2016 IL App (1st) 143070-U

FIRST DIVISION
June 13, 2016

No. 1-14-3070

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 14363
	)	
JOSE FELICIANO,	)	The Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

Held: Judgment entered on defendant's convictions of possession of a controlled substance with intent to deliver affirmed over challenge to circuit court's denial of the motion to quash search warrant and motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978); mittimus and order imposing fines, fees and costs corrected.

¶ 1 Following a bench trial, defendant Jose Feliciano was found guilty of two counts of possession of a controlled substance with intent to deliver (cocaine and heroin), and sentenced to

12 years in prison. On appeal, defendant contends that the trial court should have granted his motion to quash the search warrant and suppress evidence, and his motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). He requests this court to reverse his convictions, or alternatively, to remand for a *Franks* hearing. He also requests that his mittimus and order assessing fines, fees and costs be corrected.

¶ 2 On June 29, 2010, a warrant issued to search defendant and the single-family residence at 446 46th Avenue, Bellwood, Illinois, and to seize cocaine and heroin, along with any paraphernalia used in the manufacture or delivery of those drugs, cash, and other items. The warrant issued on a complaint signed and sworn to before the issuing judge, Kristyna C. Ryan, by Village of Bellwood police officer Shawn Clark.

¶ 3 In the complaint, Officer Clark averred that he had been a police officer for seven years and was assigned to the Gang and Narcotics Investigations Division. On June 28, 2010, he had a phone conversation Officer Daniel Torza of the Elmhurst police department, who informed him that defendant was observed to be in possession of heroin and cocaine, and that unnamed witnesses Jane Doe I and Jane Doe II were willing to speak with Officer Clark regarding the drugs.

¶ 4 Officer Clark further averred that about 11:30 p.m., on June 28, 2010, he interviewed Jane Doe I, who told him that on June 27, 2010, she was at the residence in question to interview for a live-in nanny position, and she was hired and allowed to move in her belongings that day. Later that day, she was in the residence along with defendant, his wife, and several other people. Defendant spoke to Jane Doe I about using narcotics, working for the Mexican Cartel, and also that he had a "brick" of heroin, cocaine, and marijuana. Defendant then gave an individual named "Steve" some keys and told him to retrieve some heroin and cocaine from the garage.

Steve returned from the garage with the drugs, and defendant offered Jane Doe I a "bump." She agreed, and ingested the "bump," then experienced the same high she does with heroin. About 30 minutes later, she began to feel an "intense high," similar to an overdose. She remembered being thrown into a bathtub containing water and ice, but did not recall much else until she woke up the next morning. In his complaint, Officer Clark averred that Jane Doe I made her statement freely and voluntarily, and she stated that she had been ingesting heroin since October 2009, and had snorted or injected the drug approximately 100 times.

¶ 5 Officer Clark also interviewed Jane Doe II, separately from Jane Doe I, at 11:45 p.m. She told him that on June 27, 2010, she was also at the residence in question. Jane Doe II had taken Jane Doe I to the residence to interview for the live-in nanny position. While Jane Doe I was interviewing for the position, Jane Doe II met with defendant in the kitchen, where he showed her a wrapped, brown package, 12 inches long, 6 to 7 inches wide, and 3 inches thick, which he told her was heroin. Jane Doe II replied that "[she doesn't] do that," and defendant left the kitchen, and returned ten minutes later with a large bag, containing a white powder, and said that "This isn't what [he] usually get[s] but would [she] like a bump?" Based on past experience, Jane Doe II believed the bag contained cocaine, and refused. Defendant went to the bedroom with the bag.

¶ 6 Jane Doe II then went into defendant's daughter's bedroom, and found Jane Doe I in there "reading poetry, scratching [her] arms, [and] slurring words[.]" Jane Doe I denied that anything was wrong. Jane Doe II and defendant subsequently removed Jane Doe I from the bedroom, placed her in a bathtub, after about two to three hours, she began to "come around," at which point Jane Doe II and defendant's wife removed her from the tub and changed her into dry clothes. Jane Doe II stayed at Jane Doe I's side all night and into the morning. Officer Clark

averred in the complaint that Jane Doe II made her statement freely and voluntarily, and she stated that she had been ingesting cocaine every New Year's Eve since the age of 15 years.

¶ 7 Officer Clark further averred that he, his partner Officer Jeff Kucera, and Jane Does I and II drove past 446 46th Avenue in Bellwood, Illinois, and both Jane Does positively identified the residence at that address as the one they were inside during the incident, and also pointed out several vehicles in the driveway, as well as some parked on Randolph Street, as belonging to defendant. Officer Clark cross-checked the plates of two of the vehicles via "LEADS," and learned that the vehicles were registered to defendant, and the address in question was listed as his driver's license address. Based on this information, Officer Clark obtained defendant's photograph, and placed it into a photo array for the Jane Does to view separately. Both Jane Does positively identified defendant's photograph in the array.

¶ 8 Based on those facts, Officer Clark requested the issuance of a search warrant for defendant, and the residence and garage at 446 46th Avenue, Bellwood, Illinois. The complaint for the search warrant that has been included in the record on appeal is signed by Officer Clark.

¶ 9 The search warrant was executed on June 30, 2010. The police recovered suspected narcotics, several empty bags, a large digital scale, and several cell phones, and defendant was arrested and charged with two counts of possession of a controlled substance with intent to deliver, and two counts of possession of a controlled substance.

¶ 10 On October 5, 2011, defendant filed a motion to quash the search warrant and suppress the evidence, in which he argued that the complaint for the search warrant was not signed by Jane Doe I or Jane Doe II, and therefore did not establish that they swore to the statements in the complaint or appeared before the issuing judge, so no inquiry could have been made into their credibility or reliability.

¶ 11 At the hearing on the motion, Officer Clark testified that he was the affiant for the search warrant, and was working with the Bellwood police department on June 29, 2010, at 3:50 a.m., when he obtained the warrant in question. The two Jane Does who served as his informants accompanied him to the Oak Park police department, and appeared before the judge, but were not sworn in. At the conclusion of the hearing, the trial court denied defendant's motion to quash the search warrant and suppress evidence. In doing so, it noted that the complaint for the search warrant contained detailed information from the Jane Does who were there at the same time and they corroborated each others stories, the statement of Jane Doe I was against her penal interest, both informants were brought before the issuing judge, and some of the information in the complaint with regard to the vehicles and addresses was corroborated.

¶ 12 On February 17, 2012, defendant filed a motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), asserting that the statements that Jane Doe I and Jane Doe II made to Officer Clark were materially false, and that he relayed those statements to the issuing judge. Defendant attached a copy of the search warrant, as Exhibit A, and his own affidavit, as Exhibit B, to the motion. In his affidavit, he generally denied the allegations made in the complaint, and averred that Jane Doe I was someone who he referred to as "Leah," and Jane Doe II was her mother, "Beth." He stated that Leah had interviewed for a live-in position as his nanny, she was at his residence on the day in question, and he did observe her "having symptoms that could be associated with a drug overdose," such as "foaming at the mouth" and her "mouth turning purple," and he put her in the bathtub. He maintained, however, that he did not have or offer her any drugs. He further stated that he did not show or offer Beth any heroin or cocaine, and she did not go into defendant's daughter's bedroom or see Leah reading poetry.

¶ 13 The record shows that on March 22, 2012, defense counsel acknowledged receipt of the

State's response to the motion. Defense counsel also stated that he "want[ed] to file a supplement to [his] motion that was originally filed," and that he gave the State a copy of the supplement, which the State acknowledged receiving. The record does not contain a copy of the supplement.

¶ 14 On May 11, 2012, at the hearing on the motion, the following colloquy took place between defense counsel and the court:

> [DEFENSE COUNSEL]: *** The only thing that the State has in support is a complaint for search warrant that was sworn to and signed by an officer that has no actual knowledge of the facts of the case.
>
> So you have [defendant's] sworn testimony versus the testimony by and officer that was related to him and not sworn to by people that my investigation revealed—and I submitted an investigator's affidavit also.
>
> THE COURT: Yes.
>
> [DEFENSE COUNSEL]: From Jane Doe 1 and Jane Doe 2 who essentially are drug-addicted runaways and her mom. Both of them are fly-by-night, hard to find, and one has a warrant, an active warrant for her. The other one can't even account for where her daughter is.
>
> So you have that secondhand testimony of those Jane Does 1 and Jane Doe 2 versus the sworn testimony of [defendant].
>
> On that basis I ask that you grant me an evidentiary hearing."

¶ 15 The State then argued that defendant failed to meet his burden of a substantial preliminary showing to warrant a *Franks* hearing. The State also noted that "[t]he other two affidavits submitted by the defendant in support of his motion are from a private investigator who is making attempts to try to find Jane Doe 1 and Jane Doe 2. If in fact that is Jane Doe 1 and Jane Doe 2. The State also noted that the affidavit "actually sheds no bearing on whether or not the officer acted with reckless disregard for the truth of the information received."

¶ 16 The trial court denied the motion following argument, noting that defendant failed to make a substantial preliminary showing that the affiant made a false statement knowingly and intentionally or with reckless disregard for the truth.

¶ 17 Trial was set for August 27, 2012, however, on that day, defendant filed a motion to reopen the motion to quash the search warrant and suppress evidence, with another request for a *Franks* hearing, so that he could "elicit from the officer whether or not Jane Doe 1 or Jane Doe 2 had provided information to the officers in the hopes of getting one or both of them out of an arrest[,]" and also alleged that one of the Jane Does had an active warrant at the time she provided information to the police. He cited *United States v. Simmons*, 771 F. Supp. 2d 908 (N.D. Ill. 2011) in support of the motion, and attached a copy of *Simmons* thereto. No other exhibits were attached to the motion.

¶ 18 On October 18, 2012, the trial court held a hearing on the motion to reopen. Defendant compared his case to *Simmons*, and argued that he wanted to find out whether "Officer Clark or Officer Torza [knew] that Jane Doe had an active warrant?" or if there was "some agreement to not execute the warrant?" and stated that "these are all things that [he did not] know, and [he] should know." The trial court denied the motion, and in doing so, it noted again that the two informants appeared in front of the issuing judge with the affiant, gave specific statements which

were against their penal interests, identified defendant out of a photo array, and the police corroborated defendant's address using the registration on his cars and the two informants identified defendant's home. The court found, accordingly, that "the failure of the officer to include in the search warrant any information about any outstanding warrants was not bad faith."

¶ 19 Defendant waived his right to a jury trial. At trial, Officer Clark testified that he helped execute the search warrant in question at 4:30 a.m. at 446 46th Avenue, Bellwood, Illinois, on June 30, 2010. Officer Clark went downstairs and searched the northeast bedroom of the single-family house, which had pink walls and looked like it belonged to a child. He discovered a green backpack containing suspect heroin and suspect cocaine under the bed, a large digital scale on a piece of furniture, two cell phones, and several empty, small ziplock bags in a box. The suspect cocaine was wrapped in plastic, in compressed powder form, and had a spoon inside, which, according to Officer Clark, would be used to transfer the cocaine from the "brick" to the smaller bags. The suspect heroin was in compressed powder form inside two Ziploc bags. Defendant was arrested and transported to the police station, where he was informed of his *Miranda* rights, and signed a document stating that he understood them.

¶ 20 He then made a statement that the cocaine and heroin discovered in his home was left there by his friend "Aaron," and defendant placed the bag in his daughter's bedroom. He tried to get rid of the drugs by selling the entire package for $10,000. He also stated that he was asked to "rip off" or commit theft or robbery of a drug dealer and steal drugs. Defendant reviewed, corrected and initialed the corrections on that statement.

¶ 21 Officer Clark weighed the suspect cocaine and heroin bags at the station, and determined they were 938 grams and 995 grams respectively, which in his experience had a combined street value of $110,000. Officer Clark testified that finding larger amounts of narcotics showed intent

to resell, while smaller amounts would mean the person was ingesting the drugs. To re-sell larger amounts of narcotics, one would use plastic bags to break the larger amount into smaller bags. He further testified that defendant's plan to sell the narcotics for $10,000 was a very low price.

¶ 22 The testimony of Bellwood police detective John Trevarthen[1] was substantially similar in relevant part to that of Officer Clark. He added that he searched the west bedroom, and discovered a digital scale, a cardboard box with cocaine residue, two Chicago police department baseball hats, a Chicago police department star that was later determined stolen, a nylon duty rig for a police officer, two black pellet guns and ammunition, three cell phones, a green plastic wrapper, cash, self-sealing plastic bags, and an aluminum foil crack pipe. Detective Trevarthen also found a stack of mail addressed to defendant individually, as well as to him and his wife at that address, and three vehicle titles registered to defendant, two of which were listed to that address.

¶ 23 The parties stipulated that a proper chain of custody was maintained over the recovered items, and if called to testify, Fella Johnson, a chemist for the Illinois State Police Division of Forensic Services, would state that she analyzed the suspected narcotics and indentified them to be 832.6 grams of cocaine, and 877.8 grams of heroin respectively.

¶ 24 Following closing arguments, the court found defendant guilty of all charges and merged the two counts of possession of a controlled substance with the two counts of possession with intent to deliver. It denied defendant's motion for a new trial, and sentenced him to twelve years' imprisonment.

¶ 25 In this appeal from that judgment, defendant first contends that the trial court should have

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[1] We note that Officer Trevarthen is apparently referred to as "Officer Gerard" in certain parts of the trial transcript.

granted his motion to quash the search warrant and suppress evidence because the affidavit submitted in support of the search warrant failed to establish probable cause.

¶ 26 Where defendant challenges the sufficiency of the complaint on which a search warrant was granted, we must ensure that the trial court had a substantial basis for concluding that probable cause existed. *People v. Kornegay*, 2014 IL App (1st) 122573, ¶¶ 21-23; *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). 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). At a probable cause hearing, the issuing judge must make a practical, commonsense assessment of whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a particular crime will be found in a particular place. *People v. Brown*, 2014 IL App (2d) 121167, ¶ 22.

¶ 27 In reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-part standard of review set forth in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Johnson*, 237 Ill. 2d 81, 88-89 (2010). Under this standard, we give deference to the factual findings of the trial court, and we will reject those findings only if they are against the manifest weight of the evidence, that is, if the "opposite conclusion is clearly evident" (*People v. Edward*, 402 Ill. App. 3d 555, 560-61 (2010)), whereas, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted (*Johnson*, 237 Ill. 2d at 88-89).

¶ 28 Defendant contends that the complaint for a search warrant in this case failed to establish probable cause because it was based on "uncorroborated information" from "anonymous, narcotics-using informants" with no history of providing the police with reliable information.

¶ 29 Where, as here, the affidavit submitted in support of a search warrant relies on information supplied by an informant or informants, and their credibility is an issue on appeal,

the totality-of-the-circumstances inquiry generally focuses on the informant's reliability, veracity, and basis of knowledge. *People v. Smith*, 372 Ill. App. 3d 179, 183 (2007), citing *United States v. Johnson*, 289 F.3d 1034, 1038-39 (7th Cir. 2002). Several factors inform the analysis, including: (1) the degree of police corroboration of the informant's information; (2) the extent to which the information is based on the informant's personal observations; (3) the amount of detail provided by the informant; (4) the interval of time between the events reported by the informant and the warrant application; and (5) whether the informant personally appeared before the warrant-issuing judge to present the affidavit or testimony. *United States v. Dismuke*, 593 F.3d 582, 586-87 (7th Cir. 2010). A finding that two informants' tips are reciprocally corroborative lends further credibility to their statements. *People v. Bryant*, 389 Ill. App. 3d 500, 520-22 (2009). An admission of familiarity with illegal substances is against one's penal interest, and bolsters an informant's reliability. *Kornegay*, 2014 IL App (1st) 122573, ¶ 35; *Smith*, 372 Ill. App. 3d at 184. No single issue is dispositive, and a deficiency in one factor may be compensated for by a strong showing in another or by some other indication of reliability. *Smith*, 372 Ill. App. 3d at 183.

¶ 30 As applied to the instant case, these factors weigh in favor of a finding of reliability. The record shows that the affiant, Officer Clark, based his complaint for a search warrant on the information provided to him by two confidential informants, Jane Doe I and Jane Doe II. The informants stated to him that they had both been at defendant's home the day before the interview, and had seen, first hand, a large quantity of drugs in his possession.

¶ 31 Jane Doe I told Officer Clark that she had interviewed for, and been hired as a live-in nanny for defendant's children. Later that day, she was at defendant's residence with several other guests, when defendant told her that he had a "brick" of heroin, cocaine, and marijuana in

his possession. Defendant gave an individual named "Steve" some keys, and instructed him to retrieve drugs from the garage, and defendant then offered Jane Doe I a "bump" of the drugs. Jane Doe I, who admitted to being a heroin user since 2009, ingested the "bump," and experienced the same high she does with heroin, but within half an hour of doing so, she felt that she was overdosing. She recalled being thrown into an ice bath, and not much else until she woke up the next morning.

¶ 32 Jane Doe II, who was interviewed separately from Jane Doe I, told Officer Clark that she had taken Jane Doe I to the residence to interview for the live-in nanny position. While Jane Doe I was interviewing, defendant showed Jane Doe II a wrapped, brown package, which he told her was heroin. Jane Doe II replied that she did not use heroin, at which point defendant left the kitchen, and returned ten minutes later with a large bag containing a white powder, and offered her a "bump." Based on past experience, Jane Doe II believed the bag contained cocaine, and refused. Later, Jane Doe II then went into defendant's daughter's bedroom, and found Jane Doe I inside "reading poetry, scratching [her] arms, [and] slurring words." Jane Doe II and defendant removed Jane Doe I from the bedroom, placed her in a bathtub, and after about two to three hours, she began to "come around," at which point Jane Doe II and defendant's wife removed her from the tub and changed her into dry clothes. Jane Doe II stayed at Jane Doe I's side all night and into the morning.

¶ 33 After making these statements to police the following day, the informants drove with Officer Clark to defendant's residence and positively identified his house and several vehicles in his driveway and vicinity of the residence. Officer Clark cross-checked the plates of two of the vehicles, and found that they were registered to defendant, and the address in question was listed as his driver's license address. Based on that information, Officer Clark obtained defendant's

photograph, and placed it into a photo array for the informants to view separately, and they positively identified defendant in that array.

¶ 34 Under these circumstances, although the record does not reveal whether either informant had a track record of reliability, the remaining factors set forth above favor a finding of reliabilty. The Jane Does' provided detailed, specific, first-hand descriptions of defendant's wrong doing, and made their statements to Officer Clark the day after the incident occurred. *Dismuke*, 593 F.3d 582, 586-87. The information provided by them was reciprocally corroborative, and details such as defendant's identity, his home address, and ownership of his vehicles were partially corroborated by the police. *Bryant*, 389 Ill. App. 3d at 520-21. Both Jane Does admitted to being narcotics users, which were statements against their penal interests and bolstered their reliability. *Id.* The record also shows that both Jane Does appeared before the judge who issued the warrant, adding further credibility to their statements. *Kornegay*, 2014 IL App (1st) 122573, ¶ 36.

¶ 35 Defendant, nevertheless, contends that Officer Clark's affidavit was required, but failed, to set out facts providing the issuing judge with "a substantial basis for determining that the anonymous informants were believable." He asserts, for example, that the affidavit failed to inform the judge whether the informants' "motive was to report a crime, to avoid some type of criminal liability to themselves, or to damage [defendant] for some reason," and cites *Illinois v. Gates*, 462 U.S. 213, 238-242 (1983), and *People v. Glover*, 755 F. 3d 811, 818 (7th Cir. 2014), for support.

¶ 36 However, we find no support in either *Gates* or *Glover*, or any other state or federal law, for the proposition that Officer Clark was required to set forth specific information regarding the informants' motives in order to provide the judge probable cause to issue the warrant. To the contrary, both *Gates* and *Glover*, and other federal cases cited in defendant's brief, actually

bolster the State's arguments in support of the search warrant.

¶ 37 In *Gates*, the Supreme Court reaffirmed the totality-of-the-circumstances test to review probable cause determinations, and pointed out that the duty of a reviewing court is merely to ensure that the magistrate had a "substantial basis" for concluding that probable cause to issue the warrant existed. *Gates*, 462 U.S. at 238-39. In this case, as established above, the totality-of-the-circumstances analysis supports a finding of probable cause. In *Glover*, the 7th Circuit pointed out that the omission of "known, highly relevant, and damaging information [in the affidavit] *** impair[s] the neutral role of the magistrate in deciding whether to issue the warrant[,]" however, "[w]here information about credibility is not available, other factors such as extensive corroboration may overcome the doubt inherent in relying on an informant without a track record." *Glover*, 755 F.3d at 818. Here, there is no evidence in the record that the police knew about any damaging information about either of the Jane Does' credibility, and all remaining factors in the totality-of-the-circumstances analysis, including cross-corroboration, and police corroboration favor a finding of probable cause.

¶ 38 Next, defendant acknowledges that the informants were present before the issuing judge, but maintains that they did not testify, and that their statements were therefore unreliable. We disagree. Although the Jane Does did not testify at the probable cause hearing, Officer Clark testified that they were present, and made themselves available to be questioned by the issuing judge. This factor is not outcome determinative, however, it lends credibility to their statements. *Kornegay*, 2014 IL App (1st) 122573, ¶ 36 ("The fact that questioning may or may not have occurred does not undermine the magistrate's finding *** because the informant's very presence supported his or her reliability.").

¶ 39 Defendant attempts to distinguish *Kornegay* on the grounds that the informant in that

case was an affiant to the complaint, and in any event, *Kornegay* "extended the Seventh Circuit case on which it relied[, *Glover*,] too far." We disagree. The fact that the informant in *Kornegay* was an affiant to the complaint is a distinction without a difference. There is no evidence in *Kornegay* that the affiant-informant was questioned by the judge who issued the warrant, similar to the circumstances in this case. Moreover, *Glover* pointed out that the reliability of an affidavit is bolstered by the presence of an informant, however "slightly," (*Glover*, 755 F. 3d at 817), and it is merely one factor among many to be considered in the probable cause analysis, as set forth in *Kornegay* (2014 IL App (1st) 122573, ¶ 32).

¶ 40 Defendant next acknowledges that the police corroborated his identity, home address, and cars, but characterizes that information as "the type of innocent information" that is "readily known or knowable" and argues that it is therefore "of little value." He cites *People v. Nitz*, 371 Ill. App. 3d 747, 752 (2007), for support, however, we find *Nitz* inapposite here.

¶ 41 In *Nitz*, this court addressed whether police were entitled to conduct an investigatory stop of defendant's vehicle following an informant's tip pursuant to the analysis set forth in *Terry v. Ohio*, 392 U.S. 1, 19 n. 16 (1968). *Nitz*, 371 Ill. App. 3d at 751-52. Under *Terry*, a limited investigatory stop is permissible where there exists a reasonable suspicion, based upon specific and articulable facts, that the person has committed or is about to commit a crime, and only facts known to the officer at the time of the stop may be considered. *Id.* Here, on the other hand, we must assess whether the issuing judge had a substantial basis for concluding that probable cause to issue a search warrant existed, which depends on the totality of circumstances known to an affiant applying for the warrant at the time the warrant is sought. *Kornegay*, 2014 IL App (1st) 122573, ¶¶ 21-23.

¶ 42 In addition to the different set of circumstances presented in this case vis-à-vis *Nitz*, we

note that *Nitz* does not stand for the proposition that eyewitness identification of defendant's home address, his vehicles, and his identity from a photo array is "innocent," or "readily known or knowable" information. In any event, given the information provided by the informants, the police in this case would be hard pressed to corroborate additional details other than defendant's identity and address without entering his house, a circumstance precluded prior to the issuance of a warrant. We therefore conclude that corroborating these details bolstered the informants' credibility, even if none of the details corroborated were, by themselves, incriminatory.

¶ 43 Defendant further argues that the record is insufficient to show that the statements made by the Jane Does were against their penal interests. We disagree. It is settled that an admission of familiarity with illegal substances is against one's penal interest, and bolsters the informant's reliability. *Kornegay*, 2014 IL App (1st) 122573, ¶ 35; *Smith*, 372 Ill. App. 3d at 184. Here, Jane Doe I stated to Officer Clark that she had been a heroin user since 2009, and ingested heroin over 100 times, and had done so at defendant's house, when she believed she was experiencing an overdose. Jane Doe II stated that she had used cocaine every New Year's Eve since the age of 15 years. Both these statements were against the penal interests of the women that made them, and added to their reliability. *Bryant*, 389 Ill. App. 3d at 520-21.

¶ 44 Thus, under the "totality of the circumstance test," the number of informants in this case, the consistency, cross-corroboration, and level of detail in their reports, the intimate knowledge they possessed of defendant's residence and the drugs in his possession, the fact that the statements of the informants were against their penal interest, as well as evidence in the record that the reports were partially corroborated by police, we find that there was probable cause for the issuance of a search warrant, and the trial court properly denied defendant's motion to quash arrest and suppress evidence. *Bryant*, 389 Ill. App. 3d at 523. Having so concluded, we need not

address the parties' arguments regarding the application of the good-faith exception to the exclusionary rule to prevent suppression. *Brown*, 2014 IL App (2d) 121167, ¶ 28.

¶ 45 Defendant next contends that the trial court erred by denying his motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), because he made a substantial preliminary showing that the affiant omitted material information, which misled the judge into finding probable cause. In doing so, he argues that his investigator averred in an affidavit that one of the Jane Does had an outstanding warrant for her arrest at the time she gave her statement to Officer Clark.

¶ 46 In order to obtain a *Franks* hearing, a defendant is required to make a substantial preliminary showing that the affiant made a false statement knowingly and intentionally, or with reckless disregard for the truth in the warrant affidavit, and that the allegedly false statement is necessary to the finding of probable cause. *Franks*, 438 U.S. at 155–56; *People v. Lucente*, 116 Ill. 2d 133, 152 (1987). These principles also apply where information necessary to a determination of probable cause is intentionally or recklessly omitted from the affidavit. *Id.* In such cases, "[t]he defendant must show that the information omitted was material to the determination of probable cause and that it was omitted for the purpose of misleading the magistrate." *People v. Petrenko*, 237 Ill. 2d 490, 500 (2010), citing *People v. Stewart*, 105 Ill.2d 22, 44 (1984). Omitted information is "material" where it is of such a character that had it been included in the affidavit it would have defeated probable cause. *People v. Hickey*, 178 Ill. 2d 256, 282 (1997).

¶ 47 Defendant's attack on the warrant affidavit "must be more than conclusory and must be supported by more than a mere desire to cross-examine." *People v. Chambers*, 2016 IL 117911, ¶ 92, citing *Franks*, 438 U.S. at 171. Defendant must include allegations of deliberate falsehood or

of reckless disregard for the truth in his motion, and those allegations must be accompanied by an offer of proof. Affidavits of sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. *Id.* We review a trial court's ruling on a motion for a *Franks* hearing *de novo. Chambers*, 2016 IL 117911, ¶ 96.

¶ 48 Defendant concedes that his "initial" motion for a *Franks* hearing was properly dismissed, because he failed to support the motion with anything other than "an affidavit from [himself] containing conclusory denials of the informant's claims," and such claims are insufficient to trigger the need for a *Franks* hearing. *Franks*, 438 U.S. at 171. He maintains, however, that he subsequently supplemented the motion with "evidence recovered by a defense investigator [which] show[ed] that one of the two [Jane Does] had an active warrant for her arrest [at the time in question]," which was sufficient to make a substantial preliminary showing that Officer Clark intentionally or recklessly omitted material information from the affidavit. Defendant admits that the record does not contain the alleged affidavit, however, he asserts that the references to the affidavit's existence in the report of proceedings are sufficient to allow us to review his claim, or in the alternative, that the "incompleteness in the record is *** the fault of the trial court[,]" and that therefore he was "denied his right to appeal and the judgment must be reversed and remanded."

¶ 49 As a preliminary matter, we point out that defendant, as the appellant, bears the burden of presenting an adequate record to support his claim of error, and any doubts stemming from an inadequate record will be construed against him. *People v. Hunt*, 234 Ill. 2d 49, 58 (2009). Here, defendant has failed to present the affidavit upon which his *Franks* hearing claim depends, and his cursory assertion that the trial court was to blame for his failure lacks support in the record.

¶ 50 We also reject defendant's contention that the brief colloquy between the court and

counsel during arguments on the motion for a *Franks* hearing is sufficient for us to review his claim. During the exchange, defense counsel pointed out that the State's evidence consisted of a sworn affidavit by the police officer, whereas defendant's evidence consisted of his own affidavit, and "an investigator's affidavit also." The court replied, "Yes," and defense counsel continued, "From Jane Doe 1 and Jane Doe 2 who essentially are drug-addicted runaways and her mom. Both of them are fly-by-night, hard to find, and one has *** an active warrant for her." The State responded that this affidavit or affidavits were from a private investigator, who was "making attempts to try to find Jane Doe 1 and Jane Doe 2. If in fact that is Jane Doe 1 and Jane Doe 2," and the State argued that the documents did not shed light on "whether or not the officer acted with reckless disregard for the truth of the information received."

¶ 51 The record does not clarify the contents of the affidavit, the identity of Jane Doe I and II, whether they have a criminal record or outstanding warrants, and, most importantly, if Officer Clark had any knowledge of the alleged criminal record or outstanding warrants, such that he could act with reckless disregard of that information. Because defendant has raised a claim relating to the evidence, but failed to provide the relevant affidavit, we must assume that the trial court's decision was in conformance with the law and is supported by the evidence. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 393-94 (1984); *Hunt*, 234 Ill. 2d at 58.

¶ 52 Even assuming the affidavit's existence and the truth of the unverified statement that one of the Jane Doe's had an outstanding warrant for her arrest, defendant's allegations fall far short of the requirements to warrant a *Franks* hearing. Defendant is required to make "allegations of deliberate falsehood or of reckless disregard for the truth," and he has failed to do so here. *Chambers*, 2016 IL 117911, ¶ 92, citing *Franks*, 438 U.S. at 171. Defendant has not alleged with any specificity that Officer Clark, the affiant, was aware of any outstanding warrants for either

Jane Doe, and intentionally or recklessly omitted that information from the affidavit. Moreover, he has failed to provide any "offer of proof" to support the blanket allegations made on appeal, any other affidavits or reliable statements, or explained their absence. *Id.* As such, we conclude that defendant failed to establish that he was entitled to a *Franks* hearing. *People v. Creal*, 391 Ill. App. 3d 937, 946 (2009).

¶ 53 Defendant next contends, and the State agrees, that the trial court improperly imposed two $3,000 controlled substance assessments on him, where only one assessment was permitted by statute. 720 ILCS 570/411(g). In his opening brief, defendant argued that this assessment should be vacated pursuant to *People v. Arna*, 168 Ill. 2d 107, 113 (1995), which held that a sentence not authorized by statute, including monetary assessments imposed during sentencing (see *People v. Marshall*, 242 Ill. 2d 285, 302 (2011)), is void, and may be attacked at any time. However, the void-sentencing rule set forth in *Arna* was recently abolished by the supreme court in *People v. Castleberry*, 2015 IL 116916, which held that a circuit court has broad subject matter jurisdiction over "all justiciable matters," and accordingly, it does not act without jurisdiction when it imposes an unauthorized sentence, and that such a sentence, in turn, cannot be challenged as void. *Id.* ¶¶ 11, 16-18.

¶ 54 Defendant has filed a supplemental brief in which he contends that we can reach this issue under the plain error doctrine (*People v. Herron*, 215 Ill. 2d 167, 179 (2005)), however, this court may modify a fines and fees order without remanding the case back to the circuit court pursuant to Supreme Court Rule 615(b) (eff. Aug. 27, 1999). Accordingly, we order the clerk of the court to modify the order imposing fines and fees to reflect a single controlled substance assessment in the amount of $3,000.

¶ 55 Finally, defendant contends, the State concedes, and we agree, that he was convicted of

two counts of possession of a controlled substance with intent to deliver, rather than all four of the counts he was charged with. Pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the court to correct the mittimus accordingly, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 56 Affirmed; mittimus corrected; fines and fees order corrected.