SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4764-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASHAD S. SEARLES,

Defendant-Appellant.

Submitted May 31, 2017 – Decided June 30, 2017

Before Judges Ostrer, Leone, and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 13-05-1239.

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

Joseph D. Coronato, Ocean County Prosecutor, attorney for respondent (Samuel Marzarella, Chief Appellate Attorney, of counsel; Roberta DiBiase, Supervising Assistant Prosecutor, on the brief).

PER CURIAM

Defendant, Rashad S. Searles, moved to suppress evidence seized during the execution of search warrants at two different

locations. Following the denial of that motion, defendant pleaded guilty to second-degree possession of a controlled dangerous substance (CDS) with intent to distribute, N.J.S.A. 2C:35-5a(1), 2C:35-5b(2). Defendant was sentenced to an extended term of ten years during which he is ineligible for parole for forty-six months, concurrent to a parole violation. Defendant contends on appeal:

> POINT I
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> THE "NO-KNOCK" SEARCHES HERE WERE UNSUPPORTED AND UNREASONABLE, AND THE RESULTS ACCORDINGLY MUST BE SUPPRESSED. U.S. CONST., AMENDS. IV, XIV; N.J. CONST. (1947), ART. 1, PAR.7.
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> POINT II
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> THE TRIAL COURT IMPOSED AN EXCESSIVE SENTENCE, NECESSITATING REDUCTION.

We disagree and affirm.

I.

Detective David Fox, an investigator with the Ocean County Prosecutor's Office Special Operations Group, submitted an affidavit in support of the application for both search warrants that related the following: Fox and another detective met with a confidential informant (CI) who advised that defendant employed "multiple individuals" "distributing heroin from various locations in the Ocean County New Jersey area." The CI also told the

detectives defendant stored heroin in various locations, including the target houses on Red Cedar Street in Toms River and First Avenue in South Toms River. Fox indicated various records linked defendant to both addresses. Two days before the application, the CI informed the affiant defendant possessed a large quantity of heroin, and advised the CI to contact him when the CI "was ready to purchase a quantity of cocaine."

The detective used the CI to make three controlled purchases of heroin from defendant, the details of which are set forth in the affidavit. Police surveilled defendant leave the First Avenue house, and travel directly to an arranged location to complete the transaction with the CI during the first and second operations; they observed him return directly to and enter the First Avenue house after the first purchase. Police observed defendant leave the Red Cedar Street house and travel directly to an arranged location to complete the sale to the CI during the third controlled buy; defendant returned to and entered the First Avenue house immediately after he completed the sale.

The affidavit also disclosed that records in the Prosecutor's Office documented that another informant, whose cooperation resulted in defendant's arrest and conviction for distribution of heroin, identified defendant as a member of the "'Bloods' street gang."

The affiant also provided defendant's criminal history:

Date of Arrest	**Charges**	**Final Disposition**
November 18, 1998	possession of CDS; possession with intent to distribute (PWI)	dismissed
March 26, 2000	possession of CDS; PWI; possession of firearm for an unlawful purpose	dismissed
June 10, 2000	distribution of CDS; aggravated assault; resisting arrest	conviction for distribution CDS
August 18, 2000	resisting arrest	conviction for contempt of court
August 25, 2000	possession of marijuana	not guilty
December 23, 2000	possession of CDS	dismissed
December 30, 2000	possession of CDS; PWI; resisting arrest	conviction for distribution CDS
August 20, 2005	simple assault	dismissed
December 26, 2006	obstruction of the administration of law	guilty
January 29, 2009	PWI	guilty
November 16, 2009	resisting arrest; possession of CDS; PWI - school zone	guilty: distribution CDS

Fox applied for a "no-knock" warrant. He generally related, based on his training and experience, the ease with which CDS can be destroyed after criminals learn that law enforcement is on scene during the execution of a search warrant. He also mentioned that drug dealers often possess "dangerous weapons." The detective

contended defendant's arrests for possession of a firearm, aggravated assault, resisting arrest and obstructing the administration of law indicated that he posed a risk to the safety of officers executing the warrant. The detective also posited defendant's prior record exposed him to a longer prison sentence, increasing the risk that defendant would resist arrest. Fox cited defendant's status in the Bloods as another reason for concern for violence and the destruction of evidence. He also swore that defendant "and/or one of his 'Blood' street gang associates will be present" at either one of the two target residences when the warrant was executed.

A judge issued search warrants, containing no-knock provisions, for both residences. The motion judge found, and the parties do not contest, that the warrant for Red Cedar Street was executed at 5:03 a.m.; the warrant for First Avenue was executed by a separate team of law enforcement personnel at 5:18 a.m. Defendant was arrested at the Red Cedar Street house; the time of his arrest is unknown. Two adults and three children were also present in the Red Cedar Street house. Three of defendant's adult relatives were present at the First Avenue house. Quantities of CDS were seized at both locations.

II.

Our review of a judge's decision on a motion to suppress evidence is limited. State v. Vargas, 213 N.J. 301, 326-27 (2013). In performing our task, we are obliged to uphold the motion judge's factual findings that are supported by sufficient credible evidence in the record. State v. Diaz-Bridges, 208 N.J. 544, 565 (2012). We need not, however, give deference to a trial judge's interpretation of the law, and we review legal issues de novo. Vargas, supra, 213 N.J. at 327.

The "knock and announce" requirement is "[r]ooted deeply in our federal and State constitutions and four centuries of common law," State v. Johnson, 168 N.J. 608, 625 (2001), and "protects rights and expectations linked to ancient principles in our constitutional order." Hudson v. Michigan, 547 U.S. 586, 602, 126 S. Ct. 2159, 2170, 165 L. Ed. 2d 56, 71 (2006) (Kennedy, J., concurring). Exceptions to the "knock and announce" requirement exist when "(1) immediate action is required to preserve evidence; (2) the officer's peril would be increased; or (3) the arrest would be frustrated." State v. Fair, 45 N.J. 77, 86 (1965). The Johnson Court announced a tripartite test to determine if a no-knock provision may be included in a warrant:

> First, . . . , a police officer must have a reasonable, particularized suspicion that a no-knock entry is required to prevent the

> destruction of evidence, to protect the officer's safety, or to effectuate the arrest or seizure of evidence. Second, the police officer must articulate the reasons for that suspicion and may base those reasons on the totality of the circumstances with which he or she is faced. Third, although the officer's assessment of the circumstances may be based on his or her experience and knowledge, the officer must articulate a minimal level of objective justification to support the no-knock entry, meaning it may not be based on a mere hunch.
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> [Johnson, supra, 168 N.J. at 619.]

The showing required to meet the reasonable, particularized suspicion test is "not high." Id. at 624 (quoting Richards v. Wisconsin, 520 U.S. 385, 395-95, 117 S. Ct. 1416, 1422, 137 L. Ed. 2d 615, 622 (1999)). "[T]he level of suspicion required is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." State v. Gamble, 218 N.J. 412, 428 (2014)(quoting United States v. Sokolow, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1, 10 (1989)). "The determination is highly fact sensitive and requires a balancing of risks." State v. Jones, 179 N.J. 377, 406 (2004). "[T]here must be some indication in the record that the applying officer articulated his or her reasonable suspicions . . . ." Johnson, supra, 168 N.J. at 623.

We agree with the motion judge that Fox's general contentions that drug evidence can be easily destroyed, and that drug dealers often possess weapons, cannot themselves justify a no-knock provision; they are the type of conclusory allegations that "swallow the rule" because they apply to virtually every drug case, and are not reasons specific to the crime or defendant. Id. at 617, 620, 623. Fox's recitation of defendant's prior record, however, provided specific information that, as the motion judge found, established a reasonable, particularized suspicion to believe a no-knock warrant was required to protect officer safety. Jones, supra, 179 N.J. at 398-99. Defendant's arrests for possession of a firearm for an unlawful purpose, aggravated assault, and resisting arrest manifested his proclivity for violence and avoiding apprehension. See id. at 402, 407 (holding arrest for assault, without evidence of a conviction, can sustain a finding of reasonable suspicion that a no-knock warrant is required for safety of law enforcement personnel). That some of the arrests resulted in convictions for non-violent offenses[1] "does

[1] The affidavit revealed one of defendant's arrests for offenses, including aggravated assault and resisting arrest, resulted in a conviction for distribution of CDS; another arrest for resisting arrest resulted in a conviction for contempt; arrests for offenses, including resisting arrest, resulted in another distribution conviction; and a final arrest for resisting arrest and drug charges resulted in another distribution conviction.

not undermine the probative value to officer safety suggested by the original charges against a suspect." Id. at 403.

Defendant's prior convictions for distribution also subjected him to a mandatory extended term sentence, N.J.S.A. 2C:43-6f, increasing the chances that he would follow past form and resist arrest, posing a risk to the police. Jones, supra, 179 N.J. at 408.

While sufficient cause for the issuance of the no-knock warrant existed without consideration of the second informant's disclosure that defendant was a member of the Bloods, that information is a factor that can establish a reasonable suspicion of danger to police officers.[2] See State v. Byrd, 198 N.J. 319, 340-41 (2009)(observing "fear of retaliation from gangs can be so overwhelming that some persons will refuse to come forward even when a family member is victimized or the safety of the neighborhood is imperiled"). This evidence is tempered by the lack of information about when the informant's disclosure was made to the police; yet it is supported by the fact that the informant's cooperation led to defendant's arrest and conviction for

[2] The motion judge found that defendant's "participation in the Bloods street gang" also provided "a more than hypothetical justification for destroying the CDS." The judge did not say why she linked gang membership to destruction of evidence. We do not adopt her conclusion.

distribution. No matter what weight is given to that information, defendant's gang membership is neither a necessary or major factor in determining that Fox presented other sufficient facts to the issuing judge to satisfy the three-pronged test set forth in Johnson.

Defendant argues that his arrest at the Red Cedar Street house obviated any danger police faced at the First Avenue house, nullifying the no-knock provision for that residence.

As the motion judge noted, reasonableness is the "touchstone" in determining whether an unannounced entry to a residence is justified. Johnson, supra, 168 N.J. at 616-17. A search passes constitutional muster if the police conduct is objectively reasonable. State v. Maristany, 133 N.J. 299, 305 (1993).

Two separate teams of officers executed the search warrants for houses located in different municipalities. Police entered the houses fifteen minutes apart. Defendant's argument that the Red Cedar Street team should have notified the First Avenue team of defendant's arrest discounts many factors used to determine the reasonableness of police actions. Both these situations were fluid. The team at the Red Cedar Street house entered under no-knock conditions. It encountered three adults and three children. This was a house - not a smaller apartment - that had to be secured by police even before a search began. There is no evidence that

the Red Cedar Street team coordinated operations with the First Avenue team. The First Avenue team also executed a no-knock warrant. Common sense dictates that the team was not standing idle before they entered at 5:18 a.m. The entry to the First Avenue house was an effort that, obviously, had to be orchestrated; preparations had to precede entry into the house. It is unreasonable under the circumstances to have expected the Red Cedar Street team to halt its operation as soon as defendant was arrested.[3] Defendant's arrest was not the only task the Red Cedar Street team needed to accomplish. They had to secure the occupants and the premises, and maintain that security. They had to find, seize and inventory drugs and other evidence. It was an ongoing operation.

The no-knock entry into the First Avenue house, pursuant to the terms of search warrant, was valid, as was the no-knock entry into the Red Cedar Street house.

III.

Defendant argues the sentencing judge "overvalued the applicable aggravating factors and failed to find applicable mitigating factors," resulting in an excessive period of parole ineligibility. Defendant concedes the aggravating factors found

[3] The time of defendant's arrest was never established; nor was the status of the search at the time of his arrest disclosed.

by the court apply, but avers that they, "particularly [aggravating factor nine], are not particularly weighty." Defendant contends mitigating factors nine, defendant's character and attitude indicate he is unlikely to commit another offense, N.J.S.A. 2C:44-1b(9), and eleven, the imprisonment of defendant would entail excessive hardship to him or his dependents, N.J.S.A. 2C:44-1b(11), are applicable.

Our review of the sentencing court's decision is limited to determining:

> first, whether the correct sentencing guidelines . . . have been followed; second, whether there is substantial evidence in the record to support the findings of fact upon which the sentencing court based the application of those guidelines; and third, whether in applying those guidelines to the relevant facts the trial court clearly erred by reaching a conclusion that could not have reasonably been made upon a weighing of the relevant factors.
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> [State v. Roth, 95 N.J. 334, 365-66 (1984).]

We are mindful that we must not substitute our judgment for that of the sentencing court. Id. at 365. Furthermore, "an appellate court should not second-guess a trial court's finding of sufficient facts to support an aggravating or mitigating factor if that finding is supported by sufficient evidence in the record." State v. Carey, 168 N.J. 413, 426-27 (2001) (internal citations omitted).

Defendant accepted a plea offer calling for a ten-year prison sentence with forty-eight months of parole ineligibility, which sentence was to run concurrent to defendant's parole violation. The sentencing judge found aggravating factors three, the risk that defendant will reoffend, N.J.S.A. 2C:44-1a(3), six, the extent of defendant's prior criminal history, N.J.S.A. 2C:44-1a(6), and nine, the need for general and specific deterrence, N.J.S.A. 2C:44-1a(9). The judge imposed a sentence less than that bargained for: ten years with a parole disqualifier of forty-six months.

We do not agree with defendant's argument that his "success" during "his significant employment history," and his educational career through one semester of college,[4] both of which were considered by the sentencing court, together with his acceptance of responsibility, show that his character and attitude indicate that it is unlikely he will commit another offense. The sentencing judge recognized defendant's lengthy history of arrests and four prior indictable convictions. His prior distribution convictions required the imposition of an extended term sentence. Moreover, as the judge said, "What bothers me is that you got this charge

[4] The pre-sentence report indicates defendant completed the semester while in state prison.

within six months of being paroled." She also found that, since defendant had no substance abuse history, he sold heroin for the sole purpose to make money.[5] The judge's findings not only supported her conclusions relating to the aggravating factors, they clearly militated against finding mitigating factor nine.[6] Neither his education, nor his employment kept defendant from committing another crime.

Defendant argues "he clearly has contributed support to at least some extent," warranting the application of mitigating factor eleven. As acknowledged in his brief, however, defendant's child support arrears are significant, diminishing any basis to find that factor. The judge took into account defendant's wish to attend his daughter's graduation. Although she did not

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[5] The judge did not find aggravating factor eleven, monetary sanctions without imprisonment would be viewed as a cost of doing business, N.J.S.A. 2C:44-1a(11).

[6] Defendant did not argue for any specific mitigating factors at sentencing, but did proffer the arguments we here review. "[M]itigating factors that are suggested, or are called to the court's attention, ordinarily should be considered and either embraced or rejected on the record." State v. Blackmon, 202 N.J. 283, 297 (2010). But, trial courts do not have to "explicitly reject each and every mitigating factor argued by a defendant." State v. Bieniek, 200 N.J. 601, 609 (2010). The judge implicitly rejected the tendered evidence relating to the mitigating factors now requested by defendant by finding aggravating factors three, six and nine.

specifically find mitigating factor eleven, she, in effect, applied it when she reduced the parole disqualifier to forty-six months to allow defendant an opportunity to attend the graduation.

The judge found defendant's prior record was "moderate, bordering on lengthy." Although she did not ascribe weight to any other aggravating factor, and did not articulate her aggregate balance of the factors,[7] we see no reason to find the base sentence - at the bottom of the extended term second-degree range - at all unreasonable. The period of parole ineligibility, although not in line with the favorable base term imposed, is supported by the substantial evidence found by the sentencing judge and, likewise, is reasonable. See State v. Sainz, 107 N.J. 283, 294 (1987) (sentences imposed pursuant to plea agreements are presumed reasonable); State v. S.C., 289 N.J. Super. 61, 71 (App. Div), certif. denied, 145 N.J. 373 (1996). Obviously, the aggravating factors outweighed the non-existent mitigating factors. Defendant has posited nothing that would overcome the presumed reasonableness of the sentence imposed.

Affirmed.

[7] Sentencing judges are required to set forth on the record the reason for imposing the sentence and the factual basis supporting each aggravating and mitigating factor considered. N.J.S.A. 2C:43-2e; R. 3:21-4(e). The judge must also state the balancing process that led to the sentence. State v. Martelli, 201 N.J. Super. 378, 385 (App. Div. 1985).