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LETTER BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

RE: STATE OF NEW JERSEY (Plaintiff-Movant) v.
TYJON A. WILLIAMS (Defendant-Respondent)

Docket No. A-003380-23T2

Criminal Action: On Appeal From an Interlocutory Order of the Superior Court of New Jersey, Law Division, Middlesex County.

Sat Below: Hon. Pedro J. Jimenez, Jr., J.S.C.

Honorable Judges:

Pursuant to Rule 2:6-2(b), this letter brief is submitted in lieu of a formal brief on behalf of the State of New Jersey.

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STATEMENT OF PROCEDURAL HISTORY

On October 19, 2021, a Middlesex County Grand Jury returned Indictment No. 21-10-00974-I, charging defendant, Tyjon Williams, with second-degree possession of a firearm while possessing a controlled dangerous substance (CDS) with intent to distribute, contrary to N.J.S.A. 2C:39-4.1 (Count 1); third-degree possession of CDS with intent to distribute, contrary to N.J.S.A. 2C:35-5(a)(1); 2C:35-5(b)(11)(a) (Count 2); third-degree possession of CDS with intent to distribute within 1000 feet of school property, contrary to N.J.S.A. 2C:35-7(a) (Count 3); and second-degree possession of CDS with intent to distribute within 500 feet of public property, contrary to N.J.S.A. 2C:35-7.1 (Count 4). (Pa1-2).[1] A Middlesex County Grand Jury also returned Indictment No. 21-10-00975-I, charging defendant with second-degree certain person not to possess a weapon, contrary to N.J.S.A. 2C:39-7(b)(1) (Count 1). (Pa3).

Defendant moved to suppress evidence, specifically the firearm and large quantity of marijuana found pursuant to a search warrant, and on May 28, 2024, the parties appeared before the Honorable Pedro J. Jimenez, Jr., J.S.C., for oral argument on defendant's motion. (1T3-1 to 20). Prior to oral

[1] The record is cited as follows:
Pa = State's appendix.
Pca = State's confidential appendix.
1T = Transcript of motion to suppress, May 28, 2024.

argument, the parties agreed that the pertinent facts were undisputed, there was a written and judicially authorized search warrant, and therefore live testimony was unnecessary. (1T3-13 to 20). Defense counsel did not dispute the accuracy of the evidence referenced in, or attached to, the State's brief.

After hearing oral argument, Judge Jimenez granted the defendant's suppression motion for reasons stated on the record. (1T25-21 to 24). The judge reasoned as follows:

> [T]hese warrants should never have been issued. There's no PC in this affidavit to support it. It's a general warrant. It doesn't particularize anything. The only thing it particularizes is that Mr. Williams is a bad guy because he has prior convictions for drug distribution in his past. In one instance. He's a bad guy because he has a gun possession in his past, and he's a bad guy because he's been convicted of possessing under 50 grams of marijuana on a number of different occasion[s].
>
> [1T25-10 to 19.]

An order memorializing the court's decision was issued later the same day. (Pa4).

On June 17, 2024, the State moved for leave to appeal from Judge Jimenez's order suppressing evidence. (Pa5). This court granted the State's motion by order dated July 2, 2024. (Pa5).

STATEMENT OF FACTS

According to the undisputed evidence submitted and referenced with the State's brief in opposition to the defendant's suppression motion, on December 3, 2020, members of the Middlesex County Special Operations Response Team (SORT) arrived and executed a no-knock search warrant at 5 Delavan Court in New Brunswick, New Jersey. (Pa6). This search warrant execution was months in the making; [redacted]. (Pca8). [redacted] (Pca8). [redacted] (Pca8). [redacted] (Pca10-14). [redacted] (Pca10). [redacted]

[redacted] (Pca10). [redacted]

[redacted] (Pca10). [redacted]

[redacted] (Pca10).

[redacted] (Pca10). [redacted]

[redacted] (Pca11).

[redacted] (Pca11). [redacted]

[redacted] (Pca11). [redacted]

[redacted] (Pca11). [redacted]

[redacted] (Pca11-12). [redacted] (Pca12). [redacted] (Pa12-13).

[redacted] (Pca13). [redacted] (Pca13). [redacted] (Pca13). [redacted] (Pca13-14). [redacted] (Pca14). [redacted] (Pca14). [redacted] (Pca14-15).

[redacted] (Pca1-3). [redacted] (Pca15-16). [redacted] (Pca1-18).

The search warrants were executed at approximately 2:52 p.m. on December 3, 2020, by members of the Middlesex County SORT, who were the first to arrive on scene. (Pa6, 9). When they arrived, defendant and an individual later identified as Kamau Byrd were located inside the Benz, parked immediately outside of defendant's residence at 5 Delavan Court. (Pa6). SORT members then approached the front door of the residence, which was unlocked. (Pa9). Officers then entered the residence without force and announced their presence. (Pa9). Upon entering the home, SORT encountered one adult female, identified as Brittany Scales, located inside her bedroom on the left side of the second floor. (Pa6, 9). No other individuals were present at 5 Delavan Court, and the residence was deemed clear at 2:54 p.m. (Pa9).

A search was then conducted pursuant to the written and judicially approved warrant where several items of evidentiary value were recovered, including but not limited to a quantity of marijuana and handgun, recovered after searching the defendant's vehicle and residence. (Pa11-20). The various items of evidentiary value were placed in evidence. (Pa8). Investigation revealed that Byrd did not have any ownership of the contraband that was found. (Pa7). Defendant was thus processed and charged accordingly. (Pa7).

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD REVERSE THE TRIAL COURT'S SUPPRESSION OF EVIDENCE BECAUSE THE EVIDENCE WAS SEIZED PURSUANT TO A LAWFUL AND JUDICIALLY AUTHORIZED SEARCH WARRANT. (Pa4; 1T11-4 to 25-24).

The trial court's suppression of evidence obtained pursuant to judicially authorized search warrants is erroneous and must be reversed. Judge Jimenez wrongly suppressed the handgun and CDS recovered by police because he failed to recognize, despite citing applicable law in his oral decision, that fact-scrutiny of a search-warrant affidavit should not take the form of de novo review. (1T11-4 to 15-15). Judge Jimenez decided the issue of probable cause as if he were the only judge to review the search-warrant application, which was clearly not the case. (Pca1-3). As the court reviewing the propriety of a warrant's issuance, Judge Jimenez did not provide substantial deference to the Middlesex County Criminal Presiding Judge's determination of probable cause as is required. State v. Evers, 175 N.J. 355, 381 (2003); State v. Sullivan, 169 N.J. 204, 211-12; State v. Marshall, 123 N.J. 1, 72 (1991), cert. denied, 507 U.S. 929 (1993).

For more than half a century, it has been a well-established principle in this state that "another trial judge of equal jurisdiction should regard as binding the

decision of his brother that probable cause had been sufficiently shown to support a warrant, unless there was clearly no justification for that conclusion." State v. Kasabucki, 52 N.J. 110, 117 (1968). Here, instead of starting from the position of seeing Judge Flynn's decision as binding, that probable cause had been sufficiently shown to support the warrant, Judge Jimenez made his own assumptions about the affiant's intentions—that the affiant's "conclusions and his opinions were primarily based on the reputation of the parties involved." (1T15-18 to 20). Instead of regarding the warrant-supported search as "cloaked with an aura of prima facie legality," id. at 122-23, and requiring the defendant challenging the validity of the warrant to prove there was no probable cause, State v. Jones, 179 N.J. 377, 388 (2004), the court's reasoning put the State in a position to reargue the probable cause that had already been accepted as sufficient.

The purpose of the deference given to a warrant-issuing judge's probable-cause determination is "[t]o encourage police to resort to search warrants rather than warrantless searches and to submit to the superintendence of a neutral judicial officer." State v. Jones, 308 N.J. Super. 15, 30 (App. Div. 1998). Accordingly, "after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of de novo review," and "courts should not invalidate . . . warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner." Ibid. (alterations in original) (internal citations

and quotation marks omitted) (quoting Illinois v. Gates, 462 U.S. 213, 236 (1983)).

This court therefore owes deference to Judge Flynn's probable-cause determination as the warrant-issuing judge, not to Judge Jimenez's de novo overruling of that determination. See State v. Chippero, 201 N.J. 14, 20-21 (2009) ("[A]n appellate court's role is not to determine anew whether there was probable cause for issuance of [a] warrant, but rather, whether there is evidence to support the finding made by the warrant-issuing judge."); Kasabucki, 52 N.J. at 117 ("Once the judge has made a finding of probable cause on the proof submitted and issued the search warrant, a reviewing court, especially a trial court, should pay substantial deference to his determination.").

Moreover, Judge Jimenez's de novo review of Judge Flynn's determination deserves no deference because it is based on a flawed analysis in which Judge Jimenez applied a probable-cause standard and particularity requirement that are inconsistent with longstanding judicial precedent. "Probable cause is a flexible, nontechnical concept. It includes a conscious balancing of the governmental need for enforcement of the criminal law against the citizens' constitutionally protected right of privacy." Kasabucki, 52 N.J. at 116. Thus,

> [w]hen a police officer seeking a search warrant presents the basis therefor in affidavit form to a judge

> for evaluation on the issue of probable cause, the judge's approach must be a practical and realistic one. The officer's statements must be looked at in a common sense way without a grudging or negative attitude. There must be an awareness that few policemen have legal training and that the material submitted to demonstrate probable cause may not be described with the technical nicety one would expect of a member of the bar. Moreover, the judge should take into account the specialized experience and work-a-day knowledge of policemen.
>
> [Id. at 117.]

Thus, the task of the issuing judge "is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 231 (1983) (emphasis added); accord Chippero, 201 N.J. at 28 ("Probable cause for the issuance of a search warrant requires a fair probability that contraband or evidence of a crime will be found in a particular place") (internal quotation marks and citations omitted).

The legal standard of probable cause to issue a search warrant should not be conflated with the requirement of particularity in a search warrant. The requirement that a warrant state with particularity the place to be searched and the items to be seized serves the manifest purpose "to prevent general searches."

Marshall, 199 N.J. at 611 (quoting Maryland v. Garrison, 480 N.J 79, 84 (1987)). "By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications . . . ." Ibid. (quoting Garrison, 480 U.S. at 84). "The particularity requirement, in general, mandates that a warrant sufficiently describe the place to be searched so 'that the officer with a search warrant can with reasonable effort ascertain and identify the place intended.'" State v. Feliciano, 224 N.J. 351, 366 (2016) (quoting Marshall, 199 N.J. at 611). "In other words, a warrant must be 'sufficiently specific to permit the rational exercise of judgment [by the executing officers] in selecting what items to seize.'" In re Google D.D.C., 579 F.Supp.3d 62, 75-76 (D.C. Cir. 2021) (quoting United States v. LaChance, 788 F.2d 856, 874 (2d Cir. 1986)). Indeed, "[t]he particularity requirement is uncomplicated. Generally, it mandates that 'the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended.'" Marshall, 199 N.J. at 611 (quoting Steele v. United States, 267 U.S. 498, 503 (1925)).

Here, rather than consider the totality of the circumstances as required, id. at 610, Judge Jimenez superimposed a particularity requirement on the court's probable-cause analysis and decided that individual facts stated by the affiant were

not sufficiently detailed to support a finding of probable cause to search. Judge Jimenez explained the court's reasoning as follows:

> [W]hen you're talking about searches and invading somebody's home and person and car, you have to have a belief, not just a suspicion. And the belief has to be particularized, and in this case it wasn't. It was just generalized. Bad guy out there with bad people, concluding they're doing bad things. Not enough for a warrant. Not the way the case law spells it out. You got to be particularized . . . .
>
> [1T28-24 to 29-6.]

Judge Jimenez provided this example:

> You should be able to specify or at least have a really good idea as to what kind of drugs you're dealing with. And here, you can't. You can't. Because Mr. Williams was a prior marijuana guy and the CI's talking about he's engaging in cocaine and heroin distribution, and how does that make sense? Is Mr. Williams really changing his MO?
>
> [1T24-16 to 22.]

Thus, Judge Jimenez disregarded the trained and experienced affiant's statement that [redacted] (Pca4-8), and instead relied instead on the judge's own misguided opinion, which was stated with the benefit of hindsight, that defendant could not have been dealing cocaine and heroin because his prior convictions involved marijuana. The judge also ignored the affiant's statement that

[redacted] (Pca8).

The affiant's [redacted] (Pca4-7), and the affiant stated that [redacted] (Pca10-14). According to the Supreme Court's guidance, a judge reviewing a warrant application should give fair consideration to such statements. See Kasabucki, 52 N.J. at 117 ("[T]he judge should take into account the specialized experience and work-a-day knowledge of policemen."). Judge Jimenez failed to do so here.

Additionally, when discussing defendant's drug-related criminal history, which Judge Jimenez characterized as "the past," the judge focused on defendant's numerous convictions between 1996 and 2002, making no mention of [redacted] (1T23-8 to 19; Pca9-10). Notably, [redacted] (Pca8). [redacted] therefore certainly worthy of consideration.

In sum, Judge Flynn properly reviewed the information contained within the four corners of the affidavit and determined that it established probable cause for

the issuance of the three search warrants, that is, "a fair probability that contraband or evidence of a crime will be found in a particular place." Chippero, 201 N.J. at 28. Judge Jimenez failed to give due regard to that determination, which was made not merely by another Judge of the Superior Court but by the Presiding Judge of the Criminal Division in the same county, and reversed the Presiding Judge's decision on the basis of a flawed legal analysis and misinterpretation of facts.

"When the truth is suppressed and the criminal is set free, the pain of suppression is felt, not by the inanimate State or by some penitent policeman, but by the offender's next victims for whose protection we hold office." State v. Presley, 436 N.J. Super. 440, 459 (App. Div. 2014) (quoting State v. Bisaccia, 58 N.J. 586, 590 (1971)). Because the trial court's suppression of evidence in this case is based on a misapplication of the law, in the interest of justice, the order suppressing evidence must be reversed.

CONCLUSION

For the foregoing reasons, the State urges this court to reverse the trial court's order suppressing evidence.

Respectfully submitted,

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REDACTED LETTER-BRIEF ON BEHALF OF DEFENDANT-RESPONDENT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3380-23T2
INDICTMENT NO. 21-10-00974-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	On Appeal from An Interlocutory Order of the Superior Court of New
v.	:	Jersey, Law Division, Middlesex County.
TYJON WILLIAMS,	:	
		Sat Below:
Defendant-Respondent.	:	Hon. Pedro J. Jimenez, Jr., J.S.C.

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

DEFENDANT IS NOT CONFINED

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POINT I

THIS COURT SHOULD AFFIRM THE TRIAL COURT'S SUPPRESSION OF EVIDENCE BECAUSE THE TRIAL COURT APPLIED UNDISPUTED FACTS TO WELL-ESTABLISHED LAW AND CORRECTLY RULED THAT THE WARRANT AUTHORIZING THE SEARCH OF MR. WILLIAMS'S HOME, CAR, AND PERSON WAS NOT SUPPORTED BY PROBABLE CAUSE. (1T:3-25 to 6-19, 11-4 to 25-25) 7

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PROCEDURAL HISTORY

On October 19, 2021, a Middlesex County Grand Jury returned Indictment No. 21-10-00974-I, charging defendant-respondent, Tyjon Williams, with second-degree possession of a firearm while possessing a controlled dangerous substance (CDS) with intent to distribute, contrary to N.J.S.A. 2C:39-4.1 (Count 1); third-degree possession of CDS with intent to distribute, contrary to N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(11)(a) (Count 2); third-degree possession of CDS with intent to distribute within 1000 feet of school property, contrary to N.J.S.A. 2C:35-7(a) (Count 3); and second-degree possession of CDS with intent to distribute within 500 feet of public property, contrary to N.J.S.A. 2C:35-7.1 (Count 4). (Pa 1-2)[1] A Middlesex County Grand Jury also returned Indictment No. 21-10-00975-I, charging defendant with second-degree certain persons not to possess a weapon, contrary to N.J.S.A. 2C:39-7(b)(1) (Count 1). (Pa 3)

On May 28, 2024, the Honorable Pedro J. Jimenez, Jr., J.S.C., heard Mr. Williams's motion to suppress the physical evidence seized as a result of the execution of a search warrant. (1T) The court granted the motion, suppressing the evidence from Mr. Williams's car and home.

[1] Defendant uses the same abbreviation as the State's brief. In addition, "Sb" refers to the State's brief and "Pma" refers to the appendix from the State's motion for leave to appeal.

On June 17, 2024, the State filed a motion for leave to appeal with this Court. (Pa 5) This Court granted the State's motion in an order dated July 2, 2024. (Pa 5) The State filed its brief on August 30, 2024. (Sb)

STATEMENT OF FACTS

A. The Warrant Affidavit

The relevant facts for purposes of the suppression motion are set forth in the warrant affidavit. (Pca 4-18) [redacted]

[redacted] Police executed the search warrant on the afternoon of December 3, 2020, finding a handgun in a bedroom and just under

six ounces of marijuana in the Mercedes. (Pa 6-10, 18; Pma 52).

B. The Trial Court's Suppression Decision

After reviewing the search warrant affidavit and the parties' arguments, Judge Jimenez asked the prosecutor why the warrant affidavit stated that the facts therein were based on the affiant's "physical and electronic surveillances," when the affidavit contained no further mention of electronic surveillance. (1T:8-3 to 18) The prosecutor replied that the electronic surveillance in question was pole camera footage and the defense attorney stated that it was "the first time [he] heard about a pole cam." (1T:8-15 to 9-7) The court clarified that the judge who issued the warrant had not viewed any pole camera footage as part of the search warrant application, and that no pole camera footage had been turned over to the defense at the time of the hearing.[2]

[2] The State failed to turn over pole camera footage that was part of the police investigation, in violation of the discovery rule. R. 3:13-3(b)(1). Because the contents of the pole camera footage could have been relevant to the determination of whether the search warrant was based on probable cause, Mr. Williams reserves the right to file a motion to reopen the suppression hearing based on the contents of pole camera video. See State v. Boston, 469 N.J. Super. 223, 240-41 (App. Div. 2021) (explaining that interlocutory orders can be revisited at any time before final judgment in the interests of justice and finding plain error where the trial court failed to reconsider its order denying suppression where new evidence demonstrated that the officer's testimony at the suppression hearing was not credible); State v. Dispoto, 383 N.J. Super. 205, 215 (App. Div. 2006), aff'd as modified, 189 N.J. 108 (2007) (finding that it was in the interests of justice for the trial court to reconsider the interlocutory order where "the judge was faced with evidence that called into question the veracity of [the officer's] affidavit").

The court granted the defense motion in an oral decision, suppressing the evidence recovered from Mr. Williams's home and car. (1T:11-4 to 25-25) In his decision, Judge Jimenez acknowledged that search warrants are presumed to be valid, that a reviewing court must give substantial deference to the determination of the warrant-issuing judge, and that cases where the adequacy of the facts in the search warrant supporting probable cause is "doubtful or marginal" should be resolved by sustaining the search. (1T:11-4 to 12-20) The court correctly set forth the standard for probable cause, noting that "[t]o justify the search of a place, there must be specific objective and particularized facts which taken together reasonably support the conclusion that evidence of the proceeds of criminal activity will be discovered in the place to be searched." (1T:15-2 to 7)

Applying the well-established law, the court found that the search warrant was not supported by probable cause, noting that "while there seems to be some interaction or exchange between Mr. Williams and the other individuals, nothing more can be identified than there's an exchange" because the affiant "never identified" the items exchanged and never saw money being exchanged. (1T:16-7 to 17-5, 18-24 to 19-2) The court also noted that the affiant relied almost exclusively on Mr. Williams's criminal record, consisting primarily of marijuana charges, and on the criminal records of several people he was seen interacting with, to conclude that the observed conduct was not innocuous but indicative of

criminal activity. (1T:17-16 to 18-14, 21-8 to 22-8) Acknowledging that the affiant's observations may have supported an articulable suspicion that Mr. Williams was engaged in criminal activity, the court nonetheless found that they did not amount to probable cause to search his home, car, and person. (1T:21-18 to 22-13) The court expressed concern regarding what was absent from the affidavit, noting that "there are no controlled purchases from Mr. Williams" and "no pick-off of anybody who engaged in a transaction with Mr. Williams," which could confirm the identity of the unknown items exchanged. (1T:22-18 to 23-10) The court concluded that the affiant failed to corroborate the confidential informant's general tip through his own observations or investigation. (1T:17-16 to 18-4, 23-20 to 25-24)

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD AFFIRM THE TRIAL COURT'S SUPPRESSION OF EVIDENCE BECAUSE THE TRIAL COURT APPLIED UNDISPUTED FACTS TO WELL-ESTABLISHED LAW AND CORRECTLY RULED THAT THE WARRANT AUTHORIZING THE SEARCH OF MR. WILLIAMS'S HOME, CAR, AND PERSON WAS NOT SUPPORTED BY PROBABLE CAUSE. (1T:3-25 to 6-19, 11-4 to 25-25)

This Court should affirm the trial court's suppression of evidence found as the result of the search of Mr. Williams's home and car because the trial court

applied the undisputed facts set forth in the warrant affidavit to well-established search-and-seizure law, correctly concluding that the affidavit did not establish probable cause to search Mr. Williams's home and car. The court accordingly correctly suppressed the evidence.

In its attempt to call into question the trial court's determination that the affidavit did not establish probable cause to search Mr. Williams's home, car, and person, the State makes the following related arguments: (1) the motion court did not give sufficient deference to the probable cause determination made by the warrant judge (Sb 8-10), and (2) the court erred in finding a lack of probable cause to search because the warrant affiant's observations corroborated information from a confidential informant, and the affiant drew conclusions based on his training and experience. (Sb 13-15) This Court should reject these arguments and uphold the trial court's suppression of the evidence.

Regarding deference, the motion court here gave the appropriate deference to the fact that another judge had issued this search warrant. The court correctly recognized that this warrant was presumptively valid, and that if the adequacy of the facts offered to show probable cause appeared "marginal," doubts should ordinarily be resolved by sustaining the search. (1T:11-4 to 12-20); See State v. Jones, 179 N.J. 377, 388-89 (2004). But deference to the warrant judge's discretionary determinations is not the same thing as blindly

accepting the issuance of a warrant despite the absence of any facts establishing probable cause to search.

Accordingly, the State is substantively wrong in arguing that appropriate deference requires upholding the search of Mr. Williams's home, car, and person simply because this affidavit states that Mr. Williams was seen interacting with other people in his car and driveway. [redacted] Thus, the trial court was correct in finding that, while the affiant may have had reasonable suspicion, there was no probable cause to search Mr. Williams's home, car, and person based on these facts. (1T:17-15 to 23, 21-18 to 22-8)

The confidential informant's tip is entitled to minimal weight in the probable cause analysis because there is almost no evidence in the warrant affidavit indicating that the informant had a reliable basis for knowing that the criminal activity was occurring, and the warrant affiant failed to adequately corroborate the tip through the investigation. In evaluating a tip from a confidential informant, courts typically look at three factors: (1) testimony about the reliability and veracity of the informant, see State v. Smith, 155 N.J. 83, 93-94 (1998); (2) testimony that the informant has a reliable basis for knowing that the particular criminal activity is occurring, id. at 94-96; and (3) independent corroboration of the informant's information by the observations of law enforcement, see State v. Rodriguez, 172 N.J. 117, 127-28 (2002). While these three factors are the frequent focus of the analysis, ultimately, the test for how much weight should be attributed to an informant tip remains a totality-of-the-circumstances analysis. Smith, 155 N.J. at 92-93. Tips cannot be deemed reliable based only on bald allegations, they must be shown to be "reliable in [their] assertion of illegality," and the State must produce evidence to establish that "the tipster has knowledge of concealed criminal activity." Florida v. J.L., 529 U.S. 266, 272 (2000).

While "[t]he veracity factor may be satisfied by demonstrating that the informant has proven reliable in the past, such as providing dependable

information in previous police investigations," neither a "conclusory statement that the affidavit is based on information the police received from a confidential reliable informer" nor "a statement that the police believe the informant is reliable because he did a job for an officer in the past" is sufficient to establish the informant's veracity. State v. Keyes, 184 N.J. 541, 555 (2005) (quoting State v. Sullivan, 169 N.J. 204, 213 (2001), State v. Zutic, 155 N.J. 103, 111 (1998), State v. Smith, 155 N.J. 83, 96-97 (1998)) (internal quotations omitted).

The basis of knowledge factor "analyzes whether the informant obtained his information in a reliable manner." Keyes, 184 N.J. at 555 (citing Smith, 155 N.J. at 94). Even if the tip does not expressly reveal how the informant became aware of the alleged criminal activity, "the police can still adequately demonstrate the informant's basis of knowledge 'if the nature and details revealed in the tip … imply that the informant's knowledge of the alleged criminal activity is derived from a trustworthy source.'" Ibid. Information may be deemed to have come from a trustworthy source "if the informant provides sufficient detail in the tip or recounts information that could not otherwise be attributed to circulating rumors or easily gleaned by a casual observer." Keyes, 184 N.J. at 556 (citing Smith, 155 N.J. at 95).

Finally, police corroboration is necessary "to ratify the informant's veracity and validate the truthfulness of the tip and is considered an essential

part of the determination of probable cause." Keyes, 184 N.J. at 556 (quoting Jones, 179 N.J. at 390) (internal quotations omitted). Deficiencies in the veracity or basis of knowledge prongs may be compensated for by police corroboration of information indicating that the informant's tip was grounded on inside information, rather than on circulating rumors or observations that could be easily gleaned by a casual observer. Id. at 555, 558 (citing Smith, 155 N.J. at 95).

The confidential informant's tip in Keyes is nearly identical to the tip at issue in the instant case. See Keyes, 184 N.J. at 557 (noting that "the affidavit states that the informant has proved himself to be reliable by providing information in the past that has resulted in the arrest of numerous suspects and the recovery of proceeds from drug sales."). While the informant in Keyes gave a physical description of the defendant, identified him from a photograph, alleged that the defendant was selling drugs from a specific address, and stated that there were lookouts outside of the address, the Court concluded that the tip was insufficiently detailed regarding the basis of the informant's knowledge. Id. at 558. Nonetheless, the Court found that the police corroborated "information from which it can be inferred that the informant's tip was grounded on inside information," thereby adequately supporting the informant's veracity and basis of knowledge. See Keyes, 184 N.J. at 558-59.

Central to the Keyes Court's determination that the police had sufficiently corroborated the informant's tip was a controlled buy conducted by the informant and observed by the police at the defendant's residence. Id. at 559; see also id. at 556-57 (holding that "[a]lthough no corroborating fact, by itself, conclusively establishes probable cause, a successful controlled buy typically will be persuasive evidence in establishing probable cause") (citing Sullivan, 169 N.J. at 217). The Court held that the search warrant was supported by probable cause based on the controlled buy and additional police corroboration of the informant's tip, including a positive field test of the substance obtained during the controlled buy, "routine complaints from area residents about the constant drug activity" on the same block as the defendant's residence, police detection of lookouts nearby, and the defendant's prior convictions for manufacturing and distributing drugs. Id. at 559.

Here, apart from the information regarding the confidential informant's past reliability in the warrant affidavit, there was no evidence indicating that the information in the tip was obtained in a reliable manner. [redacted]

[redacted] In short, the tip provides precisely the kind of information that could easily be "attributed to circulating rumors" rather than insider knowledge. See Keyes, 184 N.J. at 556; Williams, 364 N.J. Super. at 23, 34 (cautioning that tips from police informants "may be premised upon rumor and innuendo").

Here, as in Keyes, the police were required to corroborate the tip's allegations of concealed criminal activity through independent investigation because the informant's tip was insufficiently detailed regarding the basis of the informant's knowledge. Notably, unlike in Keyes, here, the investigating police officers did not set up a controlled buy, nor did they obtain or test any suspected CDS. (1T:22-18 to 23-4) As noted by the trial court, the warrant affiant never identified the objects he observed Mr. Williams giving to several individuals outside his residence, nor did he give any description of the objects, explain why he suspected that they may be CDS, or state what kind of CDS he believed them to be. (1T:18-24 to 19-2, 22-18 to 23-10, 24-16 to 18) Unlike in Keyes, where the warrant affidavit specified that there had been routine complaints regarding drug activity on the same block as the defendant's residence, the warrant affiant

gave no information whatsoever regarding drug distribution in the area. (1T:24-22 to 25-9) Instead, the only information that the warrant affiant provided for purposes of corroborating the tip were Mr. Williams's criminal record, and the criminal records of several people that he was seen interacting with. Thus, the trial court correctly concluded that the police failed to corroborate the informant's otherwise unreliable tip, and that the tip was entitled to minimal weight in the probable cause analysis.

Furthermore, the warrant affiant's observations do not amount to probable cause that Mr. Williams was engaging in drug distribution. [redacted] While there is a certain degree of deference to the expertise of police officers, an officer may not simply act on a "mere hunch"; rather, "objective and articulable factors" must exist to support the finding of probable cause. See State v. Sansotta, 338 N.J. Super. 486, 491 (App. Div. 2001).

Seeing the exchange of unknown objects without any exchange of currency does not amount to probable cause under our jurisprudence. In State v. Pineiro, 181 N.J. 13, 27-29 (2004), our Supreme Court determined that there were insufficient facts to support a finding of probable cause where a police officer stopped and searched the defendant – a suspected drug dealer – after observing him take a cigarette pack from a known felon in a high-crime area. The officer testified that based on his knowledge and experience, cigarette packs are sometimes used to transport drugs, that the two men were not smoking at the time, that he had information the defendant was a suspected drug dealer, and that the defendant began to cry when he was stopped and asked to produce the cigarette pack. While the Court held that the officer had reasonable suspicion justifying an investigatory stop under the circumstances, it deemed these facts insufficient to raise the level of suspicion to probable cause. Id. at 25. The Court concluded that "[t]he sum of the evidence was merely the officer's prior general narcotics training and experience, and his conclusory testimony that he knew that cigarette packs are used to transport drugs because he had seen that type of activity before." Id. at 28-29. The Court further noted that the passing of the cigarette pack might have been nothing more than an innocent transfer and that there was no evidence that currency had changed hands, which would indicate a drug deal. Id. at 28

In State v. Moore, 181 N.J. 40 (2004), decided on the same day as Pineiro, the Court reached the opposite conclusion. The Moore Court found that the police had probable cause to arrest and search the defendant where, using binoculars, they saw him walk away from a group of people to the back of a vacant lot with a companion, and saw both the defendant and his companion hand a third man currency in exchange for small unknown objects believed to be drugs, which they both immediately pocketed before returning to the group. Id. at 43.

Here, similar to Pineiro and unlike in Moore, the affiant did not see any currency exchanged. See Pineiro, 181 N.J. at 28 (noting that unlike in Moore, the police did not observe any currency being exchanged, but only saw the transfer of a cigarette pack under circumstances that had "both innocent and suspected criminal connotations"). [redacted] The affiant did not state that he believed that any of the unknown

objects he saw were drugs and gave no description of the unknown objects, beyond characterizing one of them as "small." (1T:17-16 to 18-12); (Pca 10)

Thus, the officer's conclusory statement that his observations of Mr. Williams were consistent with drug distribution were inadequate to support probable cause without more. As recognized by the Pineiro Court and the trial court in the instant case, the act of exchanging an unknown object for another unknown object and the act of giving someone an unknown object can have both innocent and criminal connotations. (1T:17-24 to 18-4); See Pineiro, 181 N.J. at 28. While the affiant stated that his observations "were consistent with the efforts of a drug dealer to hide CDS in various locations on his property," he gave no explanation for how he reached this conclusion. See State v. Demeter, 124 N.J. 374, 382-83 (1991) (noting "when an officer's experience and expertise is relevant to the probable cause determination, the officer must be able to explain sufficiently the basis of that opinion, so that it can be understood by," and be persuasive to, the "average reasonably prudent person") (internal quotations omitted).

[redacted]

[redacted] The affiant failed to explain how this conclusion was "based on his training and experience as a narcotics officer," and did not explain what inferences he drew that led him to conclude that Mr. Williams was engaging in drug distribution. (1T:20-18 to 21-21) (trial court asking how affiant's training and experience led him to draw this conclusion); Cf. State v. Maryland, 167 N.J. at 487-88 (holding officers' testimony they suspected the defendant was concealing contraband by placing bag in waistband did not support reasonable suspicion where officers did not explain, for instance, that contraband is frequently transported in this manner based on their training and experience); State v. Williams, 410 N.J. Super. 549, 556-57 (App. Div. 2009) (holding officer's testimony he was concerned the defendant was concealing weapon by putting hand in his pocket did not support reasonable suspicion where officer did not articulate basis for concern.)

Finally, the trial court appropriately took notice of the affidavit's heavy reliance on Mr. Williams's criminal history, as well as the criminal histories of some of the people he interacted with, as a substitute for critical information that was missing from the warrant affidavit. See Ybarra v. Illinois, 444 U.S. 85, 91 (1979) (holding that "mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause" to search

a person or automobile). The trial court correctly concluded that absent police observations of money being exchanged or any description of the items that were transferred to different people, the evidence presented in the warrant affidavit amounts to no more than "a suspicion based on CI information" and Mr. Williams's criminal record. (1T:17-16 to 18-12, 21-18 to 22-8, 23-20 to 24-9) While the officer may have suspected that Mr. Williams was engaged in criminal activity, the facts in the affidavit are insufficient to support anything more than a suspicion of criminal activity, let alone to establish probable cause. The trial court's decision was correct, and this Court should accordingly affirm its suppression of the evidence.

CONCLUSION

For the reasons set forth here and in the trial court's well-reasoned opinion, the evidence seized from Mr. Williams's home and car was properly suppressed. Thus, the decision of the trial court should be affirmed.

Respectfully Submitted,

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REPLY LETTER BRIEF ON BEHALF OF
THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

RE: STATE OF NEW JERSEY (Plaintiff-Appellant) v.
TYJON A. WILLIAMS (Defendant-Respondent)

Docket No. A-003380-23T2

Criminal Action: On Appeal From an Interlocutory Order of the Superior Court of New Jersey, Law Division, Middlesex County.

Sat Below: Hon. Pedro J. Jimenez, Jr., J.S.C.

Honorable Judges:

Pursuant to Rule 2:6-2(b), this letter brief is submitted in lieu of a formal brief on behalf of the State of New Jersey.

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STATEMENT OF PROCEDURAL HISTORY AND FACTS

For purposes of this reply brief, the State relies on the statements of procedural history and facts set forth in its opening brief, which was filed as amended on August 30, 2024. (Pb1-7).[1]

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD REVERSE THE TRIAL COURT'S SUPPRESSION OF EVIDENCE BECAUSE THE EVIDENCE WAS SEIZED PURSUANT TO A LAWFUL AND JUDICIALLY AUTHORIZED SEARCH WARRANT. (Pa4; 1T11-4 to 25-24).

The State maintains that the trial court's suppression of evidence in this case was erroneous for the reasons argued in the State's August 30, 2024 amended brief. The purpose of this brief is to reply to certain arguments made by defendant in his November 18, 2024 responding brief.

First, the State must address defendant's allegation that "[t]he State failed to turn over pole camera footage that was part of the police investigation, in violation of the discovery rule." (Db5 n.2 (citing R. 3:13-

[1] The record is cited as follows:
Pb = State's Aug. 30, 2024 amended brief.
Pa = Appendix to State's Aug. 30, 2024 amended brief.
Pca = State's confidential appendix.
Db = Defendant's Nov. 18, 2024 brief.
1T = Transcript of motion to suppress, May 28, 2024.

3(b)(1)). This allegation is baseless. There is no pole camera footage for the State to turn over. It is possible that in the course of the investigation, a video feed from a pole camera was viewed by the search-warrant affiant live, in real time, and not recorded. However, the undersigned can represent to this court that the State is not in possession of any recorded pole camera footage for this case.

Defendant alleged no discovery violation before the trial court. In fact, defense counsel stated, "I don't think the State has a pole cam." (1T9-11 to 12). Defendant's new allegation of a discovery violation on appeal therefore should be disregarded. See State v. Galicia, 210 N.J. 364, 383 (2012) ("Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below."). More importantly, the probable cause determination must be based on information contained within the four corners of the warrant-supporting affidavit, see State v. Jones, 179 N.J. 377, 403 (2004), and the affidavit in this case makes no mention of pole camera footage.

Turning to defendant's argument that the warrant-supporting affidavit failed to establish probable cause to search, defendant attacks the confidential informant's tip as though that tip were the only information in the affidavit to be considered. However, our Supreme Court has adopted "a totality of the circumstances test for determining whether warrants are based on probable

cause," State v. Keyes, 184 N.J. 541, 554 (2005), and thus, the entirety of the affidavit must be considered. Furthermore, although defendant relies heavily on Keyes, 184 N.J. at 541 (Db10-13), Keyes supports Judge Flynn's initial probable-cause finding, not Judge Jimenez's subsequent reversal of Judge Flynn's finding.

Significantly, the Court in Keyes observed that "[b]eyond peradventure, the facts in [that] appeal, considered collectively, constitute more corroboration than is present in the typical search and seizure case." Id. at 559. The facts that corroborated the confidential informant's tip in Keyes therefore should not be viewed as the minimum amount of corroboration required for a confidential informant's tip in every case.

Generally, "the reliability of an informant's tip must be analyzed under the totality of the circumstances." State v. Smith, 155 N.J. 83, 92, cert. denied, 525 U.S. 1033 (1998). "Two factors generally considered to be highly relevant, if not essential, that are included in the 'totality of the circumstances' are the informant's 'veracity' and the informant's 'basis of knowledge.'" Id. at 93 (citing Illinois v. Gates, 462 U.S. 213, 238 (1983)). The Smith Court noted, however, that "neither of these factors, though relevant, is an essential element under the totality of the circumstances test." Ibid. "[A] deficiency in one . . . 'may be compensated for, in determining the overall reliability of a tip, by a

strong showing as to the other, or by some other indicia of reliability.'" Ibid. (quoting Gates, 462 U.S. at 233).

Past instances of reliability, "such as providing dependable information in previous police investigations," may establish an informant's veracity, Keyes, 184 N.J. at 555, and a sufficient basis of knowledge may be established "if the tip itself relates expressly or clearly how the informant knows of the criminal activity." Smith, 155 N.J. at 94. "Even in the absence of a disclosure that expressly indicates the source of the informant's knowledge, the nature and details revealed in the tip may imply that the informant's knowledge of the alleged criminal activity is derived from a trustworthy source." Ibid. (citing State v. Novembrino, 105 N.J. 95, 113 (1987)). In addition, "[e]ven where the tip lacks sufficient detail to establish a basis of knowledge, independent police investigation and corroboration of the detail in the tip must be considered because it may in some circumstances add to the evidentiary weight of factors as well as the overall circumstances." Id. at 98.

Here, the veracity of the confidential informant (CI) was established by the affiant's sworn statement that [redacted] (Pca8). The affiant also stated that [redacted]

[redacted] (Pca8). [redacted]. (Pca4-14). The affiant also provided the CI's basis of knowledge: [redacted] (Pca8). The CI's information was not merely "a casual rumor circulating in the underworld." Id. at 94.

Adding to the totality of circumstances establishing probable cause were [redacted] In Keyes, the CI's tip was corroborated in part by the fact that "[a] criminal history check of [defendant] revealed that he had four felony convictions, including convictions for manufacturing and distributing drugs." Keyes, 184 N.J. at 559. Here, [redacted]

Furthermore, in Keyes, it was considered a corroborating fact that "police observed known drug users entering" a residence on the same block as

the residence targeted in the search warrant "and exiting shortly after." Ibid. Here, [redacted] (Pca10-15). Thus, this form of corroboration is even stronger here than it was in Keyes.

Finally, it must be repeated that here, as in Keyes, additional corroboration includes the fact [redacted] (Pca4-7). The Supreme Court has noted that a court reviewing a warrant-supporting affidavit "should take into account the specialized experience and work-a-day knowledge of policemen." State v. Kasabucki, 52 N.J. 110, 117 (1968). The reviewing court should be aware, however, "that few policemen have legal training and that the material submitted to demonstrate probable cause may not be described with the technical nicety one would expect of a member of the bar." Ibid.

Here, Judge Jimenez failed to abide by those principles and failed to give due regard not only to the affiant's training and experience but also the various ways in which the CI's information was corroborated by other information in the affidavit. The warranted search in this case is a far cry from the warrantless search in State v. Pineiro, which defendant cites (Db16-18),

where "[t]he sum of the evidence was merely the officer's prior general narcotics training and experience, and his conclusory testimony that he knew that cigarette packs are used to transport drugs because he had seen that type of activity before." 181 N.J. 13, 28 (2004). The warranted search in this case [redacted]

Contrary to defendant's arguments, the totality of circumstances as articulated in the warrant-supporting affidavit established probable cause to search for evidence of defendant's narcotics trafficking. Judge Jimenez was wrong to conclude otherwise and overrule the probable-cause determination that Judge Flynn made on the basis of the same affidavit. Judge Jimenez's erroneous suppression of evidence must be reversed.

CONCLUSION

For the foregoing reasons and those stated in its August 30, 2024 amended brief, the State urges this court to reverse the trial court's order suppressing evidence.

Respectfully submitted,

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Date: December 3, 2024