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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-5483-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KARL R. RANDOLPH, a/k/a
KARL R. RANDOLPH, JR.,

Defendant-Appellant.

Submitted December 6, 2017 – Decided December 27, 2017

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment Nos.
14-04-0863 and 14-09-2195.

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

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Kayla
Elizabeth Rowe, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant Karl R. Randolph appeals from a conviction after entering a conditional guilty plea to one count of third-degree possession of a controlled dangerous substance (CDS) with intent to distribute in a school zone, N.J.S.A. 2C:35-7; and one count of second-degree certain persons not to possess weapons, N.J.S.A. 2C:39-7(a). On appeal, defendant challenges the denial of his motion to suppress evidence seized after the issuance of a search warrant. We affirm.

The charges against defendant arose out of an undercover investigation conducted by the Newark Police Department involving a "proven and reliable confidential informant." The informant advised Newark Detective Richard Weber that defendant was selling marijuana from his Nissan Altima, from a basement of a residence located on Norwood Street in East Orange, and from the first floor of a residence located on 11th Avenue in Newark. The informant also provided the color and license plate number of the vehicle, which was later verified by Weber to be registered to defendant by reference to the New Jersey Motor Vehicles database.

The informant also provided a physical description of defendant. After viewing a police photograph, the informant identified defendant as the individual suspected of selling the CDS.

Weber arranged for the informant to participate in three controlled buys from defendant. One of the buys took place outside of the Norwood Street address on May 12, 2014. The other two buys took place in the parking lot of the West Market Mall located in Newark, and at 11th Avenue address on May 13 and May 16, 2014 respectively.

On May 27, 2014, Weber and another detective conducted a surveillance of defendant's activities and made the following observations. Defendant departed from the Norwood Street address in the Altima and drove to the West Market Mall parking lot. Soon after his arrival, an unidentified male approached defendant. The two exchanged money for a small item. Defendant then engaged in similar transactions on a number of occasions. Eventually, defendant left the parking lot and drove to the 11th Avenue location where he brought a large cooler into the residence. Defendant then returned to the West Market Mall and engaged in more transactions.

Weber applied for a search warrant for defendant and the three surveilled locations. Repeatedly throughout the affidavit, it referenced defendant and his suspected criminal activities. However, in one paragraph of the affidavit, Weber referenced another individual as the person for whom he sought the warrant. Based upon Weber's affidavit, a Law Division judge signed the

warrants authorizing the searches. Evidence obtained from the execution of the warrants led to defendant's conviction.

Based upon the reference to another individual's name within the affidavit, defendant filed a motion to suppress the evidence. The motion requested a Franks hearing.¹ In response to the motion, the State submitted an affidavit signed by Weber confirming that defendant was the sole subject of the investigation.

On November 17, 2015, Judge Carolyn E. Wright heard oral argument on the motion. The judge issued an oral opinion finding no sustainable basis for a Franks hearing. The judge held that the inclusion of the other individual's name was a "typographical error." Predicated upon her finding of probable cause based upon the substantive recitations in the affidavit, the judge denied the motion.

Defendant appeals and raises the following argument:

POINT I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING [DEFENDANT] A HEARING PURSUANT TO FRANKS v. DELAWARE.

We reject defendant's argument and affirm substantially for the reasons stated in Judge Wright's well-reasoned opinion. We add only the following.

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

"[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) (citing State v. Elders, 192 N.J. 224, 243 (2007)). 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 Elders, 192 N.J. at 244). "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. (citations omitted). Thus, "a trial court's legal conclusions are reviewed de novo." Ibid. (citing State v. Gandhi, 201 N.J. 161, 176 (2010)). Any "[d]oubt

as to the validity of the warrant 'should ordinarily be resolved by sustaining the search.'" Keyes, 184 N.J. at 554 (citing Jones, 179 N.J. at 389).

With these principles in mind, we are satisfied with the judge's determination that defendant was not entitled to a Franks hearing. As such, we discern no basis to disturb the decision denying the motion to suppress.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION