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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-1506-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HASSEIN A. FERRELL,
a/k/a HASSIEN A. FERRELL,

Defendant-Appellant.

Submitted May 2, 2023 – Decided May 30, 2023

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey, Law
Division, Salem County, Indictment No. 19-05-0146.

Kevin C. Watkins, attorney for appellant.

Kristin J. Telsey, Salem County Prosecutor, attorney
for respondent (David M. Galemba, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Following the denial of his motion to suppress evidence seized pursuant
to a search warrant, defendant Hassein A. Ferrell pled guilty to third-degree

possession of cocaine, N.J.S.A. 2C:35-10(a)(1), and second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1). In accordance with the plea bargain, the judge sentenced defendant to a five-year term of imprisonment on the weapons offense, with a forty-two-month period of parole ineligibility under the Graves Act, N.J.S.A. 2C:43-6(c), and a concurrent three-year term on the drug offense.

The affidavit of Senior Investigator Patrick Vengenock of the Salem County Prosecutor's Office supported the search warrant issued for certain premises in Salem City and defendant. Vengenock detailed three controlled buys of narcotics made by a confidential informant (CI) during the months of December 2018, and January and February 2019. In each instance, the CI purchased "suspected cocaine" directly from defendant inside the Salem City residence and reported back to Vengenock. Additionally, the affidavit included information Vengenock received from a "concerned citizen," who reported that defendant was in possession of "numerous handguns" which he carried about in a "fanny pack around his shoulder." The affidavit also listed defendant's six arrests and three prior convictions that, according to Vengenock, "depict[ed] his propensity for narcotics and violence." A Superior Court judge issued the

warrant on February 11, 2019, and Vengenock and other law enforcement officers executed the warrant the following day.

At the motion to suppress hearing on February 7, 2020, defendant argued that the search warrant lacked probable cause because the affidavit did not specify the specific dates of the controlled buys, did not state the basis for the CI's knowledge or reliability, it was unclear whether there was proper monitoring by police of the controlled buys, and police failed to submit the suspected CDS obtained by the CI during the controlled buys for testing by a laboratory.

Based on the written submissions of defendant and the prosecutor, the motion judge, who was not the judge who issued the warrant, detailed its execution in a short, written opinion that accompanied his order. Prior to executing the warrant, Vengenock set up surveillance on the Salem City property and observed defendant exit and drive away. Police stopped the car, removed defendant from the vehicle, searched him, seizing two iPhones and cash, and then placed defendant in their patrol car. Based on the odor of marijuana, police also conducted a search of the car, but they seized nothing further.

Police returned back to the Salem City house with defendant in custody and executed the warrant there. They seized an ounce of crack cocaine, a handgun, and drug paraphernalia. Although he initially exercised his right to remain silent, defendant subsequently told police that "whatever was found in the house belonged to him."¹

The motion judge rejected all of defendant's arguments. He concluded that the three controlled buys rendered the affidavit's lack of "talismanic" words about the informant's past reliability or knowledge inconsequential. Further, a concerned citizen separately provided information that defendant was in possession of multiple handguns and kept them at his home and on his person, and Vengenock laid out his training and experience as well as defendant's criminal history. The judge therefore concluded under the totality of the circumstances "that there was more than sufficient probable cause to believe that [defendant] was distributing controlled dangerous substances from the [Salem City] residence," and that a search of his person and the residence "would yield fruits of the crimes charged."

¹ Police later obtained two communication data warrants (CDW) for defendant's phones based on information they obtained during their investigations of a robbery and shootings that occurred in October and December 2018. No issues are presented on appeal regarding the CDWs.

The judge found it was of little importance that the specific dates of the controlled buys were not listed in the affidavit, concluding that is regularly done to protect the confidentiality of informants so they may be used again by investigators in the future. The judge further found there was no requirement that the suspected CDS from the controlled buys be tested at a laboratory to establish probable cause. The judge entered an order denying defendant's motion to suppress, and he ultimately pled guilty as noted above.

Defendant raises a single point on appeal:

THE JUDGMENT OF CONVICTION SHOULD BE
REVERSED AS THE ORDER DENYING
SUPPRESSION UPON WHICH THE JUDGMENT IS
BASED RESULTS FROM A SEARCH WARRANT
PREMISED UPON INCOMPETENT EVIDENCE
AND UNQUALIFIED WITNESSES.

We disagree and affirm.

"[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. Keyes, 184 N.J. 541, 554 (2005) (quoting State v. Jones, 179 N.J. 377, 388 (2004)). "Our role on appeal is limited. All we need to determine is whether the application made to [the issuing judge] provided sufficient evidence for [her] finding of probable cause to search the

premises for the items authorized." State v. Chippero, 201 N.J. 14, 32 (2009).

"In considering such a challenge, '[w]e accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant.'" Jones, 179 N.J. at 388 (alterations in original) (quoting State v. Sullivan, 169 N.J. 204, 211 (2001)). "Thus[,] when the adequacy of the facts offered to show probable cause is challenged after a search made pursuant to a warrant, and their adequacy appears to be marginal, the doubt should ordinarily be resolved by sustaining the search." Id. at 388–89 (alteration in original) (quoting State v. Kasabucki, 52 N.J. 110, 116 (1968)).

When presented with facts strikingly like the ones presented here, the Court considered "whether three controlled purchases of suspected cocaine . . . from persons with prior drug-related arrests and convictions establish[ed] probable cause sufficient for the issuance of a search warrant when the confidential informant who supplied the initial tip is of unknown reliability." Id. at 382–83. The Court held that considering the totality of the circumstances, the affidavit "adequately corroborated the informant's tip when, in addition to conducting three controlled buys," the agent provided detailed information as to his experience working on narcotics investigations, disclosed the arrests and convictions of the suspects under investigation, and expressed a conclusion

based on his knowledge, training, and experience that illegal sales were occurring. Id. at 396. As such, the Court found the defendant "has not defeated the warrant's presumption of validity or demonstrated the unreasonableness of the police conduct." Id. at 397 (quoting Sullivan, 169 N.J. at 217); see also Sullivan, 169 N.J. at 217 (stating that although not conclusive, a "controlled drug buy typically will be persuasive evidence in establishing probable cause").

In this case, we fully agree with the motion judge's evaluation of the totality of the circumstances set forth in the affidavit supporting the warrant. Although it failed to describe the CI's past reliability or the source of his knowledge regarding defendant's drug dealing, the three controlled buys, the citizen's tip, the officer's training and experience, and defendant's prior criminal history that was replete with drug and weapons offenses, amply supported probable cause for the warrant's issuance.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION