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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-5497-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANDRE D. HENDRICKS, a/k/a
TYREE HENDRICKS and ANDRA
D. HENDRICKS,

Defendant-Appellant.

Submitted January 10, 2018 – Decided February 2, 2018

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment No.
15-01-0013.

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

Ann M. Luvera, Acting Union County Prosecutor,
attorney for respondent (Izabella M. Wozniak,
Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the
brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Following the denial of his motion to suppress evidence seized pursuant to a search warrant, defendant Andre W. Hendricks pled guilty to third-degree possession of cocaine with intent to distribute, N.J.S.A. 2C:35-5B(3) and N.J.S.A. 2C:35-5A(1). In accord with a negotiated plea agreement, defendant was sentenced to an extended term of eight years State prison subject to a four-year period of parole ineligibility. Mandatory fines and penalties were imposed. All remaining counts of the indictment were dismissed. Defendant appeals raising two points for our consideration.

POINT I

THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT PRESENTED PROBABLE CAUSE TO ARREST NATASHA BASS, BUT NO PROBABLE CAUSE TO SEARCH THE HOME OF DEFENDANT'S SISTER[,] WANDA HENDRICKS, FOR WHOM BASS BABYSAT. U.S. Const., amend. IV; N.J. Const., art. I, ¶ 7.

POINT II

THE FOUR-YEAR PAROLE DISQUALIFIER IMPOSED UPON ANDRE HENDRICKS IS MORE PUNITIVE THAN RECOMMENDED BY THE ATTORNEY GENERAL'S BRIMAGE¹ GUIDELINES. HENCE, DEFENDANT RESPECTFULLY REQUESTS A REMAND FOR RESENTENCING.

¹ State v. Brimage, 153 N.J. 1 (1998).

Having considered these arguments in light of the record and controlling law, we affirm.²

In August 2014, Detective Gary Webb, Jr., of the Union County Prosecutor's Office, received information from a reliable confidential informant. The informant advised Webb that Natasha Bass, known to the informant as "Tammy," distributed a controlled dangerous substance (CDS), namely cocaine, from her single-family residence located in Plainfield.

According to the informant, Bass distributed cocaine to multiple individuals in the Plainfield area. The informant further advised that individuals seeking to purchase cocaine would approach the front door of Bass' residence whereupon Bass would open the door and conduct drug transactions either inside the residence or in the doorway.

The informant described Bass as a "black female, approximately [thirty] years of age, with light brown skin, long black hair, a heavy build and approximately five feet three inches tall." Detective Webb showed the informant a photograph of Bass, whereby the informant identified the person in the photograph as "Tammy." The informant agreed to participate in controlled drug purchases from Bass.

² Defendant filed a supplemental brief in which he repeats his challenge to the affidavit arguing lack of probable cause.

Two controlled drug purchases were conducted during the weeks of August 25, 2014 and September 1, 2014. Prior to each purchase, the informant was searched for CDS and United States currency, with negative results. Webb provided the informant with currency to conduct the transaction. In the presence of Webb, the informant contacted Bass and made arrangements to purchase cocaine at her West Fourth Street residence. On each purchase, detectives from the Union County Guns, Gangs, Drugs and Violent Crimes Task Force observed the informant meet with Bass outside her residence where the two engaged in a hand-to-hand transaction. After each controlled purchase, a lab analysis confirmed the CDS purchased was cocaine.

Records obtained by Webb from Public Service Electric and Gas (PSE&G), revealed that "Wanda Hendricks" (Wanda) was the current subscriber of the residence in Plainfield. The records of the New Jersey Motor Vehicle Commission (MVC) and New Jersey State Police Criminal Records Division (NJSP) noted Bass' address as being two house-numbers away from the residence in Plainfield.

On September 9, 2014, Webb applied for a search warrant for both the PSE&G residences and the residence listed for Bass in the records of the MVC and the NJSP. Based upon Webb's affidavit in support of the application, a Law Division judge signed the warrant authorizing the searches.

On September 11, 2014, Webb, assisted by other law enforcement officers, executed the search warrant.³ Upon gaining access to the residence, Wanda stated to the officers that, "you must be here for my brother, Andre."

The search of the premises revealed a white plate with two razor blades and suspected cocaine residue, along with paperwork bearing the name Andre Hendricks located inside a bedroom closet. A coffee mug in a kitchen cabinet was found to contain glassine folds of suspected heroin. Both the suspected cocaine residue and the heroin later tested as positive for those substances.

Detectives questioned Wanda regarding defendant's whereabouts. Wanda indicated that defendant was at his girlfriend Tara's⁴ house a few doors down. Wanda's ten-year old son pointed to a house located on West Fourth Street.

The officers went to that location. Upon their arrival, Tara permitted the officers to enter. Tara led them upstairs to a bedroom where defendant was sleeping. The officers woke up defendant. As defendant was dressing, Webb observed a hooded sweatshirt on the closet door, with the pocket wide open, exposing

³ On this appeal, defendant does not challenge the judge's determination, after a hearing, that the manner in which the search warrant was executed was reasonable.

⁴ "Tara's" was later determined to be Tarreia Caver.

a plastic bag with knots of suspected cocaine inside. Based on Webb's observation, defendant was ordered to go downstairs. Webb requested and obtained written consent from Tara to search the bedroom. Webb then searched the sweatshirt and seized the plastic bag that contained forty-four plastic knots suspected cocaine, a pack of cigarettes, and an identification card bearing the name Andre Hendricks. The suspected cocaine later tested positive for that substance.

Defendant was placed under arrest and verbally advised of his Miranda⁵ rights. After waiving his rights, defendant confessed that the cocaine and heroin seized from both residences belonged to him. Defendant was transported to police headquarters and again waived his rights. In a videotaped statement, defendant confirmed that the CDS found at the two residences belonged to him and his involvement with selling CDS.

We first address defendant's argument regarding the scope of the search warrant. The Fourth Amendment to the United States Constitution and the New Jersey Constitution protect individuals from unreasonable searches and seizures by the government. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. Accordingly, a search warrant should not issue "except upon probable cause, supported

⁵ Miranda v. Arizona, 384 U.S. 436 (1966).

by oath or affirmation." State v. Macri, 39 N.J. 250, 257 (1963). "[P]robable cause requires 'more than a mere suspicion of guilt' but less evidence than is needed to convict at trial." State v. Brown, 205 N.J. 133, 144 (2011) (quoting State v. Basil, 202 N.J. 570, 584 (2010)). New Jersey has adopted the totality of the circumstances test for determining whether warrants are based on probable cause as iterated in Illinois v. Gates, 462 U.S. 213, 230-32 (1983). See also State v. Novembrino, 105 N.J. 95, 113 (1987). Under the test, a court must therefore consider all relevant circumstances when determining the validity of a warrant. See State v. Smith, 155 N.J. 83, 92 (1998).

A "warrant is presumed valid and the burden of establishing its invalidity rests upon the defendant." State v. Singleton, 158 N.J. Super. 517, 525 (App. Div. 1978) (citing State v. Mark, 46 N.J. 262, 273 (1966)); State v. Gaudiosi, 97 N.J. Super. 565, 571 (App. Div. 1967). As a result, without proof that the warrant's issuance was improper, "the warrant-supported search ought to be regarded as cloaked with an aura of prima facie legality." State v. Kasabucki, 52 N.J. 110, 122-23 (1968).

Concerning defendant's arguments relative to the reliability of the informant, probable cause may be premised upon information received from informants, so long as there is "substantial evidence in the record to support the informant's statements." State v.

Keyes, 184 N.J. 541, 555 (2005). See also State v. Jones, 179 N.J. 377, 389 (2004); State v. Sullivan, 169 N.J. 204, 212-13 (2001). The court "must consider the 'veracity and basis of knowledge' of the informant as part of its 'totality' [of the circumstances] analysis." Keyes, 184 N.J. at 555. "A deficiency in one of those factors '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.'" State v. Zutic, 155 N.J. 103, 110-11 (1998).

The first prong of veracity may be shown by demonstrating that the informant has proven reliable by providing other dependable information in previous police investigations. Keyes, 184 N.J. at 555; Jones, 179 N.J. at 389; Sullivan, 169 N.J. at 213. The second prong of the basis of the informant's knowledge considers whether the informant obtained his information in a reliable manner. Keyes, 184 N.J. at 555; Smith, 155 N.J. at 94. Generally, an informant's basis of knowledge will be deemed sufficient "if the tip itself relates expressly or clearly how the informant knows of the criminal activity." Jones, 179 N.J. at 389 (quoting Sullivan, 169 N.J. at 213). The informant's knowledge may be demonstrated implicitly if "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." Smith, 155 N.J. at 94 (citing Novembrino, 105 N.J. at 113).

Even if the informant's tip does not demonstrate veracity or basis of knowledge, a judge may still issue a search warrant if other facts in the officer's affidavit justify a finding of probable cause. See Keyes, 184 N.J. at 556. The court, in its determination, must also consider the extent to which the police have corroborated the information in the tip through their own investigation. See ibid.; Smith, 155 N.J. at 95-96.

With these principles in mind, we are satisfied that the affidavit in support of the warrant provided ample probable cause for the issuance of the warrants both as to the person of Bass as well as the residence. Webb received information from a confidential reliable informant. The information imparted by the informant was verified by Webb both by the controlled purchases and by the location of the purchases. As such, defendant's argument that the issuance of the warrant for the location was without probable cause is unavailing.

We next address defendant's sentence. We review the trial court's sentencing decisions under an abuse of discretion standard. State v. Blackmon, 202 N.J. 283, 297 (2010). Pursuant to N.J.S.A. 2C:44-1(a) and (b), a trial court must consider statutory aggravating and mitigating factors. State v. Bieniek,

200 N.J. 601, 608 (2010). After a proper balancing of the relevant factors, "the trial court may impose a term within the permissible range for the offense." Ibid. However, the trial court must explain the reason underlying the findings. R. 3:21-4(g).

In reviewing a sentence, "[a]n appellate court is not to substitute its assessment of aggravating and mitigating factors for that of the trial court." Bieniek, 200 N.J. at 608 (citing State v. O'Donnell, 117 N.J. 210, 215 (1989)). "Appellate review of a sentence is restricted to whether the determination of the sentencing factors was appropriate, whether the determination was supported by competent evidence in the record, and whether the sentence is so unreasonable that it shocks the judicial conscience." State v. Paduani, 307 N.J. Super. 134, 148 (App. Div. 1998) (citations omitted).

When reviewing the trial court's sentence, we must ensure that the trial court followed the sentencing guidelines promulgated in the criminal code. See State v. Roth, 95 N.J. 334, 365 (1984). Specifically, we must (1) "require that an exercise of discretion be based upon findings of fact that are grounded in competent, reasonably credible evidence"; (2) "require that the factfinder apply correct legal principles in exercising its discretion"; and (3) modify sentences only when the facts and law

show "such a clear error of judgment that it shocks the judicial conscience." Id. at 363-64.

Defendant argues that his sentence pursuant to the Brimage Guidelines was excessive. We disagree. Persons convicted of certain drug offenses under the Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 to -31, are subject to a mandatory minimum term of imprisonment/parole ineligibility.

Here, there was a negotiated plea agreement pursuant to Brimage that provided for the State's sentence recommendation of eight years in state prison with a four-year-period of parole ineligibility. During the sentence hearing, the judge found aggravating factors three, six, and nine, and no mitigating factors. The judge also noted defendant's "substantial" prior criminal history, which included numerous disorderly person convictions, indictable convictions, violations of probation and parole, and a state prison sentence with a minimum period of parole ineligibility.


There was no dispute that, predicated upon that history, defendant was mandatory extended term eligible pursuant to N.J.S.A. 2C:43-6(f) (second time drug offender) or discretionary extended term eligible pursuant to N.J.S.A. 2C:44-3(a) and N.J.S.A. 2C:43-6(b) (persistent offender).

Having considered the record, we are satisfied that the sentence is not manifestly excessive or unduly punitive and does not constitute an abuse of discretion. See O'Donnell, 117 N.J. at 220; Roth, 95 N.J. at 362-63. We are further satisfied that the sentencing judge gave sufficient reasons for accepting the negotiated disposition and we find no basis for disturbing the sentence imposed in conformance therewith. See State v. Mastapeter, 290 N.J. Super. 56, 60 (App. Div. 1996). However, as the sentencing judge did not specify the statutory basis for imposition of the extended term, per R. 3:21-4(e), we are constrained to remand to the trial court to supplement the sentencing record for that purpose and for entry of an amended Judgment of Conviction.

Defendant's remaining arguments, not specifically addressed herein, lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2)(E).

Affirmed and remanded for further proceedings in accordance with our decision. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION