

438 U.S. 154 (1978), which the court denied. Following a stipulated bench trial, the court found the defendant guilty on both charges and sentenced him to two concurrent terms of 21 months' imprisonment in the Department of Corrections with 270 days' credit for time served. The defendant appealed. We affirm.

¶ 3

BACKGROUND

¶ 4

On November 12, 2010, Jeffrey D. Bullard, Sr., a detective captain with the Mount Vernon police department, presented a complaint for a search warrant to the trial court. In the complaint Officer Bullard averred that on November 12, 2010, while interviewing Dontae Harris at the police station, Mr. Harris provided information in a video/audio-recorded statement regarding criminal activity at 1708 South 12th Street, Mount Vernon. Mr. Harris told Officer Bullard that on November 11, 2010, at around 11 p.m., he had been at the residence visiting the defendant. An illegal narcotics transaction took place that "went bad and a black male he knew as 'Didi' used an assault rifle (described as an SKS) to shoot at some of the subjects on the opposing side." According to Mr. Bullard, "Didi" took the weapon back into the residence, and Mr. Harris did not see him take it when he left. Officer Bullard knew "Didi" as James Phyfiher. Mr. Harris further advised Officer Bullard that the defendant showed him a .50-caliber Desert Eagle semiautomatic handgun. Officer Bullard wrote that he checked the defendant's criminal record and learned "he was a convicted felon and was recently released from the Illinois Department of Corrections on parole to the address of 1708 S. 12th Street Mt. Vernon, IL." Officer Bullard stated that based on the foregoing information he believed that the defendant had committed the offenses of possession of a firearm by a convicted felon and possession of a controlled substance. He requested permission to search the residence located at 1708 South 12th Street along with "all places where said items may be secreted

including the persons of the occupants of said residence, any outbuildings and any parked vehicles associated with the residence."

¶ 5 On November 12, 2010, Judge Gamber issued the search warrant. Mount Vernon police officers executed the search warrant and found drugs inside the home, but no guns. The State subsequently charged the defendant with one count of unlawful possession of 1 gram or more but less than 15 grams of a substance containing cocaine with intent to deliver a controlled substance within 1,000 feet of a church and one count of unlawful possession of 1 gram or more but less than 15 grams of a substance containing heroin with intent to deliver within 1,000 feet of a church.

¶ 6 In the police incident/offense report completed by Officer Bullard about his arrest of the defendant on November 12, 2010, he described the steps taken to verify the information provided by Mr. Harris. Officer Bullard wrote that he checked the defendant's criminal history and found that he was a convicted felon who was recently paroled from the Illinois Department of Corrections to 1708 South 12th Street, Mount Vernon. He noted that one of the convictions was for manufacturing/delivery of a controlled substance in Jefferson County. Officer Bullard wrote that Officer McKee transported Mr. Harris along South 12th Street and he pointed out house number 1708 as the defendant's home, thereby confirming the address. Officer McKee called Officer Bullard and reported that there was a maroon Ford Escort with a New Mexico license plate parked in the driveway. Officer Bullard checked the license plate and found that the defendant was the owner of the vehicle.

¶ 7 In his report, Officer Bullard noted that when the warrant was executed, no one was home and the vehicle was gone. A signed receipt copy of the warrant was left in the residence. He wrote that during the course of the search he found the following

items: a black plastic film case containing a small clear plastic baggie of suspected heroin in the southwest bedroom, a clear plastic baggie of cannabis on the dining room table, a prescription pill bottle containing a small clear plastic baggie of suspected heroin in the utility room, a box of sandwich baggies, aluminum foil, and folded papers used for packaging illegal narcotics in the utility room, a small clear plastic baggie of suspected crack cocaine in the utility room, a spoon with suspected narcotic residue in the garage, a crack pipe in the garage, a set of electronic scales disguised as a music CD case in the garage, a purple Crown Royal bag containing a clear plastic baggie containing another clear plastic baggie of suspected heroin, and small folded papers containing suspected heroin.

¶ 8 On February 2, 2011, the defendant filed a *pro se* motion to quash warrant and to suppress evidence. On February 9, 2011, he filed a *pro se* motion to dismiss indictment. An affidavit was attached to this motion. The court record sheet shows that the affidavit was filed on March 3, 2011. Pursuant to his affidavit, the defendant stated that on November 11, 2010, Mr. Harris came to his house to return a DVD and stayed approximately five minutes. He left to go to Geo's Tavern. Between 10 p.m. and midnight, Mr. Harris called the defendant several times asking the defendant to join him. At 12:30 a.m. the defendant went to the tavern and picked up Mr. Harris, Mr. Harris's girlfriend, and Mr. Harris's sister and took them to Mr. Harris's house. They played cards until about 2:30 a.m. The defendant dropped Mr. Harris off at the corner of 15th and Cherry Streets and then picked him up again around 4 a.m. They stopped at the defendant's house so the defendant could use the bathroom. When he came out of the bathroom, Mr. Harris was smoking crack cocaine in his utility room. He dropped Mr. Harris off at a friend's house. The defendant stated that he last saw Mr. Harris at 4:45 a.m. on November 12, 2010. The defendant denied that Mr. Harris

was at his house at 11 p.m. on November 11, 2010, denied showing him any guns or heroin, denied knowing "Didi" or James Phyfiher, denied seeing any type of gun in his house, denied ever owning or possessing a gun, and denied having any drugs in his house to his knowledge. He stated that he was released two years prior from the Illinois Department of Corrections and paroled to New Mexico.

¶ 9 At a pretrial hearing on February 9, 2011, the court advised the defendant that if he had motions that he thought needed to be filed he needed to discuss them with his attorney because "[l]egally we have to have those filed by your attorney."

¶ 10 On February 14, 2011, the defendant's attorney filed a motion to dismiss the indictment. On March 2, 2011, his attorney filed a motion to suppress evidence. He argued that in his complaint for a search warrant, Officer Bullard relied entirely on information from Mr. Harris and that he did not include any facts or circumstances that led Officer Bullard to conclude that Mr. Harris was competent, accurate, and reliable, or that he had previously provided reliable information. He argued that Officer Bullard failed to state in the complaint the reason Mr. Harris was at the police department when he provided the information, failed to include information that Mr. Harris was an admitted crack cocaine smoker, and failed to state that Mr. Harris was a convicted criminal. He asserted that Officer Bullard erroneously wrote in his complaint that the defendant was recently released from the Illinois Department of Corrections, when he was actually released on November 12, 2008. He argued that the search warrant provided no detail as to the substance alleged to be a controlled substance or any facts showing Mr. Harris's experience identifying drugs.

¶ 11 On March 3, 2011, the State filed an objection to the defendant's motion to dismiss the indictment and an objection to the defendant's motion to suppress. The State argued that the defendant made no allegation that the complaint for search

warrant contained any deliberate falsehoods or reckless disregard for the truth. It further asserted that the defendant provided no offer of proof, affidavits, or sworn statements or any explanation of their absence in support of his motion as required by *Franks v. Delaware*, 438 U.S. 154 (1978). The State concluded that the defendant's motion merely outlined omissions, and regardless of the omissions, the complaint for search warrant supported a finding of probable cause.

¶ 12 On March 3, 2011, the defendant filed a supplemental motion to suppress evidence alleging that the complaint for a search warrant was based on information relayed with reckless disregard for the truth by the affiant and deliberate falsehood by the informant.

¶ 13 On March 3, 2011, the court heard the defendant's motion to dismiss the indictment and his motion to suppress evidence. The defendant and the State opted to stand on their arguments in their pleadings relative to the motion to dismiss the indictment. The court denied the defendant's motion to dismiss the indictment. The parties argued the motion to suppress evidence.

¶ 14 The defendant argued that Officer Bullard had a reckless disregard for the truth in providing the information in the complaint for the search warrant as evidenced by the fact that he did not disclose to the court that Mr. Harris was an admitted crack cocaine smoker with a criminal record. He asserted that Officer Bullard failed to prove that Mr. Harris was a reliable witness because there was no evidence of any previous occasion where Mr. Harris had provided accurate information, nor was there evidence that he had any experience in identifying controlled substances. The defendant asserted that the only effort the police made to corroborate the information provided by Mr. Harris was to drive by the residence to verify the street number of the house.

¶ 15 The defendant further alleged that Mr. Harris's motives were not pure because he came into the police department under arrest and he left "un-arrested." Officer Bullard testified that at the time Mr. Harris provided the information about the defendant, he was at the police department and was under arrest. Officer Bullard testified that no deals were made to provide him with an incentive to give information about other crimes, but he admitted that after providing the information about the defendant, Mr. Harris was "un-arrested." The defendant concluded that the police failed to provide the court with sufficient information for a search warrant to be issued.

¶ 16 The State argued that Officer Bullard provided the court with probable cause to search the defendant's residence. Officer Bullard testified as to the actions taken to corroborate the information provided by Mr. Harris. Officer Bullard stated that an officer took Mr. Harris to South 12th Street where he identified the house the defendant lived in and where the activities he described took place. Additionally, Officer Bullard testified that he checked the out-of-state license plate on the vehicle parked in the driveway of the residence and the defendant was listed as the owner. He also checked the defendant's criminal history, which showed that he was paroled to that same address.

¶ 17 The State argued that the police found items during the search that Mr. Harris had told Officer Bullard were located at the defendant's residence. The defendant argued that Mr. Harris claimed there were guns at his house, but none were found. Officer Bullard admitted that Mr. Harris told him that weapons were present at the residence, but none were found during the search. When asked if gunfire was reported the night before he spoke with Mr. Harris, Officer Bullard replied in the negative but clarified that it was not unusual because in that neighborhood of Mount

Vernon, "it's not uncommon for shots to be fired and no police report to be made."

¶ 18 The State further argued that because the defendant was on parole, pursuant to *People v. Wilson*, 228 Ill. 2d 35 (2008), he did not have an expectation of privacy in his home and by consenting to the terms of mandatory supervised release, he consented to the search of his residence. The defendant argued that *Wilson* was distinguishable because in that case the police were acting at the direction of the parole officer and in the instant case, the police knew he was on parole but did not contact his parole officer before the search.

¶ 19 The court denied the motion to suppress evidence. The court noted that the defendant had offered "absolutely nothing to establish any kind of reckless disregard for the truth from Officer Bullard in the presentation he made to the Court for a Search Warrant." It stated that a police officer's decision to obtain a search warrant is *prima facie* evidence that the officer was acting in good faith. The court noted that Officer Bullard provided the name of the individual from whom he obtained the information. Additionally, Officer Bullard corroborated the address by driving by and having Mr. Harris identify the residence. The court found that Officer Bullard truthfully presented evidence under oath to the court and found probable cause to issue a search warrant.

¶ 20 The defendant filed numerous *pro se* motions. At a motion hearing on March 9, 2011, the defense attorney indicated that the defendant was unhappy with his representation and wished to address the court. The defendant argued the motion to suppress. The court informed the defendant that he basically argued a motion to reconsider. It pointed out that it did not have to reconsider the defendant's argument, but opted to allow it as a motion to reconsider. The court denied the motion to reconsider. The court told the defendant that when he requests an attorney and

counsel is appointed, pleadings must be filed by the attorney and cannot be filed *pro se*. The defendant's attorney addressed the court and stated that in discussing the case for trial he "believe[d] the attorney/client relationship is that he doesn't feel confident enough in me to discuss the details of the case." The court told the defendant that it appeared that his counsel stated he could no longer represent the defendant. It asked the defendant if he wished to represent himself or if he wanted the court to appoint new counsel. The defendant stated that he chose to represent himself. The court allowed the defendant's attorney to withdraw based on the defendant's oral motion.

¶ 21 On March 10, 2011, the court held a pretrial hearing. The defendant represented himself. The State informed the court that the State Police Forensic Center still did not have the lab report generated, but that the heroin weighed 2.5 grams and the cocaine weighed 4.8 grams. The court explained the charges to the defendant again including the weight of the drugs. The defendant asked to file a motion to exclude the lab report. The court denied his request to exclude the report. The defendant indicated that he had additional motions to file including a motion to substitute judge.

¶ 22 On March 30, 2011, the motion for substitution of judge was heard. The defendant proceeded *pro se*. The court found that the defendant failed to show actual prejudice in the form of animosity, hostility, ill will, or distrust toward the defendant by the judge. As a result of the defendant's failure to meet his burden of proof, the motion was denied. The defendant requested that he be appointed an attorney. An attorney was appointed.

¶ 23 On July 7, 2011, the defendant, through his attorney, filed a motion for a *Franks* hearing to quash the search warrant and suppress evidence illegally seized.

The defendant requested a hearing to determine whether false statements contained in the body of the complaint for search warrant were made either knowingly or in reckless disregard for the truth by the affiant, Officer Bullard. In his motion, the defendant denied ever having sold contraband to any person and denied ever having possession of any firearm on November 11, 2010. He asserted that the complaint for search warrant was signed by Officer Bullard absent any independent police corroboration of Mr. Harris's allegations and with the knowledge that the averments in the complaint were falsehoods or made with reckless disregard for the truth. Specifically he complained that the omission of the fact that Mr. Harris was a habitual felon and that he was an admitted crack cocaine smoker "aggravates the means of justice."

¶ 24 On July 14, 2011, the State filed an objection to the defendant's motion for discharge and an objection to the defendant's motion to quash search warrant and suppress evidence illegally seized. The State noted that the defendant was on a term of mandatory supervised release at the time of the search and argued that under the ruling in *People v. Wilson*, a person who is on mandatory supervised release is subject to a search and seizure of his residence with or without reasonable suspicion. The State asserted, therefore, that the search of the defendant's house was well within the parameters of the law and that his motion to quash the search warrant and suppress the evidence illegally seized should be stricken.

¶ 25 On July 15, 2011, the court heard the defendant's motion for a *Franks* hearing. The defendant argued that the search warrant was obtained unlawfully because the complaint was delivered to the court under the false guise of information that was either not true or not completely true. The State argued that the issue had already been addressed in the defendant's motion to suppress that was ruled on in the State's

favor. Alternatively the State argued that the defendant was on mandatory supervised release and pursuant to *People v. Wilson*, the police had the right to search his residence. The court found that the *Wilson* case was applicable. The court further stated that the defendant simply denied the allegations and "a mere denial does not meet the substantial preliminary showing that the defendant must make that there was a false statement, either knowingly or intentionally made, or with reckless disregard for the truth." The court found that the fact that Mr. Harris had a prior criminal history was of no effect with regard to whether or not he was truthful. The court pointed out that most informants have prior criminal histories. The court found that Officer Bullard was well aware of the criminal history of Mr. Harris and that he took action to corroborate the information he received from Mr. Harris. The court found that "[n]othing in here provides this court with any preliminary showing of any type of false or reckless statement, and so the Motion for Franks hearing is denied."

¶ 26 On July 21, 2011, there was a stipulated bench trial. The State amended the information by interlineation, striking the wording "intent to deliver" and "within 1,000 feet of a church" from both charges. The defendant was charged with unlawful possession of 1 gram or more but less than 15 grams of a substance containing cocaine and unlawful possession of 1 gram or more but less than 15 grams of a substance containing heroin.

¶ 27 The State presented stipulated facts. The defendant disputed that he was in possession of the drugs and argued that the items were found in his home absent his knowledge. The court found the defendant guilty of both counts. The parties recommended concurrent sentences of 21 months' incarceration in the Department of Corrections, followed by one year of mandatory supervised release, and that the defendant receive credit for 270 days of time served in custody. The court accepted

the recommendation and entered the proposed sentence. The defendant filed a timely notice of appeal.

¶ 28

ANALYSIS

¶ 29

The defendant argues that the complaint upon which the search warrant was based failed to provide the trial court with a substantial basis for determining the existence of probable cause. The defendant acknowledges that while he moved to suppress the warrant for lack of probable cause, the issue was not presented in a posttrial motion. As a result, this court can only review this matter as plain error.

¶ 30

"[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step a reviewing court takes in a plain error analysis is to determine whether any error at all occurred. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 51.

¶ 31

This court should consider only the facts which the judge heard at the warrant application proceeding when determining whether a search warrant was supported with probable cause. *People v. Bryant*, 389 Ill. App. 3d 500, 511 (2009). "[W]here we are reviewing the sufficiency of the evidence presented to the trial judge who issued the search warrant to determine whether sufficient probable cause was present for him to do so—United States Supreme Court doctrine mandates that the standard of review should be deferential." *Id.* at 513. "That deference is reflected most prominently in close cases." *People v. Lenyoun*, 402 Ill. App. 3d 787, 792 (2010).

"A judge asked to issue a search warrant may draw reasonable inferences from material supplied, and although it may not be easy to determine when an affidavit demonstrates probable cause, doubtful or marginal cases are largely resolved by resorting to the preference accorded to warrants." *People v. Beck*, 306 Ill. App. 3d 172, 179 (1999).

¶ 32 "Whether probable cause exists in a particular case depends on the totality of facts and circumstances known to an affiant applying for a warrant at the time the warrant is sought." *People v. McCarty*, 223 Ill. 2d 109, 153 (2006). By adopting the totality-of-circumstances approach, the United States Supreme Court abandoned its former test for assessing the reliability of an informant's tip and no longer requires that a police officer seeking a warrant disclose the underlying circumstances from which the informant drew his conclusions and those from which the police officer concluded that his informant was credible. *People v. Tisler*, 103 Ill. 2d 226, 239 (1984). Probable cause exists when the totality of the facts and circumstances within the affiant's knowledge at that time is sufficient to warrant a person of reasonable caution to believe that the law was violated and evidence of the violation is on the premises to be searched. *McCarty*, 223 Ill. 2d at 153. The issuing judge's task is to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him or her, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.* The reviewing court must not substitute its judgment for that of the judge in construing the affidavit, but must merely decide whether the judge had a substantial basis for concluding that probable cause existed. *Id.*

¶ 33 When the credibility of an informant is at issue, the court should consider several factors, such as the informant's personal observations, the degree of detail

given, independent police corroboration of the information provided by the informant, and whether the informant testified at the probable cause hearing. *People v. Smith*, 372 Ill. App. 3d 179, 182 (2007). No single factor is dispositive, and a weakness in one area can be offset by a strong showing in another. *Id.*

¶ 34 A tip from a known informant is more reliable than an anonymous tip because the known informant can be held responsible if his or her allegations turn out to be fabricated. *People v. Kline*, 355 Ill. App. 3d 770, 776 (2005). "When a tip comes from an identifiable witness, only a minimum of corroboration or other verification of the reliability of the information is required, because the witness puts himself or herself in position to be criminally liable for a false complaint." *People v. DiPace*, 354 Ill. App. 3d 104, 109 (2004). In the instant case, the informant was known. Mr. Harris already had a criminal history and was under arrest at the police station at the time he provided Officer Bullard with the information. While the defense argues that he had something to gain from providing the information, he also placed himself at risk if he provided false information.

¶ 35 Information may be sufficiently reliable to support a finding of probable cause if it is corroborated by independent evidence. *Bryant*, 389 Ill. App. 3d at 520. When a tip is proved accurate on some counts, the informant is more likely to be correct about other details. *Tisler*, 103 Ill. 2d at 238. Corroboration reduces the chance of acting on a false tip and establishes a basis for crediting the tip. *Bryant*, 389 Ill. App. 3d at 520-21. In the instant case, Mr. Harris told Officer Bullard that he was present at the defendant's home when a drug deal involving "Didi" "went bad." Officer Bullard swore in the complaint that he knew "Didi" as James Phyfifer. In the complaint, Officer Bullard stated that he ran a check of the defendant's criminal history and found that the defendant was a convicted felon and had been paroled to

the house identified by Mr. Harris as the defendant's residence. Officer Bullard swore he was familiar with one of the individuals Mr. Harris alleged was involved in criminal activity, he verified that the address provided by Mr. Harris was the residence of the defendant, and he learned that the defendant was a convicted felon on parole for manufacturing/delivery of a controlled substance in Jefferson County. The steps taken by Officer Bullard met the minimum corroboration of a tip required of a known informant such as Mr. Harris.

¶ 36 "The extent of details contained in a complaint for search warrant matters." *Bryant*, 389 Ill. App. 3d at 521. When an informant provides a statement that he witnessed the event firsthand and he provides a detailed description of the wrongdoing, his tip is entitled to greater weight than might otherwise be the case. *Id.* at 521-22. In the instant case, Mr. Harris gave a detailed description of events he observed, and this information was included in the complaint for a search warrant. He informed Officer Bullard that he was at the defendant's house when an illegal drug transaction took place. He stated that "Didi" was brandishing an SKS assault rifle that he took into the defendant's residence, and Mr. Harris did not see him take the gun when he left. Additionally, Mr. Harris said the defendant showed him a .50-caliber Desert Eagle semiautomatic handgun. Mr. Harris further told Officer Bullard that he saw other firearms and heroin inside the defendant's residence. He stated that most of the firearms and heroin were kept in the defendant's bedroom. Not only did Mr. Harris provide Officer Bullard with specifics about two of the firearms he saw at the defendant's residence, he told him the type of drug and where it was likely to be found. "The fact that the information supporting the officer's reasonable suspicion came from the victim or an eyewitness does not make the tip presumptively reliable, but it is entitled to particularly great weight in evaluating the informant's reliability."

DiPace, 354 Ill. App. 3d at 108-09. "A strong inference that a person is a direct witness to the offense is more indicative of reliability than a weak inference of some source of inside information." *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 852 (2003).

¶ 37 Officer Bullard had additional reasons to believe that the defendant violated the law and that contraband would be found at his residence. Mr. Harris was an admitted drug user. When an informant provides information about illegal drug activity, "[a]n admission of familiarity with illegal substances bolsters the information's reliability." *Smith*, 372 Ill. App. 3d at 184. Officer Bullard knew that the defendant had been convicted for manufacturing/delivery of a controlled substance in Jefferson County, and in his complaint for a search warrant he stated that the defendant was a convicted felon. Because the recidivism rate of probationers is significantly higher than the general crime rate, the institution of probation assumes that the probationer is more likely than the ordinary citizen to violate the law. *United States v. Knights*, 534 U.S. 112, 120-21 (2001). Given the information provided by Mr. Harris coupled with the defendant's prior conviction, Officer Bullard and the issuing judge had a justifiable concern that the defendant was more likely to engage in criminal activity than an ordinary member of the community.

¶ 38 The judge who reviewed Officer Bullard's complaint for a search warrant was presented with detailed information from a known informant who was an eyewitness to criminal activity. Officer Bullard provided the judge with a description of the steps he took to corroborate the information provided by Mr. Harris. When reviewing the issuance of the search warrant with deference to the issuing judge, we find that although each piece of information presented to the judge might not have provided much weight when assessed on an individual basis, the collective weight of the

