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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2017-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALTARIQ J. WAGNER, a/k/a  
ALTARIQ WAGNER, AL  
WAGNER, and AL-TARIQ  
WAGNER,

Defendant-Appellant.

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Submitted May 22, 2023 – Decided June 2, 2023

Before Judges Haas and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Indictment No. 18-11-3616.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Taylor L. Napolitano, Assistant Deputy  
Public Defender, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for  
respondent (Steven K. Cuttonaro, Deputy Attorney  
General, of counsel and on the brief).

## PER CURIAM

Defendant Altariq J. Wagner 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 Franks<sup>1</sup> hearing in connection with his suppression motion. Defendant also challenges the sentence he received after pleading guilty to a number of charges. We affirm substantially for the reasons set forth by Judge Martin Cronin in his thorough June 3, 2019 decision denying defendant's suppression motion, and by Judge Mayra V. Tarantino, who sentenced defendant on August 11, 2020.

In August 2018, the police requested and obtained a search warrant to search defendant's apartment, his car, and his person. While executing the warrant, the police seized over twenty grams of cocaine and \$113,620 in cash from defendant's apartment, and fourteen vials of cocaine from his car.

After his indictment on thirteen charges related to the possession and sale of controlled dangerous substances and other offenses, defendant filed a suppression motion. Defendant argued that the affidavit prepared by a detective to support the search warrant application was incomplete and did not adequately establish the reliability of the confidential informants the police used during

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

their investigation. He also sought to discover the identities of the informants, and asked the court to conduct a Franks hearing.

Judge Cronin carefully considered, and rejected, these contentions in his comprehensive opinion. Thereafter, defendant pled guilty to a number of charges. In accordance with the negotiated plea, Judge Tarantino sentenced defendant to an aggregate term of seven years in prison, with a thirty-month period of parole ineligibility.

On appeal, defendant raises the following contentions:

POINT I

THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] MOTION TO SUPPRESS WITHOUT AN EVIDENTIARY HEARING GIVEN THAT THE RELIABILITY OF ALL FOUR CONFIDENTIAL INFORMANTS WAS CONTESTED.

POINT II

[DEFENDANT] IS ENTITLED TO A FRANKS HEARING GIVEN THE SERIOUS DISCREPANCIES BETWEEN [DETECTIVE] JOHNSON'S REPRESENTATIONS IN THE WARRANT AFFIDAVIT AND HIS PAPERWORK, WHICH FAILED TO RECORD THE ONLY TWO PIECES OF INFORMATION PROVIDED BY CONFIDENTIAL INFORMANTS WHOSE RELIABILITY HE AFFIRMED: THE INITIAL TIP AND THE SECOND CONTROLLED BUY.

### POINT III

[DEFENDANT] IS ENTITLED TO RESENTENCING BECAUSE THE COURT FAILED TO (A) APPROPRIATELY EVALUATE THE AGGRAVATING FACTORS, WHICH ONLY APPLIED TO THE OFFENDER, (B) APPLY ANY APPLICABLE MITIGATING FACTORS, AND (C) DETERMINE THE AMOUNT OF RESTITUTION OWED AND WHETHER [DEFENDANT] COULD AFFORD TO PAY IT.

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 Cronin that the detective's affidavit established probable cause for the issuance of the warrant. One confidential informant told the detective of a narcotics distribution operation operating at a specific address in Newark. This informant had provided the detective with reliable information in the past. As part of that operation, the informant stated that defendant was supplying heroin to co-defendants in the vicinity of that address. The detective surveilled the area and observed several individuals exchange money for "small items."

The informant also told the detective that defendant picked up heroin at one address and transported it to the address that was the subject of the operation. The detective conducted another surveillance and observed defendant drive to the first address, get out of his car, take a black bag from the trunk, and go into the house. When defendant left, he was carrying the bag. Defendant got back into his car, drove to the second address, and exchanged the bag for cash. By this time, the police had already conducted undercover buys

of heroin at that site. One week later, the detective observed defendant engage in the same activity of exchanging the bag for cash. Using the informant, and another informant who had also been proven reliable in the past, the police also conducted two undercover buys of heroin from defendant.

Under these circumstances, we are satisfied that the detective's affidavit established probable cause for the issuance of the warrant. The warrant detailed the detective's own observations of defendant's delivery of suspected drugs and his receipt of cash in return. The police made two undercover purchases of heroin from defendant. 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).

Defendant's argument that Judge Cronin should have conducted an evidentiary hearing before ruling on his motion lacks merit. An evidentiary hearing is only required on a motion to suppress when the defendant "places material facts in dispute . . . ." State v. Green, 346 N.J. Super. 87, 90-91 (App. Div. 2001); see also Rule 3:5-7(c) (stating that "[i]f material facts are disputed,



testimony thereon shall be taken in open court"). However, a defendant must offer more than conclusory assertions of an unconstitutional search and seizure. State v. Hewins, 166 N.J. Super. 210, 213 (Law Div. 1979). If the State alleges certain facts which support the legitimacy of the search, and the defendant does not challenge those facts, the suppression motion can be decided without an evidentiary hearing. Green, 346 N.J. Super. at 101-02.

Here, defendant did not submit a certification of his own to dispute any of the facts the State presented in support of the issuance of the warrant. He did not even request an evidentiary hearing. Instead, defendant merely asserted that the detective should have included additional information in the affidavit concerning the past reliability of the informants, and complained that certain information the detective stated the informants provided was not included in police reports. Because defendant did not provide a detailed counter-statement of facts to rebut the State's presentation, there was no need for an evidentiary hearing.

Turning to Point II, Judge Cronin 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 Cronin's denial of defendant's request for a Franks hearing. Defendant failed to identify any "deliberate falsehoods" on the detective's part or demonstrate he "recklessly disregarded" the truth in the preparation of the search warrant application. Even if the portions of the affidavit concerning the information provided by the confidential informants were disregarded, the observations made by the police of defendant twice exchanging the black bag for cash at a known heroin distribution site provided ample probable cause justifying the issuance of the warrant.

Finally, defendant argues in Point III that Judge Tarantino abused her discretion by sentencing him to an aggregate seven-year term. We disagree.

Trial judges have broad sentencing discretion as long as the sentence is based on competent credible evidence and fits within the statutory framework. State v. Dalziel, 182 N.J. 494, 500 (2005). Judges must identify and consider "any relevant aggravating and mitigating factors" that "'are called to the court's attention[,]" and "explain how they arrived at a particular sentence." State v. Case, 220 N.J. 49, 64-65 (2014) (quoting State v. Blackmon, 202 N.J. 283, 297

(2010)). "Appellate review of sentencing is deferential," and we therefore avoid substituting our judgment for the judgment of the trial court. Id. at 65; State v. O'Donnell, 117 N.J. 210, 215 (1989); State v. Roth, 95 N.J. 334, 365 (1984).

We are satisfied the judge made findings of fact concerning aggravating and mitigating factors that were based on competent and reasonably credible evidence in the record and applied the correct sentencing guidelines enunciated in the Code.<sup>2</sup> Accordingly, there is no reason for us to second-guess the sentence the judge imposed.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

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<sup>2</sup> Contrary to defendant's contention, the judge did not order him to pay restitution as part of the sentence. Therefore, no restitution hearing was required.