2023 IL App (5th) 220201-U

NO. 5-22-0201

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Christian County.
	)	
v.	)	No. 18-CF-246
	)	
LARRY SKINNER,	)	Honorable
	)	Bradley T. Paisley,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Boie and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The complaint for a search warrant was sufficient to support the issuing judge's determination of probable cause, and as such, the trial court's denial of the defendant's motion to quash warrant and suppress evidence was correctly denied; and, the trial court incorrectly considered factors inherent in the offense committed by the defendant as aggravating factors.

¶ 2 Pursuant to a search warrant issued and executed on September 27, 2018, law enforcement from the Central Illinois Enforcement Group (CIEG) arrested the defendant, Larry Skinner, for unlawful possession with intent to deliver 15 or more grams but under 100 grams of methamphetamine. After a stipulated bench trial, the defendant was convicted of possession of methamphetamine with intent to deliver and sentenced to 14 years in prison followed by 18 months of mandatory supervised release (MSR). The defendant now appeals his conviction and sentence on the following grounds: first, that the circuit court erred when it found the complaint for a search

warrant established probable cause to search the defendant's house, and second, that the circuit court erred when it considered factors in aggravation that were inherent in the offense when imposing the 14-year sentence.

¶ 3 I. BACKGROUND

¶ 4 On September 27, 2018, Officer Alan Bailey filed a complaint for a search warrant in the Christian County circuit court. The complaint sought a warrant to search the "residence, outbuildings, vehicles, and cell phones of, Larry E. Skinner *** or Kerri L. Skinner *** located at 908 W. Vandeveer St. Taylorville, IL." The complaint described the residence as "yellow in color, faces north, with a detached garage to the south of the house," and stated that law enforcement sought to seize any of the following which were used in the commission of, or constituted evidence of, the offense of possession of a controlled substance with intent to deliver:

> "1. Controlled Substances or cannabis.
> 2. Scales, plastic bags, ties, drug paraphernalia, as well as any and all documents relating to the purchase, sale, or distribution of controlled substances.
> 3. United States Currency.
> 4. Documents indicating residency.
> 5. Cellular phones, lockable briefcases/containers and safes, including authority to search any cellular phones, safes or locked briefcases/containers.
> 6. Any illegally possessed firearms."

¶ 5 The complaint then listed the factual basis upon which the officer had cause to believe such evidence was located at the defendant's residence. First, it stated that the affiant was a deputy sheriff in Christian County and had been a deputy sheriff for more than 15 years. He currently was assigned to the Illinois State Police, CIEG, with the rank of Inspector. He received specialized training in drug investigation and had experience in the field of narcotics investigations. Next, the complaint asserted that the affiant received information that the defendant was selling methamphetamine out of his house located at 908 W. Vandeveer St., Taylorville, Illinois, from two confidential sources (CS) 18-10131, and, the affiant received information from CS 15-

15879CI that the defendant was selling methamphetamine. The complaint stated that both informants had previously provided reliable information on more than one occasion and that both informants were also convicted felons. The complaint asserted that the affiant checked with the Taylorville Water Department and found that the water service for 908 W. Vandeveer St. was in the defendant's name. The affiant checked with the Secretary of State's office as well and found that Kerri Skinner and the defendant both had registered vehicles to that address.

¶ 6 In addition, the complaint recounted that a day before, on September 26, 2018, the affiant conducted a trash pull from the trash can located outside the residence. The officers removed two standard size white bags and two large black bags of trash. After searching the trash bags, they found a letter from the Illinois Department of Revenue addressed to the defendant at 908 W. Vandeveer St. and two photographs of the defendant. The officers also found three plastic sandwich baggies; two of the baggies had the bottom corners removed, and the third had one corner removed. They found a baggie corner tied off as well. Finally, the complaint stated that the affiant checked the defendant's criminal history and found that he had four previous convictions for dangerous drugs, at least one of which involved methamphetamine.

¶ 7 Based on this complaint, the circuit court issued a search warrant, and the officers subsequently executed a search of the property. They discovered two plastic baggies containing 24.2 grams of methamphetamine, a blue digital scale, several small plastic bags, $370 in U.S. currency, a notebook with suspected drug notes, items of cannabis, and paraphernalia. The defendant was arrested and charged for unlawful possession with intent to deliver (720 ILCS 646/55(a)(1), (a)(2)(C) (West 2020)).

¶ 8 On February 9, 2021, the defendant filed a motion to quash warrant and suppress evidence, and the trial court later held a hearing in December. After the hearing, the court issued an order

denying the motion. Subsequently, the defendant waived his right to a jury trial, his counsel renewed an objection to the search warrant, and the parties proceeded to a stipulated bench trial on February 17, 2022. The court properly admonished the defendant, and he stated that he understood. The State then proceeded by way of proffer and presented the evidence against the defendant. The defendant did not present any evidence and waived his right to testify.

¶ 9 The trial court subsequently found the defendant guilty and continued the matter for sentencing. At the sentencing hearing, the State presented the testimony of Detective Alan Bailey as evidence in aggravation. The defendant submitted a letter in allocution mainly focusing on his drug addiction. The parties then offered oral argument, and the court sentenced the defendant to 14 years in prison to be followed by 18 months of MSR. The defendant timely filed his notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, the defendant first argues that the circuit court erred when it found that the complaint for a search warrant established probable cause to search the defendant's house, and therefore, the ruling on the motion to quash the warrant and suppress evidence should be reversed; second, the defendant argues that the circuit court erred when, in sentencing the defendant, it incorrectly considered multiple factors in aggravation as they were inherent in the offense.

¶ 12 A. Sufficiency of the Complaint for a Search Warrant

¶ 13 Generally, when the only issue is whether a complaint establishes probable cause, our analysis considers the issuing judge's initial determination, not the trial court's assessment thereof on a motion to quash and suppress. *People v. Bryant*, 389 Ill. App. 3d 500, 511 (2009). Therefore, "if the complaint provided a substantial basis for the issuing judge's probable-cause determination,

we will affirm the trial court's denial of a defendant's motion to quash and suppress." *People v. Brown*, 2014 IL App (2d) 121167, ¶ 23.

¶ 14 First, the State asserts the defendant is now arguing the complaint was stale, when in the trial court, the defendant did not advance this argument, and as such, the issue is forfeited. See *People v. Estrada*, 394 Ill. App. 3d 611, 626 (2009) (noting that it is axiomatic that arguments may not be raised for the first time on appeal). We disagree. Below, the defendant's motion to quash warrant and suppression of evidence argued that:

> "No information was provided in the Affidavit detailing with specificity how the confidential sources came to their conclusion or any information that they had personal knowledge of any alleged activity."

The motion also asserted that:

> "11. *** These were merely conclusory statement made by felons. There were no indication of dates or times of sales or any other specificity that would indicate how they knew the Defendant was selling methamphetamines. Nor was there any specificity they knew that the Defendant was selling out of his home. There were no corroborating facts from the confidential sources themselves.
>
> 12. To allow fishing expeditions based upon confidential sources just relating names to law enforcement without specificity as to dates, times, and personal knowledge to support conclusory statements creates an environment to which search warrants can be issued at any time just by naming a person and an alleged criminal activity."

¶ 15 It is clear that, while the defendant did not use the term "stale," he was making the same argument he is here—that the complaint lacked specific facts to support a determination of probable cause. As such, we do not consider the argument forfeited. We now turn to the merits of the defendant's arguments.

¶ 16 As stated, the defendant argues that the complaint lacked specific facts supporting a finding of probable cause to issue a search warrant. He contends that, because the complaint lacked any details as to how the confidential sources knew any information about his activities and lacked any temporal references, it was deficient. If the confidential informant tips were the only

underpinnings of the complaint, the defendant may be correct in his argument; however, the complaint rested on more than just the information provided by the informants.

¶ 17 The complaint also recounted that a day before the search warrant was issued, the affiant conducted a trash pull from the trash can located outside the defendant's residence. The officers removed two standard size white bags and two large black bags of trash. After searching the trash bags, they found a letter from the Illinois Department of Revenue addressed to the defendant at 908 W. Vandeveer St. and two photographs of the defendant. The officers also found three plastic sandwich baggies; two of the baggies had the bottom corners removed, and the third had one corner removed. They found a baggie corner tied off as well. The complaint also asserted that the affiant checked with the Taylorville Water Department and found that the water service for 908 W. Vandeveer St. was in the defendant's name, and the affiant checked with the Secretary of State's office as well and found that the defendant had a registered vehicle at that address. Finally, the complaint stated that the affiant checked the defendant's criminal history and found that he had four previous convictions for dangerous drugs, at least one of which involved methamphetamine.

¶ 18 Viewed in the totality of the circumstances, we find that the complaint provided a substantial basis for the issuing judge's probable-cause determination and affirm the trial court's denial of the defendant's motion to quash and suppress.

¶ 19 B. Sentencing

¶ 20 Alternatively, the defendant asks this court to remand the case for a new sentencing hearing because the trial court erred when it considered multiple aggravating factors that were inherent in the offense. It is undisputed that the defendant did not preserve this issue, and therefore, he asks us to review it under the plain-error rule.

¶ 21 The plain-error doctrine is a narrow and limited exception. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Regarding sentencing, a defendant must show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny defendant a fair sentencing hearing. *People v. Hall*, 195 Ill. 2d 1, 18 (2000). Under both prongs of the plain-error doctrine, defendant has the burden of persuasion. *Hillier*, 237 Ill. 2d at 545. Before considering whether the plain-error rule applies, we must first determine whether any error occurred. *People v. Glasper*, 234 Ill. 2d 173, 203-04 (2009).

¶ 22 Here, the defendant contends that the error was that the trial court improperly considered an aggravating factor which was also an inherent factor in the offense. "Generally, a factor implicit in the offense for which the defendant has been convicted cannot be used as an aggravating factor in sentencing for that offense." *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). Put another way, "a single factor cannot be used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed." (Internal quotation marks omitted.) *Id.* at 11-12. Such use is often referred to as a "double enhancement." (Internal quotation marks omitted.) *Id*. at 12. "The prohibition against double enhancements is based on the assumption that, in designating the appropriate range of punishment for a criminal offense, the legislature necessarily considered the factors inherent in the offense." *Id.*

¶ 23 The defendant argues that the trial court's consideration of his receipt of compensation for selling drugs as an aggravating factor was improper because receipt of compensation is also an inherent factor of the offense. Receipt of compensation is inherent in a conviction for possession with intent to deliver, and thus cannot be considered at sentencing. *People v. Conover*, 84 Ill. 2d 400, 405 (1981). However, other courts have found exceptions to this rule. For example, a court may consider a defendant's efforts to maximize profits from a drug enterprise in sentencing (see

People v. M.I.D., 324 Ill. App. 3d 156, 159-60 (2001)), or may consider when the proceeds relate to things like the extent and nature of a defendant's involvement in a criminal enterprise, a defendant's underlying motivation, the likelihood of a defendant's commission of similar offenses in the future, and the need to deter others from committing similar crimes. *People v. Rios*, 2011 IL App (4th) 100461, ¶ 15.

¶ 24 The State argues the trial court properly considered the receipt of compensation because it explained the defendant's underlying motivation for selling methamphetamine, informed the trial court's assessment of whether the defendant would likely commit similar offenses, and explained why it was necessary for the court to fashion a sentence that would deter others from committing similar crimes. At sentencing, the court briefly mentioned that the defendant was selling large amounts of methamphetamine by stating:

> "That he received compensation for committing the offense. Apparently he was, by his own admission, selling in addition to using the methamphetamine that he was purchasing in bulk, I think by the ounce. I think his testimony was—or his statement was that he was—in the PSI was that he was using two to three grams a day. There's around 28 grams in an ounce. So if he just used for himself at two grams a day, he's going to have to re-up every two weeks. But we know that he was also, by his own admission, selling. So he had to be going through more than a gram in less than two weeks if that was a continual operation."

¶ 25 Based on our review of the record, we disagree with the State. The trial court did not link its consideration of the receipt of compensation to any alleged criminal enterprise, underlying motivation, or likelihood of repeated offenses. This case hardly appears to be one where a defendant was running a large-scale criminal enterprise. The considerations of the trial court seem to be those that would be inherent in the offense, which the legislature already considered.

¶ 26 The defendant also argues that the trial court incorrectly considered his threat of serious harm as it too was inherent in the offense. "If a trial court intends to consider the societal harm defendant's conduct threatened to cause as an aggravating factor, the record must demonstrate that

the conduct of the defendant had a greater propensity to cause harm than that which is merely inherent in the offense itself." *People v. McCain*, 248 Ill. App. 3d 844, 852 (1993). At sentencing, the court considered the threat of harm and stated:

> "There's no evidence that his conduct caused serious harm to anybody, but anytime—I agree with the State—when you're dealing a dangerous drug like methamphetamine or selling it in the community, it's obviously going to threaten serious harm for a lot of reasons. You run the risk of obviously somebody becoming addicted, you know, committing other crimes in the community, and the whole thing just keeps getting perpetuated. So, there's no question that his conduct threatened serious harm. That is an aggravating factor in this case."

¶ 27 Once again, the trial court did not make any findings that the threat of harm in this case was any different than an ordinary threat of harm that may be caused which is inherent in the offense. The record before us does not show that the defendant had a greater propensity to cause harm than that which is inherent in the offense itself. It is obvious that the considerations listed by the court would also be the basic considerations of the offense itself.

¶ 28 As such, we hold that there was an error. We also hold that the error violated the defendant's right to a fair sentencing hearing. By considering these factors, which were inherent in the offense, the trial court committed a double enhancement that subjected the defendant to a harsher penalty than he may otherwise would have had. See *People v. Whitney*, 297 Ill. App. 3d 965, 969 (1998) ("a defendant has a right not to be sentenced based upon improper factors in aggravation, and a trial judge's reliance upon an improper factor in sentencing impinges upon a defendant's 'fundamental right to liberty' " (quoting *People v. Martin*, 119 Ill. 2d 453, 458 (1988))), *aff'd*, 188 Ill. 2d 91 (1999).

¶ 29 Thus, we remand for a new sentencing hearing with instructions to properly consider factors in aggravation.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we hold that the trial court did not err in denying the defendant's motion to quash warrant and suppress evidence and affirm the conviction. However, we also hold that the trial court improperly considered factors in aggravation that were inherent in the offense.

¶ 32 Affirmed in part and remanded in part.