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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-1721-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY HEARNS, a/k/a
ANTHONY B. BELLE,

Defendant-Appellant.

Submitted November 2, 2017 – Decided January 8, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Indictment No.
13-09-1168.

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

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Laura Sunyak,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant, Anthony Hearn, pleaded guilty to a fourth-degree weapons offense pursuant to a plea agreement, received a sentence of "time served" in accordance with the agreement, and now appeals from his judgment of conviction, challenging the trial court's denial of his motion to suppress the weapons found when he was arrested. He argues the weapons should have been suppressed because the police officers' entry into the apartment where he was found "was unsupported by observation, investigation or other inquiry," and the officers did not have "an objectively reasonable basis for both believing the residence to have been the home of the person named in the arrest warrant and that he was present in the home at the time the warrant was executed." He contends "the basis for [the officers'] entry . . . runs afoul of the federal and state constitutions [due to their] use of binoculars." We disagree and affirm.

The facts leading to defendant's arrest and the discovery of the weapons, as testified to at the suppression hearing by Detective James Udijohn of the Mercer County Sheriff's Office, can be summarized as follows. In January 2013, there were multiple outstanding municipal warrants for defendant's arrest and one based upon a probation violation. Due to these outstanding warrants, the detective conducted a fugitive investigation to determine defendant's location. During his investigation, the

detective received an anonymous tip about defendant's location and was told that defendant was armed with a shotgun.

The detective and several other law enforcement officers established surveillance at the three-story building where defendant was reportedly observed. The officers parked their vehicle at a nearby location that gave them an unobstructed view of the building. While conducting surveillance, the detective and another officer who was using binoculars, observed defendant leaning out of a third-floor window. According to the detective, he was about fifty feet away from defendant when he observed him and that he was "one hundred percent" certain that the individual he observed was defendant because he had a photo of him.

The detective called for backup to assist in defendant's apprehension. While he waited, a man exited the apartment and left the door to the building wide open. When backup arrived, the officers entered the building through the open door, proceeded to the third floor, and arrested defendant.

While arresting defendant, the detective observed and seized weapons from the location. The weapons consisted of a loaded sawed-off shotgun and a switchblade knife. He also found a bag that contained several bullets, ammunitions, magazines, and a gold-colored .22 caliber pen gun. The bag was open so the officers were able to immediately identify its contents. Upon his arrest,

defendant stated that the apartment was not his residence and that he had only been staying there for a short while.

Defendant was indicted and charged with three counts of weapons offenses: second-degree possession of a handgun, N.J.S.A. 2C:39-5(b) (count one); third-degree possession of a sawed-off shotgun, N.J.S.A. 2C-39-3(b) (count two); and fourth-degree possession of a prohibited weapon, N.J.S.A. 2C:39-3(e) (count three). After being charged, he filed his suppression motion.

At the conclusion of the suppression hearing, the trial court found the detective to be credible, and, relying on State v. Miller, 342 N.J. Super. 474 (App. Div. 2001), determined that:

[T]he police . . . had an objectively reason[able basis] to believe that this had been the home of [defendant]. He obviously was on the move. He was staying at different locations. He has a history of not staying in one location. . . . [T]hey had an anonymous tip indicating he was living [at the building], and it was supported by surveillance, the observation of Detective Udijohn who[has] testified and has been subject to cross examination.

Therefore, the court concluded "the police met the exception to the search warrant, that the arrest was sufficient[,]" and denied defendant's motion to suppress.

Defendant pleaded guilty to count three of the indictment. In exchange for the guilty plea, the State agreed to recommend a sentence of time served with the condition that defendant forfeit

all seized contraband. The State also agreed to dismiss counts one and two of the indictment. The judge sentenced defendant in accordance with the agreement to time served and assessed all mandatory penalties. This appeal followed.

On appeal defendant advances only one argument:

POINT I

[DEFENDANT]'S CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURES WAS VIOLATED WHEN THE POLICE USED BINOCULARS TO SEARCH THE CURTILAGE AND RESIDENCE OF A THIRD PARTY.

We have considered defendant's arguments in light of the record and, applying our limited standard of review of the denial of a suppression motion, see State v. Handy, 206 N.J. 39, 44 (2011), we conclude that his argument is "without sufficient merit to warrant discussion in a written opinion." R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by the trial court.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION