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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0883-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CALVIN RIGGINS,

Defendant-Appellant.

Submitted January 23, 2023 – Decided January 27, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 18-09-1338.

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

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Nancy A. Hulett, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Calvin Riggins appeals from the Law Division's order denying his motion to suppress the evidence the police seized from his apartment pursuant to a search warrant, and the court's denial of his request for a Franks¹ hearing in connection with his suppression motion. We affirm substantially for the reasons set forth by Judge Michael A. Toto in his thorough December 9, 2019 written decision.

In June 2018, the police requested and obtained a search warrant to search defendant's apartment. While executing the warrant on July 3, 2018, the police found and seized "two bundles of suspected heroin or fentanyl, a clear bag containing suspected cocaine, . . . four small green bags of crack cocaine, one clear plastic bag of marijuana, various pills," and assorted drug paraphernalia.

After his indictment on ten charges related to the possession and sale of controlled dangerous substances, defendant filed a suppression motion and argued that the reliability of the confidential informant the police relied upon to secure the warrant was not established and that the informant's allegations were not corroborated. He also complained that the police did not field test the substances during controlled buys at defendant's apartment before securing the warrant. In addition, defendant asserted the detective's affidavit falsely claimed

¹ Franks v. Delaware, 438 U.S. 154 (1978).

that one of the controlled buys involved defendant's girlfriend, who denied taking part in the transaction. Based upon this allegation, defendant argued he was entitled to a Franks hearing.

Judge Toto carefully considered, and rejected, these contentions in his comprehensive opinion. Thereafter, defendant pled guilty to first-degree maintaining or operating a controlled dangerous substance production facility in violation of N.J.S.A. 2C:35-4. In accordance with the negotiated plea, another trial judge sentenced defendant to seven years in prison, with a forty-two month period of parole ineligibility. The judge dismissed defendant's remaining nine charges.

On appeal, defendant raises the same contentions he unsuccessfully presented to Judge Toto. Defendant argues:

POINT I

SUPPRESSION SHOULD HAVE BEEN GRANTED BECAUSE THE WARRANT AFFIDAVIT FAILED TO SUPPORT A FINDING OF PROBABLE CAUSE TO SEARCH [DEFENDANT] OR HIS APARTMENT.

POINT II

THE MOTION COURT ERRED IN DENYING AN EVIDENTIARY HEARING ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO THE SEARCH WARRANT BECAUSE [DEFENDANT] MADE A

"SUBSTANTIAL PRELI[M]NARY SHOWING"
THAT THE WARRANT AFFIDAVIT INCLUDED
MATERIAL[LY] FALSE STATEMENTS AND THAT
THE WARRANT FAILED TO DESCRIBE THE
AREA TO BE SEARCHED WITH SPECIFICITY.

In addressing Point I, we note that "a search executed pursuant to a warrant is presumed to be valid and . . . a defendant challenging its validity has the burden to prove 'that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" State v. Jones, 179 N.J. 377, 388 (2004) (quoting State v. Valencia, 93 N.J. 126, 133 (1983)). "Accordingly, courts 'accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant.'" State v. Keyes, 184 N.J. 541, 554 (2005) (alteration in original) (quoting Jones, 179 N.J. at 388).

When "reviewing a grant or denial of a motion to suppress [we] must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014). We "should reverse only when the trial court's determination is 'so clearly mistaken that the interests of justice demand intervention and correction.'" Id. at 425 (quoting State v. Elders, 192 N.J. 224, 244 (2007)).

"A trial court's interpretation of the law, however, and the consequences that flow from established facts are not entitled to any special deference." Ibid. Thus, "a trial court's legal conclusions are reviewed de novo." Ibid.

The New Jersey Constitution provides that "no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized." N.J. Const. art. I, ¶ 7. "When a court receives an application from the police for a search warrant, it should not issue that warrant 'unless [it] is satisfied that there is probable cause to believe that . . . evidence of a crime is at the place sought to be searched.'" State v. Smith, 212 N.J. 365, 388 (2012) (quoting State v. Sullivan, 169 N.J. 204, 210 (2001)).

Probable cause requires "less than legal evidence necessary to convict though more than mere naked suspicion." Ibid. (quoting State v. Mark, 46 N.J. 262, 271 (1966)). It exists when a police officer possesses "a 'well grounded' suspicion that a crime has been or is being committed." Sullivan, 169 N.J. at 211. The court must "make a practical, common sense determination whether, given all of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" State v. O'Neal, 190 N.J. 601, 612 (2007) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)).

Further, probable cause must be determined "based on the information contained within the four corners of the supporting affidavit, as supplemented by sworn testimony before the issuing judge that is recorded contemporaneously." State v. Marshall, 199 N.J. 602, 611 (2009) (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)).

"Information related by informants may constitute a basis for probable cause, provided that a substantial basis for crediting that information is presented." Jones, 179 N.J. at 389. The issuing court must consider the totality of the circumstances in determining whether an informant's tip establishes probable cause, including the informant's "veracity and basis of knowledge." Ibid. These are the most important factors, and a deficiency in one may be compensated "by a strong showing as to the other, or by some other indicia of reliability." State v. Zutic, 155 N.J. 103, 110-11 (1998).

"[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." Keyes, 184 N.J. at 556. Although no fact by itself establishes probable cause, "a successful controlled [drug] buy 'typically will be

persuasive evidence in establishing probable cause.'" Ibid. (quoting Sullivan, 169 N.J. at 217).

After reviewing the record, we agree with Judge Toto that the detective's affidavit established probable cause for the issuance of the warrant. After detailing the detective's extensive training, the detective stated he was approached by an informant in May 2018, who told him that defendant was selling heroin and cocaine out of his apartment that was located upstairs in the rear of a building. Although this informant was providing information to the detective for the first time, the detective stated the details were consistent with what other informants had previously provided.

The detective further corroborated the informant's account by meeting with two other confidential informants identified by officers in a neighboring town. These informants also said that defendant was selling drugs out of his second-floor apartment that was accessible by stairs located at the rear of the building.

The detective then arranged for his informant ("C.I."), to make a controlled buy at defendant's apartment. The detective watched C.I. walk to the rear of the building and return. At that time, C.I. turned over a wax fold

containing suspected heroin. C.I. stated he purchased the substance from defendant.

Several weeks later, C.I. made a second controlled buy, this time from defendant's girlfriend, Elvia Torres, at defendant's apartment. This time, C.I. returned with four wax folds of suspected heroin. One week later, C.I. made a third purchase from defendant at the apartment. He returned with two wax folds of heroin and a plastic bag of suspected cocaine.²

Under these circumstances, we agree with Judge Toto that the detective's affidavit established probable cause for the issuance of the warrant. The affidavit detailed C.I.'s participation in three controlled drug buys; defendant's prior criminal record concerning controlled dangerous substances; and the detective's relevant training and experience as a law enforcement officer. Contrary to defendant's contentions, the affidavit included ample evidence supporting "a practical, common sense determination [that], given all of the circumstances, there [was] a fair probability that contraband or evidence of a crime [would] be found in [the] particular place" for which the search warrant was issued. Marshall, 199 N.J. at 610 (quoting O'Neal, 190 N.J. at 612).

² The detective's affidavit also set forth defendant's extensive prior record.

Therefore, there was no basis to suppress any of the evidence seized during the search authorized by the warrant.

In so ruling, we reject defendant's claim that the affidavit was deficient because the items purchased in the three controlled buys were not field tested to confirm they were controlled dangerous substances. A positive test for suspected narcotics is not essential to a finding of probable cause that items are controlled dangerous substances. For example, in Jones, the Supreme Court noted that regardless of the chemical makeup of the purported narcotics, there was still sufficient information to find "probable cause that illegal narcotics activity was occurring." 179 N.J. at 395. Specifically, the Court held that in the "totality of the circumstances," the officer's narcotics training, and the coordinated purchase of illegal drugs established "sufficient probable cause to issue the search warrant." Id. at 396-97.

The totality of the facts presented here—including the coordination of the controlled purchase of suspected heroin and cocaine, the circumstances under which the controlled buys were made, and the detective's training and experience—established probable cause to believe the purchased items were illicit narcotics. Although the items purchased during the controlled buys were not tested at the time the detective applied for the warrant, "[t]he circumstances

detailed in the warrant application plainly indicated that the sole purpose of the [controlled buys] between the informant and the suspect[] . . . was to exchange money for drugs." Id. at 395.

In sum, the facts contained in the affidavit demonstrated there was "a fair probability that contraband or evidence of a crime [would] be found in" defendant's apartment. O'Neal, 190 N.J. at 612. Therefore, Judge Toto properly denied defendant's motion to suppress the evidence seized during the execution of the search warrant.

The judge also correctly denied defendant's request for a Franks hearing. It is well-established that an affidavit for a search warrant is presumed to be valid. Franks, 438 U.S. at 171. A defendant who challenges the validity of a search warrant affidavit is entitled to a Franks hearing only if the "defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause" Id. at 155-56. Stated differently, a Franks "hearing is required only if the defendant can make a substantial preliminary showing of perjury." State v. Howery, 80 N.J. 563, 583 n.4 (1979).

In making this showing, the defendant "must allege 'deliberate falsehood or reckless disregard for the truth,' pointing out with specificity the portions of the warrant that are claimed to be untrue." Id. at 567 (quoting Franks, 438 U.S. at 171). The defendant also must show that the misstatements claimed to be false are material "to the extent that when they are excised from the affidavit, that document no longer contains facts sufficient to establish probable cause." Id. at 568.

"The limitations imposed by Franks are not insignificant." Id. at 567. The burden placed on the defendant is onerous because "a Franks hearing is not directed at picking apart minor technical problems with a warrant application[,] but rather, "it is aimed at warrants obtained through intentional wrongdoing by law enforcement agents[.]" State v. Broom-Smith, 406 N.J. Super. 228, 240 (App. Div. 2009), aff'd, 201 N.J. 229 (2010).

Applying these principles, we discern no basis for disturbing Judge Toto's denial of defendant's request for a Franks hearing. In his affidavit, the detective stated he was told by C.I. that Torres handed him the suspected drugs during the second controlled purchase at defendant's apartment. C.I. told the detective he knew Torres was defendant's girlfriend. The detective later obtained a

photograph of Torres and C.I. confirmed she was the person who gave him the suspected drugs.

Defendant presented a certification from Torres in which "she categorically denied that she handed/sold any contraband to the confidential informant mentioned in the police report." Contrary to defendant's argument, Torres' statement did not demonstrate that the detective's statement that C.I. told him Torres gave him the drugs was false. Instead, the detective made clear in his affidavit that he was relaying the information C.I. provided him following the purchase. Thus, Judge Toto properly found that even if C.I.'s statement was false, "this would not negate probable cause, [because] [d]efendant has not established that [the statement] was included in the affidavit with knowing, intentional, or reckless disregard for the truth."

Moreover, the detective's affidavit contained information concerning the two other controlled buys, which both involved defendant directly, as well as information about the previous tips the detective received about defendant's activities in the apartment. Thus, even if the reference to Torres was incorrect, there was ample remaining evidence in the record to support the issuance of the search warrant. Therefore, a Franks hearing was not required.

Finally, we reject defendant's argument "that the warrant failed to describe the area to be searched with specificity." As he did before Judge Toto, defendant asserts he lived in an apartment on the third floor of the building, but the warrant incorrectly stated he lived in a second-floor unit. Because of this alleged discrepancy, defendant contends the warrant was faulty and the evidence seized pursuant to it should have been suppressed.


However, the warrant also specifically described defendant's apartment as being accessible by wooden stairs located in the rear of the premises. As Judge Toto observed in his decision:

This description does more than vaguely refer to the apartment over which [d]efendant has "possession, custody, control, or access." Rather, this description specifically describes the one apartment that can be accessed from the back of the building. Whether the apartment is on the second floor or third[]floor, as [d]efendant claims, does not destroy the ability of an officer executing the search warrant to reasonably ascertain the location to be searched. Therefore, the warrant was sufficiently descriptive of the location to be searched.

We agree.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION