testified that, prior to stopping Moya and Watson, he believed based on his observations that they "were doing some sort of narcotics and criminal transaction." (4T 16-8 to 10)

On cross-examination, Bonner testified that police had no information about Moya prior to the day of the stop; there was no reference to Moya in the records subpoenaed from Life Storage, and police never saw Moya access the storage unit during the numerous surveillance operations they conducted. (3T 63-15 to 22, 64-1 to 9, 68-3 to 111) All police knew about Moya was that he appeared to be associated with Watson and that his license plate began with the letter "T," indicating that his car was a New York-registered taxi. (3T 73-6 to 16; 4T 20-1 to 10) Bonner testified that, based on his training and experience, New York-registered taxis are known to transport narcotics from New York into other areas. (4T 19-15 to 25) With respect to Watson, Bonner testified that Nunez Vasquez never mentioned Watson to police -- he only mentioned Mr. Correa. (3T 61-14 to 62-2)

During the hearing, Judge Wilcox ruled that Mr. Correa did not have standing to challenge the warrantless traffic stop of Moya. (4T 8-7 to 9-10) Judge Wilcox reasoned that, unlike Watson, Mr. Correa was not charged as a

co-conspirator with respect to the evidence seized from Moya's car. (4T 9-3 to 10)

In a written decision issued on August 3, 2021, Judge Wilcox ruled that police had reasonable and articulable suspicion to stop Moya's car. (Da 36-38) This decision was based on Bonner's testimony about the investigation into Mr. Correa, Bonner's observations on the day of the stop, and Bonner's training and experience. (3T, 4T) In particular, Judge Wilcox emphasized Bonner's testimony that Watson and Moya bypassed unit 126 while driving inside of the storage facility. (Da 37) Judge Wilcox concluded that it was reasonable to believe that "Watson signaled Moya to continue driving toward the exit [of Life Storage] upon seeing the police officers because he was going to engage in criminal activity at the storage unit." (Da 37-38) Accordingly, Judge Wilcox determined that the decision to pull over Moya was justified. (Da 38)

## LEGAL ARGUMENT

### POINT I

**ALL EVIDENCE SEIZED FROM MOYA'S CAR MUST BE SUPPRESSED BECAUSE POLICE LACKED REASONABLE AND ARTICULABLE SUSPICION TO BELIEVE THAT MOYA WAS ENGAGING IN CRIMINAL ACTIVITY AND THEREFORE HAD NO BASIS TO EFFECTUATE A TRAFFIC STOP. (Da 36-38)**

The trial court's decision on the motion to suppress the evidence seized from Moya's car requires reversal for two reasons. First, the trial court erred in ruling that Mr. Correa lacked standing to challenge the seizure of this evidence. Case law makes clear that a defendant has standing to challenge the seizure of evidence in which he has a participatory interest. See State v. Mollica, 114 N.J. 329, 339 (1989). Mr. Correa plainly has a participatory interest in the evidence seized from Moya's car given that (a) Bonner stopped Moya to investigate whether he was in the process of delivering narcotics to Mr. Correa's storage unit, and (b) Bonner relied on the narcotics found in Moya's car in his affidavit for a search warrant for the storage unit. As a person with a participatory interest in the evidence seized during the car stop, Mr. Correa had standing and was thus entitled to benefit from the suppression of this evidence.

Second, the trial court erred in ruling that the traffic stop of Moya was justified. Bonner knew far too little about Moya prior to effectuating the stop

and thus acted on pure speculation rather than reasonable and articulable suspicion. Accordingly, the stop was illegal, and all evidence seized during the stop must be suppressed. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun v. United States, 371 U.S. 471, 484 (1963). The evidence also may not be relied on in establishing probable cause to search Mr. Correa's storage unit. See State v. Ortense, 174 N.J. Super. 453, 454-55 (App. Div. 1980) (where an affidavit submitted in support of a search warrant mixes evidence both lawfully and unlawfully obtained, probable cause may be established on the basis of the lawfully obtained evidence only).

### A. Mr. Correa Has Standing To Challenge The Warrantless Stop Of Moya's Car Because He Has A Participatory Interest In The Narcotics Seized.

The trial court erred in ruling that Mr. Correa lacked standing to challenge the warrantless stop of Moya's car. (4T 8-7 to 9-10) The court concluded that because Mr. Correa was not charged with possessing the narcotics seized from Moya's car during the stop, he lacked a sufficient connection to that evidence for standing purposes. (4T 9-3 to 10) In so doing, the court failed to consider whether Mr. Correa has a participatory interest in the evidence seized in light of its relationship to the underlying criminal activity being investigated: the delivery and distribution of heroin to and from Mr. Correa's storage unit.

Because Mr. Correa plainly has a participatory interest in the seized evidence, the court's ruling must be reversed.

New Jersey courts apply a "broad standard" in evaluating whether a defendant has standing to challenge an illegal search or seizure. Mollica, 114 N.J. at 339. Unlike in the federal context, where the only question is whether a defendant has a legitimate expectation of privacy in the place searched or items seized, New Jersey courts consider whether the defendant has a proprietary, possessory, or participatory interest in that place or those items. State v. Bruns, 172 N.J. 40, 46 (2002) (citing State v. Alston, 88 N.J. 211, 228 (1981)). If such an interest is established, the defendant is deemed to have a sufficient connection to the evidence for standing purposes. Mollica, 114 N.J. at 339.

"A participatory interest in seized evidence extends beyond the kind of relationship that could otherwise be considered only proprietary or possessory." Mollica, 114 N.J. at 339. While the terms "proprietary" and "possessory" denote the property concepts of ownership and possession, "'participatory' connotes some involvement in the underlying criminal conduct in which the seized evidence is used by the participants to carry out the unlawful activity." Id. at 339-40. The participatory interest thus "stresses the relationship of the evidence to the underlying criminal activity and defendant's own criminal role in the generation and use of such evidence." Id. at 339.

In Mollica, the New Jersey Supreme Court held that the defendant had a participatory interest in the telephone toll records for another individual's hotel room and therefore had standing to challenge the seizure of those records. 114 N.J. at 340. There, federal law enforcement received a tip from an anonymous informant that Mollica's co-defendant, Ferrone, was operating an illegal bookmaking enterprise from a hotel room utilizing the hotel room phone. Id. at 335. Federal officials corroborated the tip by seizing Ferrone's hotel room phone records without a warrant. Ibid. The informant later indicated that Ferrone was assisted by Mollica, who occupied rooms in the same hotel. Ibid. On the basis of the tip and the phone records, which were eventually turned over to State police, State police obtained a warrant to search Ferrone's and Mollica's hotel rooms for evidence of illegal bookmaking, which they found. Id. at 335-36. Mollica and Ferrone were subsequently charged with gambling-related offenses. Id. at 336.

In evaluating whether Mollica had standing to object to the seizure of Ferrone's hotel room phone records, the Court noted that Mollica was "alleged to have participated in the underlying criminal gambling activities that involved the use of Ferrone's hotel-room telephone resulting in the creation of the toll records." Mollica, 114 N.J. at 340. The Court also observed that "[t]he affidavit requesting a warrant to search Mollica's rooms for evidence of gambling

violations was derived in part from the information disclosed by these toll records." Ibid. As a result, the Court concluded that there was a "sufficient connection between the telephone toll records and the underlying criminal gambling for which [Mollica was] charged, and a sufficient relationship between [Mollica] and the gambling enterprise, to establish a participatory interest on the part of [Mollica] in this evidence." Ibid.

This case is strikingly similar to Mollica. Just as Ferrone and Mollica were believed to be operating an illegal bookkeeping enterprise out of hotel rooms, Mr. Correa and Watson were believed to be operating a heroin trafficking enterprise out of a storage unit. And just as the search warrant affidavit for Mollica's hotel room relied on the corroborating information in Ferrone's hotel room phone records, the affidavit in support of a warrant to search Mr. Correa's storage unit relied in large part on the discovery of heroin in Moya's car during the traffic stop. (Dca 8-10)

Given these similarities, Mr. Correa has a participatory interest in the narcotics seized from Moya's car. First, there is clearly a sufficient connection between the narcotics seized from Moya's car and the underlying heroin trafficking operation that police were investigating. Bonner testified that he stopped Moya's car in part based on the tip that Nunez Vasquez had previously delivered heroin to Mr. Correa's storage unit from New York. (4T 30-15 to 31-

11) Bonner evidently believed that, like Nunez Vasquez, Moya was delivering heroin to the storage unit for use in the operation. Bonner detailed the stop and search of Moya's car at length in the affidavit requesting a warrant to search the storage unit, thus exhibiting his view that the heroin in Moya's car was sufficiently connected to the underlying criminal activity being investigated. (Dca 8-10)

Second, there is undeniably a sufficient connection between the criminal activity being investigated and Mr. Correa. Mr. Correa was the primary target of the investigation, which began with a tip that he was orchestrating the delivery of narcotics to his storage unit and keeping them there for street-level distribution. On the basis of the investigation, Mr. Correa was charged with operating a heroin manufacturing facility inside of his storage unit. (Da 11) In accordance with Mollica, then, Mr. Correa must be afforded standing to challenge the seizure of narcotics from Moya's car.

The trial court cited the Supreme Court's decision in Bruns in its ruling denying standing to Mr. Correa, but Bruns is readily distinguishable. (4T 8-7 to 19) There, police pulled over a car for speeding, learned that there were two outstanding warrants for the driver's arrest, and, upon conducting a search incident to the driver's arrest, found a knife and a toy handgun in the passenger compartment. Bruns, 172 N.J. at 43-44. A man named Evans was the sole

passenger in the car at the time of the stop. Id. at 44. Three months later, police discovered that Evans may have been involved in an armed robbery with defendant Bruns that occurred seven days before the stop. Ibid. Although Bruns was not in the car during the stop, he argued that he had a participatory interest in the weapons seized from the car and therefore had standing to challenge their admission. Id. at 57-59. The Supreme Court disagreed. Ibid.

The Court reasoned that "[t]he robbery for which [Bruns] was charged occurred seven days before the items were found in [the] vehicle. Moreover, nothing in the record suggests that [Bruns] had a continuing criminal relationship with Evans at the time the weapons were seized." Bruns, 172 N.J. at 58. The Court emphasized that what was missing was "some contemporary connection between the defendant and the place searched or the items seized." Ibid.

In contrast, in this case, Mr. Correa was believed to have a continuing criminal relationship with Watson and Moya at the time police stopped Moya's car. Unlike in Bruns, where evidence was seized during a completely unrelated traffic stop one week after the criminal activity had apparently concluded, Moya's car was stopped due to a belief that Moya was involved in an ongoing criminal operation with Mr. Correa. Accordingly, Mr. Correa has a contemporary connection to the narcotics seized from Moya's car, and the trial

court's ruling that Mr. Correa lacks standing must be reversed. Furthermore, because the evidence from Moya's car was unlawfully obtained, it may not be used against Mr. Correa. See Point I.B, infra.

### B. The Traffic Stop Of Moya Was Not Supported By Reasonable And Articulable Suspicion That Moya Was Engaging In Criminal Activity.

The trial court also erred in ruling that the warrantless stop of Moya's car was justified. "Warrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions." State v. Pineiro, 181 N.J. 13, 19 (2004) (citing State v. Patino, 83 N.J. 1, 7 (1980)). "[T]he State bears the burden of establishing that any such stop or search is justified by one of the well-delineated exceptions to the warrant requirement." State v. Shaw, 213 N.J. 398, 409 (2012) (internal quotation marks and citation omitted).

One exception is the investigatory stop of a motor vehicle. State v. Alessi, 240 N.J. 501, 517-18 (2020). To justify such a stop, "[t]he State must show the stop was 'based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.'" Id. at 518 (quoting State v. Mann, 203 N.J. 328, 338 (2010)). Although the reasonable suspicion standard is not as demanding as that of probable cause, it is not satisfied by an officer's "inarticulate hunches" that criminal activity may be afoot. Alessi, 240 N.J. at 518 (internal quotation marks and citation omitted). Rather, "[t]here must be 'some objective manifestation

that the suspect was or is involved in criminal activity.'" State v. Arthur, 149 N.J. 1, 8 (1997) (quoting State v. Thomas, 110 N.J. 673, 678 (1988)). The totality of the circumstances must be considered, and the court must "balance[] the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions." State v. Nyema, 249 N.J. 509, 528 (2022) (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)).

Here, police knew very little about Moya prior to stopping his car. All they knew was that he appeared to be driving in tandem with Watson, that he and Watson drove to the storage facility but did not stop at Mr. Correa's unit, and that he drove a New York-registered taxicab. (3T 73-6 to 16, 36-25 to 37-1; 4T 20-1 to 10) These meager facts do not amount to reasonable suspicion of Moya's involvement in criminal activity.

At the outset, a person's mere association with "others independently suspected of criminal activity" does not give rise to reasonable suspicion. See State v. Rivera, 276 N.J. Super. 346, 352 (App. Div. 1992) (quoting Ybarra v. Illinois, 444 U.S. 85, 91 (1979)). In this case, Moya's association with Watson was even less probative of potential criminal conduct, as police had minimal grounds to believe that Watson was involved in criminal activity. All police knew about Watson at the time of the stop was that he rented a storage unit with

Mr. Correa and accessed it regularly and that he had recently been in New York. Renting and utilizing a storage unit are not criminal acts, nor is driving twenty minutes from one neighboring state to another.[6]

While police had received a tip that Mr. Correa had previously accepted deliveries of heroin from New York to his storage unit, Bonner testified that the informant made no mention of Watson. (3T 61-14 to 62-2) What's more, police had not verified the tip, as they had yet to see Mr. Correa do anything patently criminal.[7] Essentially, then, police stopped Moya based on his apparent association with an individual who rents a storage unit with another individual who, according to an unverified tip, may have been using the unit to store illegal contraband. This connection is far too attenuated to support a finding of reasonable suspicion. See Rivera, 276 N.J. Super. at 352 (quoting Ybarra, 444 U.S. at 91) (explaining that the reasonableness of a search "cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists

[6] This Court can take judicial notice of the fact that the Life Storage facility in Fair Lawn, New Jersey is approximately a twenty-minute drive from the George Washington Bridge between New Jersey and New York. See N.J.R.E. 201(b)(3).

[7] In the warrant affidavit, Bonner states that he witnessed Mr. Correa engage in what he believed to be a hand-to-hand drug transaction on August 23, 2018, but this belief was not adequately supported by Bonner's observations. See Point II, infra. (Dca 7-8) Moreover, no testimony was elicited about these observations during the hearing on the motion to suppress evidence seized from Moya's car.

probable cause to search or seize another or to search the premises where the person may happen to be").

The fact that Moya and Watson drove past the storage unit and did not access it also does not support a finding of reasonable suspicion to stop Moya's car. Bonner testified that Moya and Watson saw one of the surveilling officers' vehicles and were "caught off guard" by the police presence, which prompted them to bypass the storage unit and head towards the facility exit. (4T 18-17 to 24) Even if Bonner's interpretation of the pair's behavior was correct -- which is not a certainty -- a desire to avoid contact with police is not uncommon. See, e.g., State v. Tucker, 136 N.J. 158, 169 (1994) ("That some city residents may not feel entirely comfortable in the presence of some, if not all, police is regrettable but true."). Such a desire may be particularly prevalent among individuals of color, given this country's sordid history of race-based policing. See Utah v. Strieff, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting) ("[I]t is no secret that people of color are disproportionate victims" of police scrutiny); Commonwealth v. Warren, 475 Mass. 530, 540 (2016) (explaining that, because Black men are disproportionally targeted for police-civilian encounters such as stops, frisks, and searches, a Black male approached by police "might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity"). From an objective

perspective, then, Moya's and Watson's behavior was "not reasonably more consistent with guilt than innocence." See Alessi, 240 N.J. at 522. See also State v. Kuhn, 213 N.J. Super. 275, 282 (App. Div. 1986) (noting that "not wish[ing] to be in the proximity of police" is not unlawful).

It is noteworthy that, had Moya and Watson indeed accessed Mr. Correa's storage unit, police presumably would have characterized such behavior as similarly suspicious. As our Supreme Court has explained, police cannot have it both ways when it comes to a suspect's ambiguous behavior. See Nyema, 249 N.J. at 533-534. Otherwise, "whatever individuals may do -- whether they do nothing, something, or anything in between -- the behavior can be argued to be suspicious." Ibid.

The notion that the pair's bypassing of the storage unit would arouse sufficient suspicion to stop Moya is even more flimsy considering Bonner's testimony that Watson directed this behavior. Bonner testified that "Mr. Watson motion[ed] to Mr. Moya to continue traveling, to keep going, and follow." (3T 36-21 to 24) This testimony implies that it was Watson's decision not to access the unit, which would make sense if, as police evidently assumed, Watson was aware of the narcotics being stored there and of the police presence. On the other hand, police had no reason to believe that Moya was similarly aware of the contraband inside the storage unit. Given Bonner's testimony suggesting that

Moya was merely following Watson's lead, the fact that the pair did not access the storage unit does not support a finding of reasonable suspicion as to Moya.

The final factor police relied on in stopping Moya's car was his license plate, which indicated that his vehicle was a New York-registered taxicab. Bonner testified that, based on his training and experience in narcotics trafficking, such vehicles are known to transport narcotics. (3T 13-13 to 14-8; 4T 19-18 to 25) While police are permitted to rely on specialized training and experience in forming an opinion about reasonable suspicion, they must do more than vaguely assert that something intrinsically innocent, such as a taxicab, is associated with criminal activity. See State v. Demeter, 124 N.J. 374, 383-86 (1991) (rejecting police testimony that a film canister, an "intrinsically innocent object[]," suggested drugs because "[a]lthough the officer here said that half of his drug encounters involved the use of similar containers to hold narcotics, the record does not disclose the number of times he examined film canisters without result," and thus the State presented "no information about what percentage of observed containers held drugs"). Common sense dictates that not all New York cabs are utilized for narcotics trafficking, yet Bonner provided no data from his training or experience that would enable the court to determine what percentage of such vehicles are involved in this illicit industry. See ibid. As a result, this factor does little to support Bonner's conclusion that reasonable suspicion

existed to stop Moya's car. And while Bonner further testified that, based on the New York plates, he believed that Moya had traveled to and from New York with Watson, this belief was also highly speculative.[8] (4T 18-5 to 12)

Simply put, police knew far too little about Moya to justify a traffic stop. Without any objective indicia of criminality, the warrantless stop was unlawful, and all evidence seized from Moya's car must be suppressed. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun, 371 U.S. at 484; State v. Smith, 251 N.J. 244, 263 (2022). Because Mr. Correa has standing to challenge the seizure of this evidence, its suppression means it cannot be used against Mr. Correa. See Point I.C, infra.

[8] It is unclear from Bonner's testimony whether he believed prior to effectuating the stop that Moya had followed Watson from New York or whether this was a belief that Bonner developed later. He testified in the present tense that, "I believe that [Moya] must have followed [Watson] from New York, due to the New York license plate tag." (4T 18-8 to 12) After the stop, Moya admitted to following Watson from New York, but that information cannot be used to support a finding of reasonable suspicion. See State v. Rosario, 229 N.J. 263, 277 (2017) (observing that information subsequently obtained cannot "be used, post hoc, to establish the reasonable and articulable suspicion required at the outset of the investigative detention"); State v. Bruzzese, 94 N.J. 210, 221 (1983) ("Facts learned by the authorities after the search and seizure occurs will not validate unreasonable intrusions.").

### C. Because The Narcotics Seized From Moya's Car Were Illegally Obtained, They Cannot Factor Into The Analysis Of Whether There Was Probable Cause To Issue A Search Warrant For The Storage Unit.

"[A] search warrant based on illegally obtained information is itself tainted and all evidence seized pursuant to it must be suppressed." State v. Parisi, 181 N.J. Super. 117, 119 (App. Div. 1981) (citing Wong Sun, 371 U.S. 471). Where, as here, a warrant affidavit contains both information lawfully and unlawfully obtained, the unlawfully obtained information is "tainted" and may not be considered in evaluating whether the issuance of a search warrant was justified. See Ortense, 174 N.J. Super. at 454-455.

Because police lacked reasonable and articulable suspicion to stop Moya's car, all information about the subsequent search of the car and anything else that occurred as a result of the illegal stop is "tainted." Accordingly, this information must be excised from the affidavit when evaluating whether the affidavit set forth probable cause to believe that the storage unit contained evidence of criminality. See Ortense, 174 N.J. Super. at 454-455. Without this tainted evidence, the warrant affidavit does not establish probable cause to search the storage unit. See Point II, infra.

## POINT II

### ALL EVIDENCE SEIZED FROM THE STORAGE UNIT MUST BE SUPPRESSED BECAUSE THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE. (2T 33-4 to 45-5; Da 24)

The trial court's decision denying Mr. Correa's motion to suppress the evidence seized from his storage unit must be reversed because none of the key components of the warrant affidavit, either separately or together, establish probable cause. Where the police seek to rely on a tip from a criminal informant in a warrant affidavit, the tip must be corroborated by an independent police investigation. State v. Jones, 179 N.J. 377, 389-90 (2004). Corroboration is especially important in a case like this, where the informant has no proven track record of reliability. State v. Keyes, 184 N.J. 541, 558 (2005). While the investigation in this case confirmed some non-criminal details of the tip, such as the fact that Mr. Correa rented the storage unit identified by the informant and accessed it regularly, it fell short of corroborating the tip's essential feature: that Mr. Correa was engaged in any criminal activity.

First, Bonner wrote in the affidavit that he believed he witnessed Mr. Correa engage in a hand-to-hand narcotics transaction on August 23, 2018, but all Bonner saw was Mr. Correa park on the side of the road and a man lean into the car with his hands. (Dca 7-8) These facts are far too minimal to suggest that a drug exchange occurred. Second, although the affidavit discusses the narcotics

found in Moya's car during the traffic stop, that evidence was unlawfully obtained and cannot be used against Mr. Correa. See Point I.C, supra. Even if that evidence could be considered, it is insufficiently connected to the informant's tip regarding Mr. Correa and thus adds little to the probable cause analysis. Lastly, while the affidavit states that a police dog alerted to the scent of narcotics at Mr. Correa's storage unit, the affidavit fails to indicate that the dog was trained in narcotics detection. Without any such indication, the purported positive alert means nothing.

In short, police did not have probable cause to believe that the storage unit contained illegal contraband. The trial court's decision denying the motion to suppress the evidence seized from the storage unit must be reversed.

To protect against unreasonable searches and seizures, our law generally requires that such actions be authorized by a neutral magistrate in the form of a warrant. See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). A magistrate judge may issue a search warrant only where the warrant application demonstrates that "there is probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is at the place sought to be searched." State v. Boone, 232 N.J. 417, 426 (2017) (quoting Jones, 179 N.J. at 388) (emphasis omitted). The probable cause standard "is not susceptible of precise definition," but a "principal component

is a well-grounded suspicion." State v. Smith, 212 N.J. 365, 388 (2012) (internal quotation marks and citations omitted) (cleaned up).

Our Supreme Court has made clear that securing a warrant "is not a mere formality." State v. Novembrino, 105 N.J. 95, 107 (1987) (quoting State v. Macri, 39 N.J. 250, 255-57 (1963)). To that end, a reviewing court must ensure that the magistrate judge who issued the warrant did not simply ratify bare conclusory statements of the officer who wrote the affidavit. "The duty of a reviewing court is," in other words, "to ensure that the magistrate had a substantial basis for concluding that probable cause existed." Illinois v. Gates, 462 U.S. 213, 238-39 (1983) (cleaned up).

Police may rely on hearsay statements in a warrant affidavit so long as the affidavit "provide[s] the warrant-issuing judge with a substantial basis for crediting the hearsay." Novembrino, 105 N.J. at 120-21. A showing of credibility is especially critical in cases where a tip is provided to police by a criminal informant. Wildoner v. Borough of Ramsey, 162 N.J. 375, 390-91 (2000); State v. Lakomy, 126 N.J. Super. 430, 435 (App. Div. 1974). Because information provided by criminal informants "is not given in the spirit of a concerned citizen, but often is given in exchange for some concession, payment, or simply out of revenge against the subject . . . the information which they supply convey[s] a certain impression of unreliability." Ibid. (quoting State v.

Paszek, 184 N.W. 2d 836, 842 (Wis. 1971)); see also State v. Davis, 104 N.J. 490, 506 (1986) (noting that anonymous informers, who "are themselves criminals in many instances," are less reliable than ordinary citizens).

In evaluating whether a warrant affidavit demonstrates an informant's credibility, courts consider two factors: veracity and basis of knowledge. Jones, 179 N.J. at 389. The first factor, the informant's veracity, may be satisfied by "demonstrating that the informant proved to be reliable in previous police investigations" by providing accurate information. State v. Sullivan, 169 N.J. 204, 213 (2001). The second factor, basis of knowledge, is satisfied by a showing that the informant obtained the information provided to police in a trustworthy manner. State v. Smith, 155 N.J. 83, 94 (1998). Such a showing is made where "the tip itself relates expressly or clearly how the informant knows of criminal activity." Ibid.

In addition, corroboration "is necessary to ratify the informant's veracity and validate the truthfulness of the tip." Jones, 179 N.J. at 390 (quoting Smith, 155 N.J. at 95). While corroboration via independent police investigation is "an essential part of the determination of probable cause" in every case with a criminal informant, ibid., the degree of corroboration required depends on the particular facts and circumstances of the case, Keyes, 184 N.J. at 556. Corroborating facts may include "records confirming the informant's

description of the target location, the suspect's criminal history, and the experience of the officer who submitted the supporting affidavit." Ibid. However, a successful controlled drug buy has been singled out by the courts as persuasive evidence in establishing probable cause. Id. at 556-57.

In this case, Nunez Vasquez spoke to police only after he was arrested for the possession of controlled dangerous substances. (Dca 5) He did not act merely as a concerned citizen whose motivations are typically "consistent with law enforcement goals." See Davis, 104 N.J. at 506. Instead, "doubts concerning potential ulterior motives" exist, and thus the informant's veracity and basis of knowledge must be analyzed. Smith, 155 N.J. at 100.

While the affidavit establishes a basis of knowledge -- Nunez Vasquez told police that he learned this information from personally delivering drugs to the storage unit -- it fails to establish his veracity. There is no indication that Nunez Vasquez has ever given reliable information to police in the past, and nothing else in the affidavit suggests that he is a trustworthy source. Cf. Keyes, 184 N.J. at 557 (affidavit stated that the informant had "proven himself to be reliable by providing 'information in the past that has resulted in the arrest of numerous suspects and the recovery of proceeds from drug sales'"). The lack of verifiable details in the tip further undermines the informant's purported reliability; the only such details provided were the specific storage unit rented

by Mr. Correa and Mr. Correa's cellphone number. (Dca 5-6) He did not describe, for instance, the manner in which the drugs are packaged for delivery to the unit or what times of day Mr. Correa accepts deliveries. See Keyes, 184 N.J. at 558 (lack of detail in informant's tip weakened basis of knowledge prong where the tip merely provided the address at which the defendant was selling cocaine and indicated that there were lookouts standing outside the apartment to alert drug dealers to the presence of police). Thus, while Nunez Vasquez told police that he obtained the information personally and not secondhand, nothing else about the tip implies reliability.

Moreover, despite the steps taken to investigate the tip, police failed to sufficiently corroborate it. The records subpoenaed from Life Storage confirmed that Mr. Correa did in fact rent unit 126, and surveillance revealed that he regularly accessed the unit. (Dca 6-7) However, neither renting a storage unit nor using it frequently is criminal in nature. The fact that Mr. Correa apparently only stayed inside the unit for short periods of time is also not indicative of criminal activity; common sense suggests that most people do not spend ample amounts of time inside of a space which has the primary purpose of storing items.

Life Storage records also confirmed that the phone number provided by the informant for Mr. Correa was in fact his phone number, but this merely

shows that the informant was familiar with Mr. Correa on a personal level. (Dca 6) In no way does it corroborate the informant's story that the two engaged in drug transactions. It is not as if, for example, police obtained the informant's cellphone data to investigate whether text messages were sent between the informant and Mr. Correa discussing the planned transactions. Even if no such messages were sent, call logs might have shown whether and when the informant and Mr. Correa spoke on the phone. Police obtained none of this information.

Similarly, while police learned that Mr. Correa had previously been arrested for and convicted of drug-related offenses, his last conviction was in September 2009 -- nine years before the investigation in this case. (PSR 12) The corroborative value of this information was therefore minimal.

Substantial corroboration was necessary in this case because the informant failed to provide any details about when he delivered drugs to the storage unit. In Novembrino, the New Jersey Supreme Court noted that, although the warrant affidavit established the informant's veracity and basis of knowledge, it "furnishe[d] no information whatsoever as to when the informant allegedly 'witnessed' the drug sales" that he told police about. 105 N.J. at 123-24. In light of this "critical deficiency" in the affidavit, the tip failed to provide probable cause that a present search of the location of the alleged drug sales would yield evidence of criminal activity. Ibid.

In this case, not only did the tip not provide information about the date of the drug deliveries, but police learned from facility records that Mr. Correa had been renting the same unit for six years. (Dca 6) It was therefore possible that the informant's last interaction with Mr. Correa was years earlier and that the tip was extremely stale.[9] Stale tips negate the inference of probable cause. See United States v. Leon, 468 U.S. 897, 901, 904 (1984) (leaving undisturbed Appeals Court's conclusion that an informant's tip that he had witnessed a narcotics sale at a residence five months earlier was "fatally stale," such that an affidavit based on the tip did not establish probable cause despite independent police investigation). Substantial corroboration that Mr. Correa was presently engaged in criminal activity was therefore required.

Bonner's observations of Mr. Correa on August 23, 2018, did not provide that substantial corroboration. According to the affidavit, Mr. Correa parked on the side of the road, and a man leaned into the car with his hands. (Dca 7) The interaction was brief, as Mr. Correa had departed by the time Bonner circled the block. (Dca 7) While Bonner wrote that, based on his training and experience, he believed a hand-to-hand transaction occurred, the facts are far too minimal to

[9] Although the affidavit did not make this clear, Bonner testified at the hearing on the motion to suppress evidence seized from Moya's car that the informant's tip was in fact phrased in the past tense; the informant stated that "he used to deliver narcotics . . . to a certain storage unit." (3T 15-7 to 12) (emphasis added)

demonstrate that. (Dca 7-8) Bonner witnessed no exchange of anything -- currency or otherwise. Nor did Bonner see either Mr. Correa or the unidentified man "look[] around really suspiciously" to make sure no one was watching them. Arthur, 149 N.J. at 4. Cf. Id. at 4-5, 10-12 (officer had reasonable suspicion that a drug exchange occurred where the defendant parked his car in an area known for narcotic activity, an individual entered the car and stayed inside for a short period of time, the individual left with a paper bag she did not have before, and she looked around suspiciously upon exiting the car). The fact that Bonner circled the block to get a better view of the interaction itself confirms that what he witnessed was not sufficiently compelling.

Our Supreme Court has made clear that in cases based on an informant's tip of drug-related activity, controlled buys are the gold standard of corroboration. "When coupled with at least one additional corroborating circumstance, a controlled buy typically suffices to demonstrate that the police, under the totality of the circumstances, had probable cause." Keyes, 184 N.J. at 559. This Court and our Supreme Court have concluded in numerous cases that an affidavit established probable cause where at least one successful controlled buy occurred and other corroborating circumstances existed. See, e.g., Keyes, 184 N.J. at 557-60; Sullivan, 169 N.J. at 214-17; Jones, 179 N.J. at 392-97; State v. Jackson, 268 N.J. Super. 194, 202 (Law. Div. 1993).

Here, however, it appears that police did not even attempt to conduct a controlled buy from Mr. Correa. Even after Bonner witnessed what he purportedly believed to be a hand-to-hand narcotics transaction on August 23, police continued to passively surveil the Life Storage facility. They took no active steps to determine whether Mr. Correa's ostensibly innocent behavior was in fact criminal in nature.

The only direct observations of criminal activity detailed in the affidavit are those that pertain to the discovery of narcotics in Moya's car. But that discovery was the product of an unlawful seizure and cannot be considered in evaluating whether the affidavit established probable cause. See Point I.B-C, supra. Even assuming that the narcotics found in Moya's car could be considered, they are insufficiently connected to the informant's tip regarding Mr. Correa. Mr. Correa was not at the scene at the time of the search of Moya's car, and although Moya stated that he followed Watson to the storage facility, Watson's involvement in the alleged criminal activity of Mr. Correa was unknown at that point. (Dca 10) All police knew of Watson was that he was an alternate tenant of Mr. Correa's storage unit and accessed it regularly. However, on the day of the stop and search of Moya's car, neither Watson nor Moya were seen accessing the storage unit. (Dca 8) This further undermines the notion that the drugs found in Moya's car had any connection to the storage unit.

Finally, the K-9 sniff as detailed in the affidavit cannot be considered in the probable cause analysis. (Dca 11) To be sure, a positive alert by a trained narcotics-detection dog can provide probable cause to believe that narcotics are present in the location sniffed. But the warrant affidavit provided no indication that "Nidas" was trained in narcotics detection. "The reasonableness of relying on the behavior of a police dog depends on what one knows about the dog," and here, there is no information whatsoever. United States v. Grupee, 682 F.3d 143, 147 (1st Cir. 2012). While the United States Supreme Court has made clear that evidence of a dog's performance in the field is not necessary to establish the dog's reliability, Florida v. Harris, 568 U.S. 237, 246-48 (2013), at the very least police must indicate that a dog has undergone drug-detection training, United States v. Berry, 90 F.3d 148, 153 (6th Cir. 1996). See also Harris, 568 U.S. at 246-47 (explaining that "[i]f a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume . . . that the dog's alert provides probable cause to search"). Because the warrant affidavit failed to meet this low bar, the reliability of "Nidas" was not established, and the sniff cannot support a finding of probable cause. See State v. Hall, 2017 ND 124, ¶ 26 (2017) ("[W]ithout a statement attesting to the training of the dog that conducted the sniff, the sniff cannot be considered.")

In sum, Bonner's affidavit did not establish that probable cause existed to search Mr. Correa's storage unit, as the investigation failed to corroborate that Mr. Correa was engaged in any criminal wrongdoing. All evidence seized from the storage unit must be suppressed as the fruits of an illegal search. See Novembrino, 105 N.J. at 157-59 (exclusionary rule applies to evidence seized following a search where the warrant affidavit did not establish probable cause).

## CONCLUSION

For the reasons set forth in this brief, all evidence seized during the traffic stop of Moya and all evidence seized during the search of Mr. Correa's storage unit must be suppressed. Mr. Correa respectfully requests that the matter be remanded to the trial court to provide him with an opportunity to withdraw his plea if he chooses to do so.

Respectfully submitted,

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Dated: February 9, 2024

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**LETTER BRIEF ON BEHALF OF DEFENDANT-APPELLANT**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3919-22
INDICTMENT NO. 18-12-195-S

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|---|---|---|
| STATE OF NEW JERSEY, | : | CRIMINAL ACTION |
| Plaintiff-Respondent, | : | On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Middlesex County, |
| v. | : | |
| JIMMY CORREA, | : | Sat Below: Hon. Robert M. Vinci, J.S.C., and |
| Defendant-Appellant. | : | Hon. Gary N. Wilcox, J.S.C |

DEFENDANT IS NOT CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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## PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Jimmy Correa relies on the procedural history and statement of facts from his initial brief. (Db 3-14)[1]

## LEGAL ARGUMENT

Mr. Correa relies on the legal arguments from his initial brief and adds the following:

### POINT I

### MR. CORREA HAS A PARTICIPATORY INTEREST IN THE EVIDENCE SEIZED FROM MOYA'S CAR AND THEREFORE HAS STANDING TO CHALLENGE THE WARRANTLESS STOP OF THE CAR.

In his initial brief, Mr. Correa argued that the narcotics seized from Moya's car must be suppressed because police lacked a legal basis to initiate a traffic stop. (Db 15-28) Furthermore, because this evidence was unlawfully obtained, Mr. Correa argued that it cannot factor into the analysis of whether there was probable cause to issue a search warrant for his storage unit. (Db 29)

The State disputes that Mr. Correa has standing to challenge the seizure of contraband from Moya's car. (Sb 14-20) Mr. Correa primarily relies on the

[1] This brief uses the same abbreviations as Mr. Correa's initial brief. In addition, Db refers to Mr. Correa's initial brief, and Sb refers to the State's brief.

subsection of his initial brief on this issue (Db 16-22), but he takes this opportunity to respond to several of the State's arguments that are without merit.

First, the State puts far too much emphasis on the fact that Mr. Correa was not charged with conspiracy to possess or distribute the narcotics seized from Moya's car. The State attempts to create a rigid separation between the criminal activities of Moya and Watson, on the one hand, and of Watson and Mr. Correa, on the other, by noting there are "two distinct conspiracies" charged: "1) defendant's conspiracy with Watson to distribute CDS; and 2) Watson's conspiracy with Moya to deliver narcotics to the storage unit." (Sb 18-19) But such a rigid separation is belied by the fact that the storage unit belongs to Mr. Correa and that, at the time police stopped Moya's car, they were investigating an alleged criminal enterprise run by Mr. Correa out of his storage unit, involving, among other things, the delivery of narcotics to that unit. The two conspiracies were thus inextricably linked in the minds of the investigating officers, and the officers would not have stopped Moya's car had they not believed there was a connection between Moya and Mr. Correa.

Moreover, Mr. Correa's right to be free from unreasonable searches and seizures cannot be limited by the State's subsequent charging decisions. The ultimate conclusion of the prosecutor's office -- that it did not have enough evidence to prove Mr. Correa's involvement in a conspiracy to possess or

distribute the narcotics found in Moya's car -- cannot be used as an after-the-fact justification for denying Mr. Correa the opportunity to challenge the seizure of this evidence in the first instance, particularly where the evidence was relied on to establish probable cause to search Mr. Correa's storage unit. Consequently, the fact that Mr. Correa was not charged with conspiracy to possess or distribute the drugs found in Moya's car does not negate his standing to challenge the seizure of that evidence.[2]

The State also argues that Mr. Correa lacks a "contemporary connection" to the narcotics seized from Moya's car because he was neither present at the storage unit nor in the car at the time of the stop. (Sb 19-20) The State analogizes this case to Bruns, but as explained in Mr. Correa's initial brief, Bruns is easily distinguishable. (Db 20-22) In Bruns, the police seized evidence of a crime seven days after it was completed (during an unrelated traffic stop), and there was no indication of an ongoing criminal connection between the defendant and the person from whom the evidence was seized. 172 N.J. 40, 57-58 (2002). Here, by contrast, police seized the relevant evidence just outside Mr. Correa's storage unit before it was able to be delivered, and the reason for the car stop was a

[2] It is noteworthy that the motion judge, in denying a motion to sever Mr. Correa's case from Watson's, reasoned that "[t]he criminal charges relating to the contraband recovered in Moya's vehicle are connected to Mr. Correa and [] Mr. Watson's jointly rented storage unit." (2T 56-1 to 4)

suspected ongoing criminal relationship between Moya, Watson, and Mr. Correa. Not only that, but Mr. Correa did in fact arrive at the scene of the traffic stop after Moya and Watson were arrested. (2T 29-14 to 19) Thus, while he was not present at the exact time of the stop, he was present shortly thereafter, further demonstrating his "contemporary connection" to the unlawful seizure of this evidence.

Finally, the State maintains that it is irrelevant to the standing analysis that the detectives relied on the narcotics found in Moya's car in their affidavit to obtain a search warrant for Mr. Correa's storage unit. (Sb 20) According to the State, the Supreme Court held in State v. Arthur that a defendant lacks standing where evidence is seized from someone other than the defendant and the evidence "is not sought to be used as evidence against the defendant to prove guilt, but only to justify an investigatory stop of [the] defendant." 149 N.J. 1, 13 (1997). The State is mistaken about the holding of Arthur. In fact, while the Arthur Court acknowledged that New Jersey's broad standing rule had not been invoked in such a circumstance, it did not "reach or resolve the issue of defendant's standing" because it concluded that police had reasonable and articulable suspicion to stop the defendant independent of the incriminating evidence seized from the other individual. Ibid. Accordingly, Arthur did not hold

that a defendant lacks standing where seized evidence is used against him not to prove guilt, but to support a finding of reasonable suspicion or probable cause.

In sum, Mr. Correa has a participatory interest in the contraband seized from Moya's car and therefore has standing to challenge the seizure of this evidence. In addition, because the traffic stop of Moya was unlawful, the contraband seized during the stop cannot be used against Mr. Correa. (Db 22-29)

## POINT II

### THE WARRANT AFFIDAVIT DID NOT ESTABLISH PROBABLE TO SEARCH MR. CORREA'S STORAGE UNIT.

Mr. Correa argued in his initial brief that the trial court's decision denying his motion to suppress the evidence seized from his storage unit must be reversed because the warrant affidavit did not establish probable cause. (Db 30-41) Among other things, Mr. Correa argued that (1) police did not sufficiently corroborate the informant's tip for purposes of establishing its reliability, and (2) the alert of a police dog to the scent of narcotics at the storage unit could not be considered because the affidavit fails to indicate that the dog was trained in narcotics detection. In response, the State argues that (1) the tip's reliability is supported by the fact that the informant made a statement against his penal

interests (Sb 38-40), and (2) the reliability of the dog sniff was not raised below and therefore should not be considered. (Sb 42-43) The State is wrong.

Starting with the reliability of the tip, the State notes that in the evidentiary context, a statement made against one's interest is considered sufficiently reliable and is therefore exempt from the rule against hearsay. The State argues by analogy that the informant's tip regarding the heroin he delivered to Mr. Correa's storage unit is inherently trustworthy because it was made against the informant's penal interest. (Sb 38-40)

The problem with this argument is that it assumes that the informant acted against his interests in telling police about Mr. Correa's criminal behavior. While it is true that the informant told police that he delivered heroin to Mr. Correa's storage unit in the past, he made this admission only after he was arrested for possessing approximately 12 kilograms of heroin. (Dca 5) We can safely assume that he provided this information while in police custody and that he was already facing serious charges at the time.

As the United States Supreme Court has observed, "the arrest statements of a codefendant have traditionally been viewed with special suspicion." Lee v. Illinois, 476 U.S. 530, 541 (1986) (citing Bruton v. United States, 391 U.S. 123, 141 (1968) (White, J., dissenting)). "The courts have good reason to be suspicious of a statement made by a person in police custody, because 'the

statement or parts of it implicating others very likely were made to curry favor even if it also inculpates the declarant.'" Smith v. State, 746 So. 2d 1162, 1169 (Fla. Dist. Ct. App. 1999) (quoting John W. Strong, McCormick on Evidence § 319(d) (5th ed.1999)). In this case, given the circumstances in which the tip was provided, the tip itself carries an impression of unreliability, rather than the opposite. See State v. Lakomy, 126 N.J. Super. 430, 435 (App. Div. 1974) (noting that information given by criminal informants "convey[s] a certain impression of unreliability"). The State's insistence that the tip was inherently truthful because it was made against the informant's interests should therefore be rejected. See State v. Nevius, 426 N.J. Super. 379, 394 (App. Div. 2012) (noting that, in the evidentiary context, a statement against interest is admissible only if it is "on the whole" "so far against the declarant's interest that a reasonable person in the declarant's position would not have made the statement unless he believed it to have been true").

Turning to the reliability of the dog sniff, the State asserts that "because defendant did not raise this issue below, it should be deemed waived on appeal." (Sb 43) This overly mechanical interpretation of the rule prohibiting the raising of new issues on appeal is without merit.

As long as an issue was raised before the trial court, the appellate court may consider an argument relevant to that issue "even if [the] argument before

the trial court was based on a different theory from that advanced in the appellate court." Pressler & Verniero, Rules Governing the Courts of the State of New Jersey, cmt. 3 on R. 2:6-2 (2024). Here, at the trial level, Mr. Correa moved to suppress the evidence seized from his storage unit on the grounds that the warrant affidavit did not establish probable cause. (2T 39-2 to 4) While he did not argue specifically that the dog sniff should not have been considered, the sniff was a component of the affidavit, which, as a whole, was challenged. The fact that Mr. Correa is now advancing an additional reason as to why the affidavit is insufficient does not bar this Court from considering that theory.[3]

More substantively, the State is wrong that the mere fact that a K-9 unit was called to sniff Moya's car permits an inference that the K-9 was trained in narcotics detection. (Sb 43) In making this argument, the State is essentially saying that the police have no obligation to assert any facts in a warrant affidavit demonstrating that a drug-sniffing dog is actually capable of detecting the drugs that police are relying on the dog to detect. This simply cannot be true. See State

[3] The State is in no way prejudiced by this Court's consideration of the issue. Because the underlying question is whether the affidavit provided probable cause, a purely legal question based on the four corners of the affidavit, no additional fact-finding on the reliability of the police dog would have been appropriate even if this argument had been expressly discussed in the trial court. Cf. State v. Witt, 223 N.J. 409, 418-19 (2015) (when defendant did not challenge the legality of a warrantless traffic stop at the trial court and merely challenged the subsequent search, the State was denied its opportunity to develop a factual record as to the lawfulness of the stop).

v. Hall, 2017 ND 124, ¶ 26 (reviewing case law from multiple jurisdictions and concluding that where police rely on a dog sniff in a warrant affidavit, at a minimum the affidavit must attest to the training of the dog that conducted the sniff). Moreover, that the dog alerted to the presence of narcotics in the passenger's seat of Moya's car also does not prove its ability to detect drugs, as the State asserts. This argument boils down to an assertion that one positive "hit" in the field demonstrates a dog's reliability, but it is merely a single data point. Not only that, but field performance data in general has "relatively limited import" in most cases. Florida v. Harris, 568 U.S. 237, 245-46 (2013). Because "errors may abound in such records," "the better measure of a dog's reliability comes away from the field, in controlled testing environments." Ibid. (cleaned up). At bottom, this Court should not excuse the failure of the police to present enough facts to establish that a dog sniff supports a finding of probable cause.

In sum, the State's arguments that the informant's tip was inherently trustworthy and that the dog sniff supported a finding of probable cause should be rejected. Considering its contents as a whole, the affidavit did not establish probable cause to search Mr. Correa's storage unit.

## CONCLUSION

For the reasons set forth here and in Mr. Correa's initial brief, this Court should reverse the trial court's denial of the motion to suppress the evidence seized from Mr. Correa's storage unit. The evidence should be suppressed, and Mr. Correa should be offered the opportunity to withdraw from his guilty plea if he chooses to do so.

Respectfully submitted,

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Dated: April 18, 2024