SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1660-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT L. WASHINGTON,
a/k/a WILLIAM LYONS,

Defendant-Appellant.

Submitted September 18, 2023 – Decided October 13, 2023

Before Judges Mawla and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 18-01-0039.

Joseph E. Krakora, Public Defender, attorney for appellant (Marcia Blum, Assistant Deputy Public Defender, of counsel and on the briefs).

Robert J. Carroll, Morris County Prosecutor, attorney for respondent (Robert J. Lombardo, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Robert Washington appeals from an April 11, 2018 order denying a motion to suppress evidence following a no-knock warrant executed on his residence. Based on our review of the record and the applicable legal principles, we affirm.

I.

In October 2017, the New Jersey State Police ("NJSP") received information from a confidential informant defendant was running a drug distribution operation out of his home in Victory Gardens. Based on this information, the NJSP conducted multiple controlled buys from defendant.

On November 2, 2017, defendant was charged with possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1); possession of CDS with the intent to distribute, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(3); and distribution of CDS, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(3), all third-degree offenses.

On the same date, the State applied for a no-knock search warrant of defendant's residence. Under the "method of entry" section of the affidavit, it was noted defendant had thirty-three prior arrests, fourteen felony convictions, and had violated parole on four different occasions. The officer executing the affidavit further noted defendant had "multiple convictions for possession of

CDS, distribution of CDS, manufacturing of CDS, aggravated assault, aggravated assault on law enforcement[1] and resisting arrest charges." Lastly, the affidavit stated:

> It is this [a]ffiant's belief that knocking and announcing the presence of law enforcement prior to effectuating the search warrant will put officers in harm's way and could hamper law enforcement's ability to effectuate arrests and seize evidence, which could be destroyed prior to executing the search warrant, if law enforcement knocked and announced before entering.

A judge found the affidavit established probable cause, and he signed the search warrant. However, the judge did not mark or circle certain words and phrases in the pre-printed method of entry section at the bottom of the warrant. The method of entry portion of the warrant read as follows:

> Based on the information set forth in the affidavit and/or testimony submitted in support of this [w]arrant, the officers executing said warrant (shall) (shall not) be permitted to enter the premises, place or vehicle to be searched or to seize the person to be searched without first knocking and announcing their presence.
>
> Based on the information set forth in the affidavit and/or testimony submitted in support of this [w]arrant, I (find) (do not find) a reasonable particularized

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1 As discussed below, defendant actually had two prior convictions for aggravated assault on a law enforcement officer. One conviction was from 1990, and the other was from 2002.

> suspicion to believe that a no-knock entry is required to:
>
> ☐ Prevent the destruction of evidence; and/or
>
> ☐ Protect the safety of the officers executing said warrant; and/or
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> ☐ Effectuate the arrest and/or seizure of evidence.

The judge placed an "X" in the three boxes referenced above. He did not, however, circle or mark the parenthetical "shall" or "shall not" in the first paragraph, or "find" or "do not find" in the second paragraph.

In November 2017, the search warrant was executed. As a result of the search, defendant was charged with additional crimes: third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1); and possession of drug paraphernalia, N.J.S.A. 2C:36-2, a disorderly persons offense.

In January 2018, a Morris County Grand Jury indicted defendant with two counts of possession of CDS, two counts of possession with intent to distribute, and three counts of distribution of CDS, all third-degree offenses.

In March 2018, defendant filed a motion to suppress evidence obtained via the November 2017 no-knock search warrant, which the motion judge denied. Defendant subsequently entered a conditional plea to the charge of possession of CDS with the intent to distribute (count two), reserving the right

to appeal the suppression motion decision. The remaining charges were dismissed, including the offenses stemming from the evidence seized during the execution of the November 2017 search warrant. This appeal followed.

II.

Defendant raises the following points on appeal:

> POINT I
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> THE EVIDENCE MUST BE SUPPRESSED BECAUSE IT WAS SEIZED AS THE RESULT OF AN UNAUTHORIZED AND UNJUSTIFIED NO-KNOCK ENTRY OF DEFENDANT'S HOME IN VIOLATION OF HIS CONSTITUTIONAL PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES.
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> A. Under the New Jersey Constitution, evidence seized in violation of a knock-and-announce warrant is excluded.
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> B. The evidence must be suppressed because the warrant did not authorize a no-knock entry.
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> C. There was insufficient reasonable suspicion to justify a departure from the constitutional knock-and-announce requirement.

More particularly, defendant argues the evidence must be suppressed because the warrant did not clearly authorize a no-knock entry into his home. In the alternative, defendant asserts even if the warrant authorized a no-knock

entry, the evidence must still be suppressed because there was insufficient reasonable suspicion to justify a no-knock entry.

"Appellate courts reviewing a grant or denial of a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Lamb, 218 N.J. 300, 313 (2014) (citing State v. Elders, 192 N.J. 224, 243 (2007)). "Thus, appellate courts should reverse only when the trial court's determination is 'so clearly mistaken "that the interests of justice demand intervention and correction."'" Ibid. (quoting Elders, 192 N.J. at 244).

"A trial court's interpretation of the law, however, and the consequences that flow from established facts are not entitled to any special deference." Ibid. (citing State v. K.W., 214 N.J. 499, 507 (2013)). "Therefore, a trial court's legal conclusions are reviewed de novo." Ibid. (citing State v. Gandhi, 201 N.J. 161, 176 (2010)).

"There are two types of warrants police can request: a no-knock warrant and a knock-and-announce warrant." State v. Caronna, 469 N.J. Super. 462, 486 (App. Div. 2021).

> [T]o justify a no-knock warrant, a police officer, under the totality of the circumstances and based on his or her experience and knowledge, "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."
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> [Id. at 486 n.17 (quoting State v. Johnson, 168 N.J. 608, 619 (2001)).]

A no-knock warrant is an exception to well-established Fourth Amendment principles, that the police must knock-and-announce their presence before executing a warrant. Johnson, 168 N.J. at 615-16. "The knock-and-announce rule protects 'human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident.'" Caronna, 469 N.J. Super. at 499 (quoting Hudson v. Michigan, 547 U.S. 586, 594 (2006)). "Suffice it to say that the rule safeguards against violence to occupants of the residence, and importantly, likewise protects police officers themselves." Ibid.

However, the knock-and-announce requirement is "not absolute." State v. Jones, 179 N.J. 377, 397 (2004). In general, reasons to ignore the requirement when executing a warrant are inclusive of the justifications to grant a no-knock warrant, and also include exigent circumstances. Caronna, 469 N.J. Super. at 474 n.4 (citing State v. Robinson, 200 N.J. 1, 14 (2009)) (affirming suppression of the evidence obtained when police ignored a knock-and-announce requirement in a valid search warrant because there were no exigent circumstances or other justifications for a no-knock entry).

The Court in Johnson noted, "the task of courts evaluating the propriety of a no-knock provision is to determine whether the applying officer has articulated a reasonable suspicion to believe that one or more exceptions to the knock-and-announce rule are justified." 168 N.J. at 618. The Court clarified, "there must be some indication in the record that the applying officer articulated his or her reasonable suspicions to justify the no-knock provision before the issuing court can consider and ultimately approve that form of entry." Id. at 623. "[T]he applying officer must state the specific reasons for departing from the knock-and-announce rule to the satisfaction of the reviewing court." Id. at 624.

After Johnson, in Jones, the Court addressed the issue of "officer safety" as it affected the validity of a no-knock warrant. 179 N.J. at 397. The Court explained, "boilerplate police concerns are insufficient." Id. at 398 (internal quotations omitted). Instead, to justify no-knock entry, there must be case-specific "objective facts" that amount to "a reasonable suspicion of a heightened risk to officer safety . . . ." Ibid. The Court stated, "[s]everal factors, alone or in combination, may provide sufficient justification to dispense with the knock-and-announce requirement[,]" regardless of a suspect's inclination for violence or criminal history, including: an informant's tip about the presence of weapons,

an officer's knowledge of a suspect's violent criminal history coupled with information from an informant that the suspect still exhibits violent behavior, or the layout of an apartment where one of the occupants has had a violent criminal past. Id. at 400-01. And, where a suspect had multiple drug convictions and faces a possible extended term, there exists a greater potential for resisting arrest because of the "strong incentive to resist capture by the police." Id. at 408.

A.

Guided by these principles, we first consider whether the no-knock warrant here was valid despite the fact the court did not complete certain sections of the warrant. The court initially noted defendant's prior record of violent behavior towards law enforcement is "plainly probative of the heightened risk posed to officer safety." The court further observed:

> [Defendant's] argument is based on the fact that the "shall" and "shall not" language and the "find" and "do not find" language is not crossed out or circled or delineated in any fashion.
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> However, that argument ignores the language immediately below those two paragraphs where [the judge issuing the warrant] marked under method of entry and checked the box for the destruction of evidence[,] [c]hecked the box that says protect the safety of officers executing the warrant[,] and to effectuate the arrest and/or seizure of evidence.

> [T]his [c]ourt finds that his markings next to those phrases indicate that he did in fact authorize and permit the no-knock entry that was utilized in this case . . . . I think it is clear that [the judge] in marking the search warrant as he did, clearly authorized a no-knock entry.[2]
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> . . . .
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> [T]he omission of the marking of the language "shall" or "shall not" or "find" or "do not find" I find to be a simple scrivener's error and not an indication that the court did not authorize a no-knock entry. So, I don't find [defendant's] argument has merit based upon my review of the search warrant.

The court concluded that the judge issuing the warrant "clearly . . . found that there was a reasonable particularized suspicion to believe that a no-knock entry in this case was required to prevent the destruction of evidence, and protect the safety of the officers . . . ."

The search warrant form itself is not a model of clarity. Despite the form's option to explain both why a no-knock or a knock-and-announce warrant was issued, it was not logical to proceed to the second section of the method of entry section unless there was an intent on the part of the judge issuing the warrant to approve a no-knock entry. That is, if the judge issuing the warrant was

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[2] The court further noted the judge issuing the warrant circled the word "and" in the phrases next to the first two boxes.

approving a routine knock-and-announce warrant, there is no meaningful reason to move beyond that first paragraph. For a judge to approve a no-knock warrant, they must provide a justification for the method of entry of that no-knock warrant. Therefore, it logically follows that this judge, in providing a justification, intended to approve the no-knock warrant.

In State v. Bisaccia, the Court addressed the issue of a warrant that contained the wrong address for the premises to be searched. 58 N.J. 586, 588 (1971). Despite the wrong building number on the warrant, the Court noted the "building was unmistakably described in the affidavit." Ibid. The Court stated, "[t]he place searched was undeniably the place as to which probable cause had been made out, and the place searched was in fact the place the warrant was meant to describe. Nor did the error in the street number in the warrant taint the justice of the search." Id. at 592. The Court further noted, the officer "knew the judge who issued the warrant intended the building he had amply described in his affidavit. We see no threat to Fourth Amendment values in these circumstances. To suppress the truth would be a waste of the public interest." Id. at 592-93.

Bissacia provides some guidance in this matter insofar as the motion judge looked to the facts and circumstances surrounding the issuance of the warrant.

To be sure, the better practice would have been for the judge issuing the warrant to properly circle the appropriate word or phrases in the parentheticals within the pre-printed search warrant form. However, the motion judge amply addressed the totality of the circumstances surrounding the issuance of the warrant, including the accompanying affidavit in support of the warrant, and sensibly determined it was the intent of the court issuing the warrant to approve a no-knock warrant. We conclude the motion court's findings were supported by sufficient credible evidence in the record, and he did not err in denying the motion to suppress.

B.

We next turn to defendant's contention that even if the warrant on its face permitted a no-knock entry, the facts "set forth in the affidavit are insufficient to support [a] finding that a no-knock entry was justified in this case." Defendant asserts there was insufficient reasonable suspicion to justify the no-knock search warrant. Defendant states his last conviction for assaulting a law enforcement officer occurred seventeen years prior to the warrant application, and his other assault on a law enforcement officer was twenty-eight years before the application. He argues these convictions are too remote in time to justify a no-knock entry.

The motion court stated "[h]ere, we have a prior conviction by [defendant] of an aggravated assault on a police officer, a prior conviction for resisting arrest, and a separate conviction for aggravated assault [and] [t]hose are among fourteen felony convictions for [defendant] as set forth in the affidavit." The court further noted that unlike Jones, defendant did not just have a prior arrest for aggravated assault on a law enforcement officer. Rather, he had a prior conviction for aggravated assault on a law enforcement officer along with a separate conviction for aggravated assault. He noted defendant's record "is highly probative of the potential for violence during the execution of the search warrant." The court further noted defendant had the possibility for an extended term of imprisonment if convicted of the pending offenses and that he violated probation on four occasions. This, coupled with the fourteen felony convictions, demonstrated a "complete disregard for authority." He concluded there was clearly a basis for the no-knock warrant.

We affirm substantially for the reasons set forth in the motion judge's opinion. We add the following comments.

In Jones, the Supreme Court stated, "[p]ast evidence of violent criminal behavior, particularly behavior directed towards law enforcement officers, is plainly probative of the heightened risk posed to officer safety." 179 N.J. at 402

(citing United States v. Tavares, 223 F.3d 911, 917 (8th Cir. 2000)). Further, the Court stated:

> The determination [and evaluation of the reasonableness of a no-knock warrant application] is highly fact sensitive and requires a balancing of risks. Among those factors the court must take into account are the practical risks to the officers' lives and safety, which are of especial concern when a warrant is to be executed in a home. . . .
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> . . . .
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> Just as the case law requires a judge to consider a defendant's violent nature when sentencing in order to protect society, so too a judge should evaluate a defendant's violent history, including arrests, in determining whether to vest the police officer with both the advantage and protection of surprise in executing a warrant when safety considerations are present.
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> [Id. at 406-07.]

Here, the motion judge observed that the judge issuing the warrant was not simply dealing with a prior arrest for aggravated assault on a police officer, but a conviction. Moreover, the judge issuing the warrant was advised defendant also had a conviction for an additional aggravated assault and resisting arrest.[3]

[3] Although defendant had two prior convictions for aggravated assault on a police officer, the motion judge correctly noted the judge issuing the warrant only had information that there was one aggravated assault on a law enforcement officer, coupled with another aggravated assault. The motion judge properly analyzed the record from the perspective of the judge executing the warrant.

Therefore, we are convinced the motion judge correctly concluded from the affidavit submitted in support of the search warrant application that the arresting officer articulated valid reasons for seeking a no-knock warrant, despite the deficiencies in the warrant itself. We, therefore, discern no basis to disturb the court's decision.

C.

Lastly, relying on State v. Davila, 443 N.J. Super. 577 (App. Div. 2016), the State claims defendant's arguments are moot because he did not plead guilty to offenses involving evidence seized within his home. That is, the charges resulting from the seizure of the CDS from his home were ultimately dismissed as a part of the negotiated plea deal. Because we affirm the motion court's decision on the merits, we need not address the mootness argument.

III.

For these reasons, we affirm the motion judge's denial of the motion to suppress. To the extent we have not addressed any remaining contentions, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.