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APPROVAL OF THE APPELLATE DIVISION**

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-1926-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EMAN HASSENBAY, a/k/a EDMOND  
HASSENBAY and AMAN A. HASSENBAY,

Defendant-Appellant.

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Submitted January 23, 2018 – Decided February 7, 2018

Before Judges Reisner, Gilson and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Somerset County, Indictment No.  
14-06-0403.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Brian P. Keenan, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Michael H. Robertson, Somerset County  
Prosecutor, attorney for respondent (Paul H.  
Heinzl, Assistant Prosecutor, of counsel and  
on the brief).

PER CURIAM

Following the denial of his motion for a Franks<sup>1</sup> hearing and his motion to suppress evidence of drugs seized during a search of his person and his car, defendant pled guilty to two counts of third-degree possession of narcotics with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3). He now appeals from his conviction, raising the following points of argument:

POINT I: THE OFFICERS' STRIP SEARCH OF HASSENBEY IN A PUBLIC PARKING LOT IN THE MIDDLE OF THE DAY, WAS ILLEGAL AND UNREASONABLE, AND THEREFORE, THE EVIDENCE SEIZED MUST BE SUPPRESSED.

POINT II: THE POLICE LACKED REASONABLE SUSPICION TO STOP HASSENBEY, AND THEREFORE, THE EVIDENCE RESULTING FROM THE SUBSEQUENT SEARCH SHOULD HAVE BEEN SUPPRESSED.

POINT III: THE LACK OF FOUNDATIONAL DOCUMENTATION SUPPORTING THE ALLEGED CONTROLLED BUY, AND CONFLICTING REPORTS ABOUT WHERE THE DRUG DOG ALERTED, REQUIRE A REMAND FOR A FRANKS HEARING.

In ruling on defendant's motions, Judge Robert B. Reed considered and rejected those arguments in his comprehensive oral opinion issued on May 19, 2016. After reviewing the record, we likewise find no merit in defendant's arguments, and we affirm substantially for the reasons stated in Judge Reed's opinion. We add these comments.

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<sup>1</sup> Franks v. Delaware, 438 U.S. 154 (1978).

Under police supervision, a confidential informant (CI) made a controlled buy of drugs from defendant, whom the police observed driving a silver Infinity Q45 with a certain license plate number. A field test revealed that the drugs were heroin. The CI then arranged to meet defendant in a mall parking lot to make a second purchase. Defendant, driving the same Infiniti, arrived at the agreed-on location, and the CI positively identified him to the police. The officers detained defendant, and after he refused to consent to a search, they called for a narcotic sniffing dog. The dog "indicated" (had a drug-positive reaction) to defendant's car, and the hood of the police vehicle where defendant had been sitting while awaiting the dog's arrival. Based on that information, the police obtained a telephonic warrant to search defendant's car and his person.

During the search, an officer unbuckled defendant's belt and unzipped his pants in order to gain access to an object attached to his underwear. Without otherwise disturbing or removing defendant's clothing, the officer observed a small sock sewn to the outside front of defendant's underwear. The sock contained narcotics. The police photographed defendant after finding the sock. Defendant's appendix contains a blurry black-and-white photocopy of the photograph. However, the State provided us with

a copy of the actual color photograph, which clearly demonstrates that the sock was visible and accessible without a strip search.<sup>2</sup>

Based on our review of the evidence, we agree with Judge Reed that the police had reasonable suspicion justifying the investigatory stop of defendant in the mall parking lot. See State v. Birkenmeier, 185 N.J. 552, 561-62 (2006). We also concur in Judge Reed's well-founded conclusion that there was probable cause to issue the search warrant, based on the information from the CI, the controlled buy, and the canine sniff. On this record, a Franks hearing was not required. See State v. Broom-Smith, 406 N.J. Super. 228, 240 (App. Div. 2009), aff'd, 201 N.J. 229 (2010). Defendant's appellate contentions on these issues do not warrant further discussion. R. 2:11-3(e)(2).

We also conclude there was sufficient credible evidence to support Judge Reed's findings that no strip search occurred, N.J.S.A. 2A:161A-3(a), and the search that did occur pursuant to a search warrant was not unreasonable. See State v. S.S., 229 N.J. 360, 379-81 (2017) (on a suppression motion, we defer to a trial judge's factual findings even if based on documentary evidence). We find no merit in defendant's arguments based on N.J.S.A. 2A:161A-1, which prohibits strip searches of persons

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<sup>2</sup> As Judge Reed observed based on the photo, "You don't have to go into the underwear to find [the] sock. It is looking at you."

detained for non-criminal offenses except pursuant to a warrant.  
Even if a strip search occurred here, defendant was detained for  
a criminal offense and the search was "authorized by a warrant."  
N.J.S.A. 2A:161A-1(a).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION