

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1136

Filed: 17 September 2019

Brunswick County, No. 17 CRS051856-57

STATE OF NORTH CAROLINA

v.

ASHLEIGH CORRIN WILLIAMS

Appeal by defendant from judgments entered 27 April 2018 by Judge James F Ammons Jr. in Superior Court, Brunswick County. Heard in the Court of Appeals 24 April 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Terence D. Friedman, for the State.

Richard Croutharmel, for defendant-appellant.

STROUD, Judge.

Defendant appeals the denial of her motion to suppress and judgments for her drug-related convictions. We reverse the denial of defendant's motion to suppress and judgment and remand for a new trial.

I. Procedural Background

We briefly summarize the procedural background. On 20 April 2017, based upon a warrant application and affidavit by Agent Charles Melvin, the magistrate issued a search warrant for defendant's home, vehicles, and person. Based upon the

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warrant, law enforcement searched defendant's home and found heroin. Defendant was then indicted for several drug-related offenses.

In March of 2018, defendant made a motion "to suppress all evidence collected pursuant to the search warrant[.]" Defendant raised arguments regarding the reliability of the informants, the lack of specificity of the property searched and seized, and a lack of probable cause; she also requested a *Franks* hearing¹ because she believed the affiant "made material misrepresentations to the judicial officer reviewing the search warrant application."

In her "Motion to Suppress and Request for *Franks* Hearing[.]" (original in all caps), defendant contended that Agent Melvin had "intentionally exaggerated" the past cooperation and reliability of the confidential informant, Ms. Smith. Defendant alleged Ms. Smith had done only one controlled drug buy for the Brunswick County Vice Narcotics Unit ("BCVN") prior to offering to buy heroin from a man known as

¹ "It is elementary that the Fourth Amendment's requirement of a factual showing sufficient to constitute probable cause anticipates a truthful showing of facts. *Franks v. Delaware*, 438 U.S. 154, 57 L. Ed. 2d 667, 678 (1978). Truthful, as intended here, does not mean that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant's own knowledge that sometimes must be garnered hastily. Rather, truthful in this context means that the information put forth is believed or appropriately accepted by the affiant as true. Resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. *Franks* held that where a search warrant is issued on the basis of an affidavit containing false facts which are necessary to a finding of probable cause, the warrant is rendered void, and evidence obtained thereby is inadmissible if the defendant proves, by a preponderance of the evidence, that the facts were asserted either with knowledge of their falsity or with a reckless disregard for their truth." *State v. Fernandez*, 346 N.C. 1, 13, 484 S.E.2d 350, 358 (1997) (citations, quotation marks, ellipses, and brackets omitted).

Vaughn who would buy it from defendant because defendant would only sell to Vaughn.² Ms. Smith then participated in a controlled buy on 20 April 2017 equipped with a recording device, which showed that she picked up “an unknown black male, alleged to be Vaughn, and travel[ed] to an unknown destination” where Vaughn left the vehicle and returned “when the deal was complete.” But the video did not show defendant or defendant’s home, and Vaughn did not tell Ms. Smith he had gotten the heroin from defendant. Thus, defendant alleged the video does not corroborate Ms. Smith’s allegations that she went to defendant’s home or that Vaughn received heroin from defendant. The motion included as exhibits the warrant affidavit, Ms. Smith’s informant contract signed in January of 2017, and the search warrant.

At the beginning of the trial, the trial court heard the motion to suppress. The State noted that defendant had requested a *Franks* hearing, so “it’s his burden to produce substantial evidence of a violation, at which point the State would need to respond.” Defendant then called Agent Charles Melvin of the Brunswick County Sheriff’s Office to testify in support of her motion to suppress. The warrant affidavit stated, “*In the past year* CS1 has worked with Agents and has provided correct and accurate information leading to the *arrests* of narcotics dealers.” (Emphasis added). As to the “[i]n the past year” language, during his testimony, Agent Melvin acknowledged that he had “first dealt” with Ms. Smith in January of 2017, only a few

² The warrant affidavit notes Vaughn is a nickname and does not provide his real name.

months prior to the search of defendant, and she had done *one* controlled buy prior to the one from which defendant's arrest arose. As to the plural "*arrests* of narcotics dealers" language, Agent Melvin also admitted he knew the seller from the first controlled buy was "charged" but he did not know when that occurred or if she had been "arrested before April 20th["] (Emphasis added.)

After Agent Melvin's testimony, defendant's counsel and the State made arguments regarding the *Franks* issue, and the trial court denied the motion:

All right. This matter coming on to be heard on defendant's motion to suppress a search warrant, a request for a *Franks* hearing, the Court has pretty much given a hearing on this. But after reviewing the motion to suppress, after reviewing the search warrant and the affidavit, after reviewing applicable case law, the statute law, and hearing testimony from the witness and hearing arguments of counsel, the Court denies the motion to suppress.

Defendant's counsel then requested "to be heard on the other issue, which is the reliability of the unknown informant." The trial court stated, "The information is not unknown; right? The informant is [Ms. Smith]." Defense counsel then noted the information about defendant

came from 'Vaughn' through [Ms. Smith], that's a separate issue. On that issue – that's where the law is very clear, that they have to prove reliability of the middleman. The middleman was unknown and known after all this and arrested eight months later. But at the time the warrant was issued, they took information – they say it's from [Ms. Smith]. It's not from [Ms. Smith]. [Ms. Smith] didn't see anything. [Ms. Smith] didn't know anything. [Ms. Smith] never dealt with anybody

The trial court then denied defendant's motion to suppress again, stating:

All right. That's my ruling. Motion to suppress is denied.

....

... Court reserves the right to make further findings of fact and conclusions of law with regard to this ruling at a later time, should it become necessary.

The trial court made no later findings of fact or conclusions of law and did not enter a written order regarding the motion to suppress. Defendant's trial then began and she was found guilty of all six charges against her and sentenced accordingly. Defendant appeals.

II. Motion to Suppress

The motion to suppress raised four arguments for suppression; we will note the first two as relevant to the issues on appeal. First, defendant argued the information in the search warrant application "was derived from an unknown informant [Vaughn] and was insufficient to support a search warrant." Although Ms. Smith was known to Agent Melvin, nearly all of the material information came from the unknown man identified as Vaughn, and there was no indication of Vaughn's reliability. Second, defendant argued that "Agent Melvin's exaggeration of [Ms. Smith's] past cooperation, as set forth in the affidavit of probable cause" was a material misrepresentation." The alleged misrepresentations were the time period of prior assistance and the number of prior arrests and prosecutions based upon Ms. Smith's cooperation.

A reviewing court is responsible for ensuring that the issuing magistrate had a substantial basis for concluding that probable cause existed. Our Supreme Court has stated, the applicable test is whether, given all the circumstances set forth in the affidavit before the magistrate, there is a fair probability that contraband will be found in a particular place.

State v. Frederick, ___ N.C. App. ___, ___, 814 S.E.2d 855, 858, *aff'd per curiam*, ___ N.C. ___, ___, 819 S.E.2d 346 (2018) (citations, quotation marks, and brackets omitted).

A. Failure to Make Findings of Fact and Conclusions of Law

Defendant contends the trial court violated North Carolina General Statute § 15A-977(f) when it failed to make written findings of fact and conclusions of law in ruling on her motion to suppress, particularly as to the *Franks* issue. North Carolina General Statute § 15A-977(f) requires the trial court to “set forth in the record his findings of fact and conclusions of law” in ruling on a motion to suppress; N.C. Gen. Stat. § 15A-977(f) (2017), although where there is no material conflict in the evidence and the trial court’s legal conclusion is clear from the record, we may be able to review the denial of a motion to suppress on appeal without written findings of fact and conclusions of law:

After a motion to suppress evidence is presented at the trial court, the judge must set forth in the record his findings of fact and conclusions of law. Our Supreme Court has held, the absence of factual findings alone is not error because only a material conflict in the evidence—one that potentially affects the outcome of the suppression motion—

must be resolved by explicit factual findings that show the basis for the trial court's ruling. Even so, it is still the trial court's responsibility to make the conclusions of law.

The State argues no material conflicts in the evidence exist, and the trial court's conclusion was clear from its ruling. The record of the suppression hearing reveals no material conflicts existed. . . .

....
While no material conflicts exist in the evidence presented at the suppression hearing, the judge failed to provide any rationale from the bench to explain or support his denial of Defendant's motion. The only statement from the trial court concerning Defendant's motion was, "I'm going to allow the case to go forward with some reluctance, but—I'm going to deny the Motion to Suppress." This lack of rationale from the bench precludes meaningful appellate review.

The trial court's failure to articulate or record its rationale from the bench supports a remand.

State v. Howard, ___ N.C. App. ___, ___, 817 S.E.2d 232, 237–38 (2018) (emphasis added) (citations and quotation marks omitted); *see also State v. Faulk*, ___ N.C. App. ___, ___, 807 S.E.2d 623, 630 (2017) ("Even though findings of fact are not required, the trial court's failure to provide its rationale from the bench, coupled with the omission of any mention of the motion challenging the search warrant, precludes meaningful appellate review of that ruling. It is the trial court's duty to apply legal principles to the facts, even when they are undisputed. We therefore hold that the trial court erred by failing to either provide its rationale from the bench or make the necessary conclusions of law in its written order addressing both of Defendant's motions to suppress.").

The State attempts to distinguish *Howard and Faulk* because

the Trial Court's explanation of what it had reviewed in arriving at its finding of probable cause, [which the State notes is implicit,] is unlike the conclusion of law at issue in *State v. Faulk*, ___ N.C. App. ___, 807 S.E.2d 623, 630 (2017), in which the trial court's order failed to even mention one of the two motions to suppress at issue. Similar, the Trial Court's conclusion of law in this case is more detailed than the rote conclusion in *State v. Howard*, ___ N.C. App. ___, 817 S.E.2d 232, 238 (2018), in which the trial court merely stated: "I'm going to allow the case to go forward with some reluctance, but – I'm going to deny the Motion to Suppress." In sum, the Trial Court's conclusion of law denying defendant's motion to suppress is sufficient to satisfy N.C. Gen. Stat. § 15A_977(f).

But we decline the State's invitation to find the trial court's "conclusion" in this case sufficient. First, we note that defendant's motion to suppress raised several issues, and at best, the trial court's ruling from the bench addressed only two portions of the motion, the Franks motion and the reliability of Ms. Smith as an informant. But under the motion and facts here, to call the trial court's statement a "conclusion of law" is too generous; it is a merely a denial of the motion. Were we to adopt the State's argument that a conclusion of probable cause is "implicit" in the ruling there would be no need for findings of fact or conclusions of law for any denial of a motion to suppress of this nature, since the mere denial of the motion would "implicitly" contain a conclusion of probable cause or a ruling on whatever issue the defendant raised in the motion to suppress.

Also, the motion to suppress here included an issue not raised in *Faulk* and

Howard since defendant requested a *Franks* hearing. Contrast *Howard* ___ N.C. App. ___, 817 S.E.2d 232, *Faulk*, ___ N.C. App. ___, 807 S.E.2d 623. The affidavit could support a conclusion of probable cause only if there was no *Franks* violation in the allegations about Ms. Smith and Vaughn was also a reliable informant. On this initial issue regarding the allegations of the affidavit, the trial court stated it had “pretty much” given a *Franks* hearing, but defendant is only entitled to a *Franks* hearing upon “a preliminary showing that the affiant knowingly, or with reckless disregard for the truth, made a false statement in the affidavit.” *Fernandez*, 346 N.C. at 13, 484 S.E.2d at 358 (1997). Based upon this statement, the trial court apparently agreed that defendant had made the preliminary showing required for a *Franks* hearing, but never made findings addressing the issues of credibility and good faith raised by the motion.

B. Reliability of Middleman

But even if we assume the trial court did find that Agent Melvin’s statements regarding the length of time Ms. Smith had worked as an informant and the number of arrests made with her assistance were not intentional misrepresentations and were made in good faith, most of the substantive allegations of the affidavit are based upon *Vaughn*’s interactions with defendant, so his reliability as an informant was also essential. The information provided by Ms. Smith can only be as reliable as Vaughn, since she drove him to the general area of defendant’s home but did not

observe Vaughn going to defendant's home or purchasing drugs. Only the allegations that she had purchased drugs from defendant in the past and that she believed that defendant would at that time sell only to Vaughn were based on Ms. Smith's own personal knowledge. Ms. Smith did not say that Vaughn never purchased drugs from anyone but defendant or that there was no other potential source of drugs in the area where she took Vaughn to buy drugs. In fact, Agent Melvin testified that the area was known as an area of high drug activity. Even if Agent Melvin was acting in good faith and his representations about Ms. Smith's reliability were correct, very little of the affidavit was based upon Ms. Smith's own information.

Remand for additional findings regarding the *Franks* hearing and Ms. Smith's reliability would be necessary only if the affidavit demonstrates Vaughn's reliability as well:

If a defendant establishes by a preponderance of the evidence that a false statement knowingly and intentionally, or with reckless disregard for the truth" was made by an affiant in an affidavit in order to obtain a search warrant, that false information must be then set aside. *If the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.*

Id. at 322-23, 502 S.E.2d at 884 (emphasis added) (citations and quotation marks omitted).

The "remaining content" of affidavit was based mostly upon information

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provided by the unknown informant, Vaughn, to Ms. Smith, since she did not personally participate in or observe the actual purchase of drugs by Vaughn. Unlike the ruling upon the *Franks* motion, the basis for the trial court's denial of this portion of the motion is in our record:

THE COURT: The informant is not unknown; right? The informant is Ashleigh.

MR. THOMAS: No. Ashleigh Williams is the defendant. The informant is CS- --

THE COURT: I'm sorry. The informant is [Ms. Smith]?

MR. THOMAS: Yes.

MR. WRIGHT: Correct.

THE COURT: You previously said that -- is it "Vaughn" or Ryan that's going to testify?

MR. THOMAS: Yes, sir. "Vaughn" is going to testify.

THE COURT: "Vaughn," the runner, is going to testify. All right.

The trial court then denied the motion indicating that the fact that Vaughn was now known cured the fact that he was not known at the time of the affidavit, but in fact it does not. It is undisputed that at the time of the warrant affidavit, April 2017, Vaughn was not known to law enforcement, and there is no mention of any effort to identify him or determine his reliability. Vaughn is merely identified as "a middle

man nicknamed ‘Vaughn’” though Vaughn is the only individual who allegedly interacted with defendant or even saw her.

In the substantive factual allegations of the warrant affidavit,³ the only statements based upon Ms. Smith’s own knowledge are:

CS1 advised that CS1 has purchased fifty bags of heroin five times from the residence in the past six months. CS1 advised that [defendant] used to sell to CS1 directly but has been scared lately. CS1 advised that [defendant] makes everyone use Vaughn as a middle man to come to the residence.

Even if we assume Ms. Smith was properly considered as a reliable informant, these factual allegations are the only statements for which only her reliability is relevant. Standing alone, these allegations are not sufficient to form the basis for probable cause to issue the search warrant. The affidavit included no information regarding Vaughn’s reliability as an informant or even his identity, other than as a man Ms. Smith believed defendant trusted as a drug buyer. This situation is quite different from *Frederick*, because in *Frederick*, the reliability of the known confidential reliable source was not questioned; the issue was regarding the reliability of the middleman who purchased drugs. *See Frederick*, ___ N.C. App. at ___, 814 S.E.2d at 858-60. The warrant affidavit did not address the reliability of the middleman, but the affidavit stated that

Detective Ladd personally observed his confidential source

³ We are referring to the factual allegations regarding Ms. Smith, Vaughn, and defendant. There is no issue on appeal regarding the factual allegations of Agent’s Melvin’s training and experience.

meet the middleman and travel to Defendant's residence, where the middleman entered and exited shortly thereafter. The confidential source, who had been searched and supplied with money to purchase controlled substances, provided Detective Ladd with MDMA and heroin after his interaction with the middleman. Detective Ladd also observed other traffic in and out of Defendant's residence. Detective Ladd's experience and personal observations set forth in the affidavit were sufficient to establish probable cause to believe that controlled substances would probably be found in Defendant's residence.

Id. at ___, 814 S.E.2d at 860. In *Frederick*, the detective personally observed the confidential source and the middleman go into the defendant's residence and purchase drugs. *See id.* There was no need to establish the reliability of the middleman where the detective personally observed him going into the defendant's home to buy drugs. *See generally id.*

Here, neither Agent Melvin nor Ms. Smith observed Vaughn going to defendant's home to buy drugs. Instead, the affidavit states that Ms. Smith took Vaughn to Victory Drive and saw him "run into the yard of the residence leading to the house" but "could not see the residence[;]" Vaughn completed "the deal[;]" Vaughn left and then Ms. Smith returned to Agent Melvin with "the heroin purchased from 'Vaughn' and [defendant]." The only information in the affidavit regarding where Vaughn purchased the drugs is based upon what Vaughn told Ms. Smith and not upon her observations, as she did not witness the purchase of the drugs or even Vaughn entering defendant's home. Although Ms. Smith was searched to ensure that

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she had no drugs prior to the controlled buy, Vaughn was not searched prior to going with Ms. Smith, so there was no way of knowing if he already had the drugs he claimed to have purchased. Since the affidavit does not address Vaughn's reliability at all and the allegations based upon Ms. Smith's knowledge are not sufficient to establish probable cause, the motion to suppress should have been allowed.

III. Conclusion

Because the affidavit was insufficient to form the basis of probable cause for issuance of the search warrant, we reverse the denial of defendant's motion to suppress and judgment and remand for a new trial.

REVERSED and REMANDED.

Judge COLLINS concurs in the result.

Judge BRYANT dissents.

BRYANT, Judge, dissenting.

Because I do not believe defendant’s challenge to the affidavit, which sets forth probable cause for the search warrant, is sufficient to overcome the presumption of validity accorded a search warrant granted by a neutral and detached magistrate, I respectfully dissent.

The Fourth Amendment to the United States Constitution protects the people from “unreasonable searches and seizures.” U.S. Const. amend. IV. Absent exigent circumstances, the police need a warrant to conduct a search of or seizure in a home, *see Payton v. New York*, 445 U.S. 573, 586 (1980), and a warrant may be issued only on a showing of probable cause, U.S. Const. amend. IV.

State v. Allman, 369 N.C. 292, 293, 794 S.E.2d 301, 302–03 (2016). “Probable cause means that there must exist a reasonable ground to believe that the proposed search will reveal the presence upon the premises to be searched of the objects sought and that those objects will aid in the apprehension or conviction of the offender.” *State v. Howard*, ___ N.C. App. ___, ___, 817 S.E.2d 232, 235 (2018) (citation omitted); *see also State v. Riggs*, 328 N.C. 213, 219, 400 S.E.2d 429, 433 (1991) (“[P]robable cause requires only a *probability or substantial chance* of criminal activity, not an actual showing of such activity.” (quoting *Illinois v. Gates*, 462 U.S. 213, 243 n. 13, 76 L. Ed. 2d 527, 552 n. 13 (1983) (emphasis added))).

Per statute, each application for a search warrant must contain a statement asserting there is probable cause to believe that an item subject to seizure will be found in the place to be searched and an affidavit setting forth the facts and

circumstances establishing the probable cause. *See* N.C. Gen. Stat. § 15A-244 (2), (3) (2017).

An “affidavit is sufficient if it supplies reasonable cause to believe that the proposed search for evidence probably will reveal the presence upon the described premises of the items sought and that those items will aid in the apprehension or conviction of the offender.” *State v. Arrington*, 311 N.C. 633, 636, 319 S.E.2d 254, 256 (1984) (citing *State v. Riddick*, 291 N.C. 399, 230 S.E.2d 506 (1976)). The applicable test is

whether, given all the circumstances set forth in the affidavit before [the magistrate], including “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. And the duty of the reviewing court is simply to ensure that the magistrate had a “substantial basis for . . . conclud[ing]” that probable cause existed.

Id. 311 N.C. at 638, 319 S.E.2d at 257–58 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 76 L. Ed. 2d 527, 548 (1983)).

State v. Riggs, 328 N.C. at 218, 400 S.E.2d at 432; *see also State v. McKinney*, 368 N.C. 161, 164, 775 S.E.2d 821, 824 (2015) (“A magistrate must ‘make a practical, common-sense decision,’ based on the totality of the circumstances, whether there is a ‘fair probability’ that contraband will be found in the place to be searched. *Gates*, 462 U.S. at 238, 103 S.Ct. at 2332, 76 L. Ed. 2d at 548; *e.g.*, *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 598 (2014).”).

Courts interpreting the Fourth Amendment have

expressed a “strong preference for searches conducted pursuant to a warrant.” *Illinois v. Gates*, 462 U.S. 213, 236, 103 S. Ct. 2317, 2331, 76 L. Ed. 2d 527, 547 (1983); *State v. Sinapi*, 359 N.C. 394, 398, 610 S.E.2d 362, 365 (2005) (quoting *State v. Riggs*, 328 N.C. 213, 222, 400 S.E.2d 429, 434 (1991)). . . . Recognizing that affidavits attached to search warrants “are normally drafted by nonlawyers in the . . . haste of a criminal investigation,” [*United States v. Ventresca*, 380 U.S. 102, 108, 85 S. Ct. 741, 746, 13 L. Ed. 2d 684, 689 (1965)], courts are reluctant to scrutinize them “in a hypertechnical, rather than a commonsense, manner,” *id.* at 109, 85 S. Ct. at 746, 13 L. Ed. 2d at 689.

. . . .

. . . The magistrate’s determination of probable cause is given “great deference” and “after-the-fact scrutiny should not take the form of a *de novo* review.” *State v. Arrington*, 311 N.C. 633, 638, 319 S.E.2d 254, 258 (1984) (citing *Gates*, 462 U.S. at 236, 103 S.Ct. at 2331, 76 L. Ed. 2d at 547).

McKinney, 368 N.C. at 164–65, 775 S.E.2d at 824–25.

The majority appears to express sympathy toward defendant’s contentions: that information in the search warrant affidavit “was derived from an unknown informant[—a middle man—]” whose reliability was unknown; and that the affiant Agent Melvin’s “exaggeration” of the confidential informant’s (Ms. Smith’s) past cooperation was a material misrepresentation. The majority then discusses a lack of written findings of fact and conclusions of law regarding defendant’s motion to suppress, and cites to cases finding error in a trial court’s failure to either provide its rationale from the bench or enter a written order with findings. Notwithstanding an extensive discussion, the majority does not hold the trial court’s failure to make

findings of fact was reversible error. Instead, the majority seems to hold that “since the affidavit does not address [the middle man]’s reliability at all and the allegations based upon Ms. Smith’s knowledge are not sufficient to establish probable cause, the motion to suppress should have been allowed.” Then, finding “the affidavit . . . insufficient to form the basis of probable cause for issuance of the search warrant, [the majority] reverse[s] the denial of defendant’s motion to suppress and judgment and remand[s] for a new trial.”

In *State v. Frederick*, ___ N.C. App. ___, 814 S.E.2d 855, *aff’d per curiam*, ___ N.C. ___, 819 S.E.2d 346 (2018), a divided panel of this Court affirmed the issuance of a search warrant predicated on the sworn affidavit of a law enforcement officer describing his observations of a confidential source conducting controlled buys of “Molly” (MDMA) and heroin from a Raleigh residence through a middleman. The informant provided law enforcement officers with the identity of “a mid-level MDMA, heroin[,] and crystal methamphetamine dealer in Raleigh.” *Id.* at ___, 814 S.E.2d at 857. The informant arranged and conducted the purchase through a middleman who traveled with the informant to the Raleigh residence. *Id.* Law enforcement officers observed the informant meet the middleman and watched the middleman enter the suspect Raleigh residence, emerge two minutes later, and return to the informant, after which, the informant provided law enforcement officers with a quantity of MDMA. *Id.* The informant conducted a second controlled buy from the same

residence also via a middleman shortly before the submission of the search warrant application. The affiant wrote, “[b]ased on my training and experience, this was indicative of drug trafficking activity.” *Id.* at ___, 814 S.E.2d at 858. A majority of this Court held that “[b]ased on the totality of the circumstances, the magistrate had a substantial basis for concluding probable cause existed to believe controlled substances were located on the premises of [the Raleigh residence].” *Id.* at ___, 814 S.E.2d at 860; *see also State v. Jackson*, ___ N.C. App. ___, ___, 791 S.E.2d 505, 511 (2016) (“In order for a reviewing court to weigh an informant’s tip as confidential and reliable, ‘evidence is needed to show indicia of reliability[.]’ [*State v. Hughes*, 353 N.C. 200, 204, 539 S.E.2d 625, 628 (2000)]. Indicia of reliability may include statements against the informant’s penal interests and statements from an informant with a history of providing reliable information. *Benters*, 367 N.C. at 665, 766 S.E.2d at 598. Even if an informant does not provide a statement against his/her penal interest and does not have a history of providing reliable information to law enforcement officers, the Supreme Court has suggested that ‘other indication[s] of reliability’ may suffice. *Hughes*, 353 N.C. at 204, 539 S.E.2d at 628.”).

In *McKinney*, 368 N.C. 161, 775 S.E.2d 821, our Supreme Court held that a search warrant application affidavit provided sufficient facts to support a finding of probable cause on the following facts: “a citizen” met with a law enforcement officer in the Greensboro Police Department and “reported observing heavy traffic in and

out of [an apartment] Pointing out that the visitors made abbreviated stays” and that the citizen had seen the apartment resident dealing narcotics in the parking lot of the apartment complex. *Id.* at 162, 775 S.E.2d at 823. In response to the report, law enforcement officers began surveillance of the apartment and observed a vehicle driver arrive in the afternoon, enter the apartment, and exit six minutes later. *Id.* An officer conducted a traffic stop of the vehicle and discovered \$4,258.00 in cash on the person of the driver, as well as a gallon-size bag containing marijuana remnants. *Id.* Incident to the driver’s arrest, law enforcement officers searched the driver’s cell phone and discovered a series of text messages exchanged minutes before the driver entered the apartment: “Bra, when you come to get the money, can you bring a fat 25. I got the bread.” *Id.* The next stating, “Can you bring me one more, Bra?” In response, “About 45,” “ight.” *Id.* The person to whom the driver sent the texts was never linked to the residence under surveillance. *Id.*

In a pretrial motion and hearing, the *McKinney* defendant moved to suppress the evidence seized during the search of the apartment arguing there was a lack of probable cause to support the search. *Id.* at 163, 775 S.E.2d at 823. The trial court denied the motion, and defendant pled guilty preserving his right to appeal the denial of his motion to suppress. On appeal, the Court of Appeals reversed the trial court’s order holding that the warrant was unsupported by probable cause. *Id.* at 163, 775

S.E.2d at 824 (citing *State v. McKinney*, __ N.C. App. __, 752 S.E.2d 726 (2014)).

Reversing the Court of Appeals, our Supreme Court noted the following:

[The defendant] maintains that the citizen complaint underlying the officer’s application for the search warrant was unreliable because the complaint gave no indication when the citizen observed either the short stays or drugs purportedly changing hands, that the complaint was only a “naked assertion” that the observed activities were narcotics-related, and that the State failed to establish a nexus between [the driver]’s vehicle and [the] defendant’s apartment.

Id. at 165, 775 S.E.2d at 825. The Court found “[n]one of these arguments . . . persuasive, either individually or collectively.” *Id.* The Court noted that information contained in the citizen complaint was consistent with the officer’s observations of activity around the apartment and the contents of the vehicle in conjunction with the text messages indicated preparation for a drug transaction involving the vehicle driver and someone he was about to meet. *Id.* at 166, 775 S.E.2d at 825.

We conclude that, under the totality of circumstances, all the evidence described in the affidavit both established a substantial nexus between the marijuana remnants recovered from [the driver]’s vehicle and [the] defendant’s residence, and also was sufficient to support the magistrate’s finding of probable cause to search [the] defendant’s apartment. Considering this evidence in its entirety, the magistrate could reasonably conclude that the proposed search would reveal the presence of illegal drugs in the dwelling.

Id. at 166, 775 S.E.2d at 826 (citation omitted); *cf. Benters*, 367 N.C. 660, 766 S.E.2d 593 (holding that the search warrant application failed to provide a substantial basis

to believe probable cause existed to find a marijuana grow operation at the suspect residence where the affidavit mainly provided that the residence windows were covered with thick mil black plastic; potting soil, fertilizer, seed starting trays, plastic cups, metal storage rack, and portable pump sprayers were observed on the curtilage of the residence; and the energy usage records for the residence indicated “extreme high and low kilowatt usage”); *State v. Campbell*, 282 N.C. 125, 130–31, 191 S.E.2d 752, 756 (1972) (holding the search warrant application affidavit did not support a finding of probable cause where “purely conclusory” statements indicated substantively that persons named in the warrant application all lived in the residence to be searched and “reliable confidential informants” had provided that the named persons had sold narcotics to college students).

Here, in the case before us, the affidavit submitted by Agent Melvin contained his work history as a law enforcement officer, including his experience investigating narcotics cases since 2012, and the following factual basis for the search warrant application:

In April 2017 Affiant received information from a confidential source of information, hereafter referred to as [Ms. Smith] that a black female with the first name Ashley lives on Victory Drive off of Freedom Star Drive. [Ms. Smith] advised that Ashely [sic] lives on the left of Victory Drive . . . and sells heroin from the residence. [Ms. Smith] advised that Ashley’s residence to [sic] a cream colored double wide residence with a swing set in the front yard. [Ms. Smith] advised that Ashley drives a burgundy Jeep Liberty with a tire cover on the back that has animal paws

on it. [Ms. Smith] advised that Ashley only sells fifty bags of heroin at a time and will not sell any less. . . . [Ms. Smith] advised that [Ms. Smith] has purchased fifty bags of heroin five times in the past six months from the residence on Victory Drive [Ms. Smith] advised that Ashley has been scared recently and is making all her customers use a middle man named “Vaughn” to conduct the controlled purchase from the residence. [Ms. Smith] advised that another black male with the name “Ryan” lives at the residence and is known to conduct heroin deals.

In the past 48 hours [Ms. Smith] advised Affiant that [Ms. Smith] could purchase heroin from “Vaughn” and Ashley on Victory Drive Affiant met with [Ms. Smith] at a secured location. [A law enforcement officer] searched [Ms. Smith] for any illegal contraband or narcotics. [The law enforcement officer] found no illegal contraband or narcotics on [Ms. Smith]. [The law enforcement officer] searched [Ms. Smith’s] vehicle for any illegal contraband or narcotics. [The law enforcement officer] advised that no illegal contraband or narcotics were located. Affiant provided [Ms. Smith] with an amount of U.S. Currency Affiant provided [Ms. Smith] with a recording device. [Ms. Smith] traveled . . . and picked up “Vaughn” at his residence while Agents followed. [Ms. Smith] and “Vaughn” traveled to Freedom Star Drive. [Ms. Smith] and “Vaughn” traveled down Freedom Star Drive and took a left onto Victory Drive. Agents were not able to follow due to counter surveillance and high narcotic area. [Ms. Smith] stayed on Victory Drive for approximately five minutes and [Ms. Smith] advised the deal was complete. [Ms. Smith] and “Vaughn” traveled back to “Vaughn’s” residence “Vaughn” departed [Ms. Smith’s] conveyance and [Ms. Smith] departed. Agents followed [Ms. Smith] back to the staging area. Once back at the secured location Affiant searched [Ms. Smith] for any illegal contraband and narcotics. Affiant located no illegal contraband or narcotics except the heroin purchased from “Vaughn” and [defendant]. [A law enforcement officer] searched [Ms. Smith’s] vehicle for any illegal contraband or narcotics.

[The law enforcement officer] found no illegal contraband or narcotics in the vehicle. . . . [Ms. Smith] advised that [after picking up “Vaughn,” she and “Vaughn”] went to the first house on the left on Victory Drive. [Ms. Smith] advised she parked beside the wood line on Victory Drive. [Ms. Smith] advised [Ms. Smith] gave the issued U.S. Currency to “Vaughn” and he departed. [Ms. Smith] advised that “Vaughn” departed the vehicle and ran to [defendant’s] residence. . . . [Ms. Smith] advised that [Ms. Smith] could not see the residence but observed “Vaughn” run into the yard of the residence leading to the house. [Ms. Smith] advised that “Vaughn” stayed an estimated five minutes at the residence and came back to [Ms. Smith’s] vehicle. [Ms. Smith] advised that [Ms. Smith] has purchased fifty bags of heroin five times from the residence in the past six months. [Ms. Smith] advised that [defendant] used to sell to [Ms. Smith] directly but has been scared lately. [Ms. Smith] advised that [defendant] makes everyone use Vaughn as a middle man to come to the residence [Ms. Smith] advised that [Ms. Smith] transported “Vaughn” back to his residence . . . [Ms. Smith] advised [Ms. Smith] departed. [Ms. Smith] advised that [defendant’s] residence is the only residence on the left side of Victory Drive. Affiant conducted a google maps search of Victory Drive and observed one residence on the left side of Victory Drive . . . [Ms. Smith] identified [defendant’s] residence on the left of Victory Drive . . . to be the same residence on Google Maps. Affiant conducted a search using Brunswick County GIS on Victory Drive Affiant observed only one residence on the left side of Victory Drive Brunswick County GIS showed the address to be 7655 Victory Drive Affiant conducted a search on the address 7655 Victory Drive . . . using the law enforcement database CJLEADS. Affiant located an Ashleigh Corrin Williams and a Richard Ryan Stallings with the listed address of 7655 Victory Drive [Ms. Smith] identified [defendant] from the heroin purchases to be Ashleigh Corrin Williams by photo identification and advised that [defendant] lives at 7655 Victory Drive

The majority's analysis of challenges to the sufficiency of the affidavit to support a finding of probable cause hinges in large part on the reliability of Ms. Smith and Vaughn. Absent the trial court's findings of fact and conclusions as to Vaughn's reliability, the majority holds that the affidavit fails to provide sufficient probable cause to find illegal narcotics: "Ms. Smith did not say that Vaughn never purchased drugs from anyone but defendant or that there was no other potential source of drugs in the area where she took Vaughn to buy drugs." However, "[p]robable cause does not mean . . . absolute certainty. *State v. Campbell*, 282 N.C. 125, 191 S.E.2d 752 (1972)). . . . A determination of probable cause is grounded in practical considerations. *Jaben v. United States*, 381 U.S. 214 (1965)." *State v. Arrington*, 311 N.C. 633, 636, 319 S.E.2d 254, 256–57 (1984).

The majority seems to predicate its disposition to reverse the trial court's ruling to deny the motion to suppress on the premise that the affidavit, standing alone, does not support a finding of probable cause, especially when averments potentially made in violation of *Franks v. Delaware*, 438 U.S. 154, 57 L. Ed. 2d 667 (1978), are excluded. However, the challenged averments of the affidavit (the length of time Agent Melvin worked with Ms. Smith as a confidential informant and the number of arrests made and convictions entered in direct relation to Ms. Smith's information) do not appear to be essential to a finding of probable cause.

Per the unchallenged averments in the affidavit, Ms. Smith—a confidential informant known to law enforcement officers and whom the trial court was aware was available to testify, along with Vaughn, at defendant’s trial—made a statement against penal interest regarding her multiple purchases of heroin directly from defendant at the defendant’s residence, *see Jackson*, ___ N.C. App. ___, 791 S.E.2d 505; Ms. Smith’s description of the protocol to purchase heroin from defendant’s residence matched the conduct law enforcement officers could practically observe, *see McKinney*, 368 N.C. 161, 775 S.E.2d 821; and the use of a middle-man to deliver narcotics from the location of defendant’s residence—the same residence from which Ms. Smith had previously purchased heroin five times within the previous six months—along with the short delivery time (five minutes), did not make the likelihood of finding narcotics at the suspect residence less probable, *see Frederick*, ___ N.C. App. ___, 814 S.E.2d 855.

Given the totality of the circumstances set forth in the affidavit, including the basis of knowledge provided by Ms. Smith, the affidavit describes circumstances establishing a probability that contraband or evidence of heroin trafficking would be found at defendant’s residence. *See McKinney*, 368 N.C. at 166, 775 S.E.2d at 825–26. In accordance with our duty as a reviewing court, I would hold the magistrate had a substantial basis for concluding there existed probable cause to search defendant’s residence for narcotics, *see id.*; the trial court’s denial of defendant’s

motion to suppress was supported by the affidavit establishing probable cause; and the record showed no proof of a violation of *Franks*. As with many cases, this Court would prefer detailed findings of fact and conclusions of law regarding the trial court's rationale for its ruling. However, where, as here, the record provides sufficient basis to support the trial court's ruling, and given that a neutral and detached magistrate's grant of a warrant to search defendant's residence was valid and any potential defects in the warrant application were not substantial, I would affirm the trial court's denial of defendant's motion to suppress.