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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1747-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VINCENT LABEGA, a/k/a  
VINCENT K. LABEGA,

Defendant-Appellant.

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Submitted January 9, 2018 – Decided January 31, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Middlesex County, Indictment No.  
13-12-1530.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Jaime B. Herrera, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Andrew C. Carey, Middlesex County Prosecutor,  
attorney for respondent (David M. Liston,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Following denial of his motion to suppress evidence seized pursuant to a search warrant, defendant Vincent Labega pled guilty to third-degree possession with intent to distribute cocaine, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3). He was sentenced to five years of special Drug Court probation, and the remaining charges were dismissed pursuant to a plea agreement. The sole issue on appeal is whether the judge erred in denying defendant's motion to suppress. We affirm.

On September 12, 2013, Judge Alberto Rivas issued a warrant to search the main floor of a house at XXX West Avenue<sup>1</sup> in the Sewaren section of Woodbridge Township. The judge simultaneously issued a second warrant to search the person of Jason Labega who, according to the warrant, resided at that address.

The search warrants were supported by the sworn twenty-page affidavit of Woodbridge Police Department (WPD) Detective Patrick J. Harris. In his affidavit, Harris averred that he received information from two concerned citizens stating they observed an African-American male operating a red 2005 Honda Accord who was engaged in drug activity, including hand-to-hand exchanges, in the Sewaren section of Woodbridge Township. The concerned citizens

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<sup>1</sup> We use a fictitious street address to protect the privacy of the owners and occupants of the multi-family dwelling.

identified Jason Labega as the individual driving the car who was involved in the drug activity.

During the week of September 1, 2013, a confidential informant (CI) participated in a controlled drug transaction, which Harris described in his affidavit as follows:

[The CI] was kept under constant surveillance by [Patrolman] Bonilla and I and followed to a predetermined location that was arrange[d] by Jason Labega. [Detective/Sergeant] Murphy observed Jason Labega exit his residence which is located at [XXX] West Avenue[, ] Sewaren[, ] and meet with the [CI]. Jason Labega and the [CI] exchanged the [WPD] buy money for a quantity of crack cocaine. Shortly after the exchange, both parties went their separate ways.

The evidence was transported to WPD headquarters "where it tested positive for the presumptive presence of cocaine."

The CI participated in a second controlled drug transaction with defendant during the week of September 8, 2013. On this occasion, the police observed the CI arrive at the West Avenue residence, and then exit minutes later with a substance that again tested positive for cocaine.

In his affidavit, Harris detailed his training and experience, Jason Labega's significant criminal history, and the portion of the house the police sought permission to search. Harris further represented that through his training and experience he learned it was common for individuals who distribute

controlled dangerous substances to secrete the narcotics in various areas of their residence.

When police went to the West Avenue home to execute the search warrants, Harris immediately realized the individual he had "observed on the surveillances and the controlled purchase[s]" was not Jason Labega but rather his brother, defendant Vincent Labega, who resided there. Consequently, Harris only executed the search warrant for the home, and not for the person of Jason Labega. The home was searched, and a quantity of cocaine was discovered and seized. Defendant was arrested and searched incident to his arrest.

Defendant moved for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), to support his motion to invalidate the search warrant and suppress the evidence seized from his residence.<sup>2</sup> He argued the Harris affidavit contained several false or misleading statements that were material to Judge Rivas's authorization of the warrant. Specifically, defendant contended that Harris falsely represented that Jason Labega, rather than defendant: resided at XXX West Avenue; owned and operated the 2005 Honda Accord; and participated in the controlled drug transactions.

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<sup>2</sup> Defendant also moved to disclose the identity of the C.I. Defendant does not challenge the denial of that motion on appeal.

Judge Rivas granted defendant's request for a Franks hearing and conducted an evidentiary hearing on October 15, 2014. Detective Harris was the sole witness to testify. Harris explained that when he first received the complaint about drug activity in the Sewaren section of Woodbridge Township he was only "given a general description of the . . . male, and a vehicle that he was said to be operating." Harris conducted surveillance and obtained a license plate number for the 2005 Honda Accord, which "came back to a Fern Labega" at an address on Lewis Street in Perth Amboy. Harris then learned the car was "seen at [XXX] West Avenue in Sewaren, not far from where the original drug activity was observed."

Harris testified he conducted additional surveillance and saw the car parked at XXX West Avenue on multiple occasions. Harris eventually established a relationship with an informant, whom he had not previously used in the past. The CI told Harris the male was selling crack cocaine "either at the house or the male would drive that Honda Accord and meet him."

Harris checked Motor Vehicle Commission (MVC) records and "found that there was a Jason Labega with the same address" as Fern Labega on Lewis Street in Perth Amboy. Harris showed Jason Labega's MVC photograph to the CI, who identified the person pictured as the man he was purchasing drugs from. The CI did not

know the drug dealer as either Jason or Vincent, but rather by a different name that was not disclosed to protect the CI's identity.

Harris testified he conducted additional surveillance during the CI's two controlled drug purchases from defendant. Harris personally observed defendant come out of the West Avenue home and meet with the CI. On cross-examination, Harris clarified: "Vincent Labega was observed exiting the house and going directly to the [CI], meeting with the [CI] and then going their separate ways."

It was only when Harris executed the search warrants that he realized defendant was not Jason Labega, and it was defendant and not Jason who lived in the West Avenue home. Referring to Jason Labega's MVC photograph, Harris explained that he and defendant "look very much alike. They're only like, two years apart and [have] very similar features."

Judge Rivas denied defendant's motion to suppress on March 3, 2015. His written decision explained:

Applying the totality of the circumstances test set forth in Gates<sup>3</sup>/Novembrino<sup>4</sup>, this [c]ourt . . . finds that there existed a fair probability that contraband and evidence of a crime would be found at [XXX] West Ave. The information supplied by [Detective] Harris was accurate in nearly all aspects, aside from the misnaming of the Labega [b]rothers: Vincent Labega was seen operating his 2005 Honda

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<sup>3</sup> Illinois v. Gates, 462 U.S. 213 (1983).

<sup>4</sup> State v. Novembrino, 105 N.J. 95 (1987).

Accord by two citizens that reported the activity to the police and the police conducted two controlled buys at his residence, [XXX] West Ave., before submitting the affidavit.

This [c]ourt finds that the affidavit presented to the [c]ourt was sufficient for the issuance of the warrant. Further, it finds that [Detective] Harris was credible while giving testimony to the [c]ourt, and that the confusion of naming the Labega brothers was neither inherently improbable nor untrustworthy.

On appeal, defendant argues:

THE AFFIDAVIT DID NOT PROVIDE PROBABLE CAUSE TO SEARCH THE DEFENDANT'S HOME BECAUSE THE VERACITY AND BASIS OF KNOWLEDGE OF THE ANONYMOUS INFORMANT UPON WHICH THE AFFIDAVIT RELIED WAS NOT ESTABLISHED, AND THERE WAS NO NEXUS BETWEEN DEFENDANT'S CONDUCT AND THE RESIDENCE. THEREFORE, THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS.

Specifically, defendant contends Harris's affidavit was fatally flawed because it was based on information received from a first-time informant that was unreliable, inaccurate, and not corroborated by Harris. Defendant further asserts that, even if the affidavit established probable cause to search defendant's person, there is no basis to infer that defendant was distributing drugs from the West Avenue residence. We do not find these arguments persuasive.

Our Supreme Court has recently reaffirmed the principles by which our review is governed:

An appellate court reviewing a motion to suppress evidence in a criminal case must uphold the factual findings underlying the trial court's decision, provided that those findings are "supported by sufficient credible evidence in the record." State v. Scriven, 226 N.J. 20, 40 (2016). The suppression motion judge's findings should be overturned "only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). However, we owe no deference to conclusions of law made by lower courts in suppression decisions, which we instead review de novo. State v. Watts, 223 N.J. 503, 516 (2015).

. . . .

The application for a warrant must satisfy the issuing authority "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. Jones, 179 N.J. 377, 388 (2004) . . . (quoting State v. Sullivan, 169 N.J. 204, 210 (2001)). . . .

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." Watts, 223 N.J. at 513-14 (quoting State v. Keyes, 184 N.J. 541, 554 (2005)). Reviewing courts "accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant." Jones, 179 N.J. at 388 (quoting Sullivan, 169 N.J. at 211 (alteration in original)). Courts consider the "totality of the circumstances" and should sustain the validity of a search only if the finding of



probable cause relies on adequate facts. Id.  
at 388-89.

[State v. Boone, \_\_\_ N.J. \_\_\_, \_\_\_ (2017)  
(slip op. at 9-11).]

Where a warrant affidavit relies on a tip provided by an informant, we consider the totality of the circumstances, including the informant's prior demonstrated veracity and whether the informant had a "basis of knowledge for the information provided to the police . . . ." Sullivan, 169 N.J. at 213. We also consider whether the police were able to corroborate the informant's information. A previous controlled buy using the informant is a factor that supports a finding of probable cause. See Jones, 179 N.J. at 392 (citing Sullivan, 169 N.J. at 215-16). In Keyes, our Supreme Court opined:

[R]elevant corroborating facts may include a controlled drug buy performed on the basis of the tip, positive test results of the drugs obtained, 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. Although no corroborating fact, by itself, conclusively establishes probable cause, a successful "controlled buy 'typically will be persuasive evidence in establishing probable cause.'" Indeed, when the police have performed a successful controlled drug buy we have found that "even one additional circumstance might suffice, in the totality of the circumstances, to demonstrate probable cause."

[184 N.J. 541, 556-57 (2005) (citations omitted).]

In this case, we find no basis to second-guess Judge Rivas's decision to issue the warrant to search the home at XXX West Avenue or to sustain the validity of that warrant. It is true, as defendant points out, that the CI was assisting the police for the first time in this case. Nonetheless, the CI participated in two controlled buys that took place either at or close to the West Avenue house. These transactions were conducted under police surveillance, and the police observations of defendant's movements from the house immediately prior to the drug sales not only corroborated the CI's information and reliability, but also gave rise to the reasonable inference that defendant was engaged in the sale of illegal drugs and that there was contraband in the home.

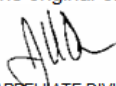
Contrary to defendant's contention, even if no drug sales were observed inside or immediately outside of defendant's residence, that would not defeat the existence of probable cause. That concept does not require certainty but only "a fair probability that contraband or evidence of a crime will be found 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)); see also State v. Jones, 308 N.J. Super. 15, 28 (App. Div. 1998). For instance, in State v. Myers, 357 N.J. Super. 32, 39-

40 (App. Div. 2003), we found that police officers had sufficient probable cause that drug evidence would be found at the defendant's residence because on the same day the officers observed drug transactions at a nearby location, they observed the defendant leaving his residence and giving a brick of suspected heroin to one of the dealers at the nearby location, and police found drugs, a weapon, and ammunition at the nearby location.

We conclude there was probable cause to issue the search warrant and sufficient credible evidence in the record to support the denial of defendant's motion to suppress.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION