



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE COOPER, )  
 )  
 Defendant-Below, )  
 Appellant, )  
 )  
 v. ) No. 261, 2019  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff-Below, )  
 Appellee. )

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

**STATE'S ANSWERING BRIEF**

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Dated: November 12, 2019

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## NATURE AND STAGE OF THE PROCEEDINGS

On January 16, 2018, a New Castle County grand jury indicted Maurice Cooper (“Cooper”) for Drug Dealing (Heroin), Aggravated Possession of Heroin, four counts of Possession of a Firearm During the Commission of a Felony (“PFDCF”), two counts of Receiving a Stolen Firearm, four counts of Possession of a Firearm by a Person Prohibited, and two counts of Possession of Ammunition by a Person Prohibited. A1 at DI 1.<sup>1</sup> New Castle grand juries returned superseding indictments, adding additional charges including murder, racketeering, and money laundering, on June 4, 2018 (A5 at DI 16), July 16, 2018 (A7 at DI 25), and October 8, 2018. A7 at DI 30. A related investigation of Cooper and several of his co-defendants culminated in a federal indictment and the State’s dismissal of several of the indicted charges against Cooper on October 9, 2018. A8 at DI 32.

On January 15, 2019, Cooper filed a Motion to Suppress Evidence and to Reveal Identity of Confidential Informant. A10 at DI 46; B1-26. The motion sought to suppress evidence related to searches of two properties located in the City of Wilmington: 2338 West 18<sup>th</sup> Street, Apartment 1, and 3607 Downing Drive, Unit 8. *Id.* On January 25, 2019, Cooper filed a Second Motion to Suppress seeking to suppress evidence obtained from his Instagram accounts. A11 at DI 47; B27-30.

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<sup>1</sup> “DI \_\_\_” refers to item numbers on the Superior Court Docket in *State v. Cooper*, I.D. No. 1801007017. A1-19.

After receiving additional written submissions (A11 at DI 50, 54), and hearing oral argument from the parties, the Superior Court denied Cooper's motions to suppress on February 11, 2019. A11-12 at DI 55; A20-49.<sup>2</sup>

Cooper's trial on the charges of Drug Dealing (Heroin), Aggravated Possession of Heroin, four counts of PFDCF, four counts of PFBPP, two counts of PABPP, two counts of Receiving a Stolen Firearm, and Conspiracy to Commit Racketeering commenced on February 25, 2019. A15 at DI 69. On February 28, 2019, following a four-day trial, a jury found Cooper guilty of all charges except the two counts of Receiving a Stolen Firearm and Conspiracy to Commit Racketeering. *Id.* The Superior Court revoked Cooper's bail, ordered a presentence investigation, and scheduled sentencing for a later date. *Id.*

On May 31, 2019, the Superior Court sentenced Cooper to an aggregate 75 years of incarceration followed by decreasing levels of supervision. A17 at DI 86; Op. Br. Ex A. Cooper appealed and filed a timely opening brief. This is the State's answering brief.

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<sup>2</sup> On February 12, 2019, not related to this appeal, the Superior Court also directed the State to produce the identity of the confidential information to defense counsel only pursuant to a protective order. A11-12 at DI 55. Additionally, Cooper withdrew another motion he filed seeking to suppress his statements. *Id.*

## **SUMMARY OF THE ARGUMENT**

- I. Cooper's Arguments I – III are DENIED. The Superior Court did not abuse its discretion by denying Cooper's motions to suppress. Investigators included within the four corners of the warrants for Apartment 1 and Unit 8 sufficient facts for the issuing judge to form a reasonable belief that heroin and firearms would be found in those locations. Additionally, investigators presented the issuing judge sufficient facts to believe evidence pertaining drug and weapons offenses would be found in Cooper's Instagram Account.
  
- II. Cooper's Argument IV is DENIED. The Superior Court did not abuse its discretion in sentencing Cooper. First, the Superior Court exercised its discretion to not impose concurrent sentences upon Cooper. Second, the Superior Court exercised its discretion in sentencing Cooper to a term of incarceration within the statutory parameters set by the General Assembly. Cooper's sentence presents no inference of gross disproportionality; thus, proportionality review under the Eighth Amendment to the United States Constitution is not warranted.



## STATEMENT OF FACTS<sup>3</sup>

Beginning in 2014, the Federal Bureau of Investigation (“FBI”) Safe Streets Violent Crimes Task Force (“SSVCTF,” “SSTF,” or “FBI Task Force”) officers received information pertaining to individuals, including Cooper, dealing large quantities of heroin, cocaine, and marijuana throughout the State of Delaware. A54 at ¶ 11. Investigators learned Cooper, known by nicknames such as “Coop,” “Coop DeVille,” and “Make-a-Mil Maurice,” dealt large quantities of heroin in the Riverside section of Wilmington. A54 at ¶ 12. Past proven reliable sources informed investigators of Cooper’s drug dealing and advised that Cooper possessed weapons and was involved in acts of violence. *Id.*

Informants advised investigators of a series of incidents in which Cooper dealt drugs, brandished weapons, discharged firearms, and was shot by firearms:

- On December 1, 2016 Cooper was shot “as a result of a robbery that occurred involving his heroin trade.” A54 at ¶ 13. Cooper was not able to tell investigators why he was shot or who shot him. *Id.* Investigators learned of the motive behind the shooting from informants. *Id.*
- On May 10, 2017, Cooper was involved in a shootout in the Riverside Housing Projects. A54 at ¶ 14. An individual demanded drugs and money from Cooper and his associate while displaying a handgun. *Id.* In response,

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<sup>3</sup> Because Cooper is challenging the search warrants in this case, the facts are drawn primarily from the affidavits of probable cause associated with the search warrants. As the warrants for 3607 Downing Drive, Unit 8 (“Unit 8”) and 2338 West 18<sup>th</sup> Street, Apartment 1 (“Apartment 1”) provided identical facts, references are to the Unit 8 warrant provide in Appellant’s Amended Appendix. Facts pertaining to the evidence seized from these searches are drawn from the trial transcripts.

Cooper and his associate produced handguns and fired at the robber who quickly fled. *Id.*

- Just over a week later, on May 19, 2017, Cooper was involved in a shootout on 27<sup>th</sup> Street in the Wilmington. A55 at ¶ 15. Investigators found a disabled vehicle with “numerous bullet holes on the exterior . . . and spent bullet casings on the interior.” *Id.*
- During the third week of August, 2017, Cooper was involved in a physical fight with Taurian Hammond in the Southbridge neighborhood of Wilmington in which “Cooper bested Hammond.” A55 at ¶ 16. At the conclusion of the fight, both “declared that each wanted the other dead and neither would stop until one was deceased.” *Id.*
- On October 13, 2017, Cooper and Hammond engaged in a shootout in the Riverside neighborhood of Wilmington. A55 at ¶ 17. Hammond sustained a gunshot wound; responding officers found 9 mm casings at the scene. *Id.*
- In the third week of December 2017, Cooper was seen with a “firearm with a large capacity magazine.” A56 at ¶ 19.
- On December 28, 2017, Cooper and Ryan Bacon were involved in shooting Hammond in the Southbridge neighborhood of Wilmington. A56 at ¶ 20. Nine-millimeter casings recovered from the scene of this shooting “matched casings from the October shooting where Hammond was shot the first time.” *Id.*
- In January 2018, Cooper was seen driving a black Maxima “with a tech9 style gun with an extended magazine on his lap.” A58 at ¶ 30. Also, in January 2018, investigators learned Cooper purchased gun cleaning equipment from the Walmart store on Centerville Road. A58 at ¶ 28.

As a convicted felon, Cooper is not permitted to possess firearms or ammunition for firearms. A58 at ¶ 29.

In December 2017, an informant (designated in the search warrant affidavit as CS5) told investigators CS5 knew Cooper and could purchase heroin and weapons

from him. A55 at ¶ 18. CS5 further informed investigators that Cooper had shown CS5 “a large cache of weapons on multiple occasions that included a rifle, tec9, and handguns.” *Id.* CS5 saw these weapons inside “what appeared to be a residence and also inside what appeared to be a car detailing shop” along Governor Printz Boulevard. *Id.* Investigators observed photograms of some of the weapons on Cooper’s social media postings. *Id.*

Investigators established Cooper resided, or spent a large amount of his time, at 2338 West 18<sup>th</sup> Street, Apartment 1 (“Apartment 1”):

- On June 1, 2017, Cooper registered one of his vehicles to this address. A56 at ¶ 21.
- FBI Task Force members conducting spot checks “observed vehicles belonging to Maurice Cooper parked around this address.” *Id.*
- On September 2, 2017, Animal Welfare officers investigated an animal welfare complaint at the apartment. A 56 at ¶ 22. The responding officers were greeted by Cooper who escorted them into the residence to assess the welfare of dogs housed in the basement. *Id.*
- On October 4, 2017, Cooper registered a 2012 Nissan Maxima to this address. A56 at ¶ 23. FBI Task Force members observed the vehicle parked outside the residence on numerous occasions. *Id.*
- In January 2018, Investigators observed the 2012 Nissan Maxima parked in front of Apartment 1 and, later that morning, saw Cooper exit the residence, enter the driver’s side of the Maxima, and drive away. A57 at ¶ 24.

In January 2018, CS5 contacted Cooper to purchase drugs and a firearm. A57 at ¶ 25. Cooper agreed to sell CS5 heroin and a firearm and the two coordinated the

date, time, and location of the sale. *Id.* Investigators provided CS5 money to complete the transaction and searched CS5 prior to the transaction to insure CS5 possessed no other weapons, drugs, or money before meeting with Cooper; moreover, CS5 remained under constant surveillance by investigators. *Id.* Additionally, members of the FBI Task Force coordinated to covertly surveil Cooper's movements preceding the prearranged drug and weapon sale. *Id.* Investigators observed Cooper leave Apartment 1 carrying a white shopping bag. *Id.* He drove to 3607 Downing Drive, "a small industrial complex along Governor Printz Boulevard that has a car detailing shop inside," parked in front of Unit 8 (the corner unit), entered Unit 8 "for a brief period of time," then drove directly to the prearranged location. *Id.* Investigators did not observe Cooper carry anything into or out of Unit 8 but noted that he was wearing a large puffy jacket at the time.<sup>4</sup> *Id.* At the prearranged location, Cooper, as planned, provided CS5 heroin and a firearm in return for United States Currency ("USC"). *Id.* CS5 met with investigators immediately thereafter and provided them with the gun and drugs CS5 purchased from Cooper. *Id.*

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<sup>4</sup> Based on their training and experience, investigators informed the reviewing judge "it is common for drug traffickers to secret contraband . . . in secure locations within their residence and/or business for their ready access and to conceal from law enforcement officers (A53 at ¶ 4), and "that drug traffickers only transport enough drugs that they will need for the sale. They will maintain the other drugs at a secured location, including by not limited to their residence." A53 at ¶ 9.

On January 12, 2018, officers presented the facts developed during their investigation to a Superior Court judge in search warrant applications and were granted that court's approval to search Apartment 1 and Unit 8. A50; A60. Officers also sought and obtained warrants, supported by the same investigative facts, to secure content from Cooper's Instagram account (makeamill\_pt2). A70.

On January 15, 2018, members of the FBI Task Force searched Apartment 1 and Unit 8. B31. Officers found Cooper and Allejah Dredden-Bivens at Apartment 1 when they arrived. B32. Officers secured the pair and began their search of the residence. B32. Cooper informed the officers that Dredden-Bivens "didn't have anything to do with this," and that "everything in the house is [his]." B32, 41-42. Within the residence, officers found a wallet, prescription bottles, and a vehicle bill of sale bearing Cooper's name. B34-35. They also found a "Springfield XD semiautomatic handgun [and] several thousand dollars bundled together."<sup>5</sup> B36.

Investigators searched Unit 8 about a half hour after searching Apartment 1. Using keys found in Apartment 1, investigators gained entry into Unit 8 (B38) and found a "Ruger handgun with an extended magazine, a large quantity of packaged

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<sup>5</sup> The Springfield Armory handgun was found loaded with a magazine containing 19 rounds of 9-millimeter ammunition. B39. The cash seized from both locations totaled \$6,566.00. B40.

heroin and United States currency,”<sup>6</sup> a “Daniel Defense AR-15 rifle with four magazine clips . . . containing various quantities of . . . rifle ammunition,” “a Maverick 12-gauge shotgun,” “several boxes of 9-millimeter ammunition,” and “a large quantity of raw heroin.” B37. Cooper agreed that he was “a person prohibited by Delaware law from possessing, owning or controlling a firearm, and a person prohibited from possessing owning or controlling ammunition for a firearm.” A13 at DI 61.

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<sup>6</sup> The Ruger P85 handgun was found loaded with 14 rounds of 9-millimeter ammunition in an extended magazine. B39. The total weight of heroin seized from both locations was greater than 35 grams. B43.

**I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING COOPER’S MOTIONS TO SUPPRESS EVIDENCE.<sup>7</sup>**

**Question Presented**

Whether the Superior Court abused its discretion by denying Cooper’s motions to suppress evidence seized pursuant to lawfully obtained search warrants.

**Standard and Scope of Review**

This Court reviews a lower court’s finding of probable cause “with great deference, considering it as a whole in a practical, commonsense manner, and not on the basis of hypertechnical analysis of its separate allegations.”<sup>8</sup> This is so, “because ‘[a] grudging or negative attitude by reviewing courts toward warrants is inconsistent with the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant.’”<sup>9</sup> This Court’s “duty is simply to ensure that the magistrate

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<sup>7</sup> Appellant’s claims I and II contend the four corners of the warrants secured to search 2338 West 18<sup>th</sup> Street, Apartment 1 and 3607 Downing Street, Unit 8 do not “establish a sufficient nexus between the contraband sought and the location searched.” Op. Br. at 6, 27. In claim III, Appellant contends the warrants to secure information from his Instagram are insufficient because they “were based in part on information that was gained as a result of the unconstitutional searches of Unit 8 and 18<sup>th</sup> Street.” Op. Br. at 37. As all of Appellant’s claims address the same information contained within the four corners of the warrants, the State answers claims I through III in Argument I.

<sup>8</sup> *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006) (citing *Smith v. State*, 887 A.2d 470, 473 (Del. 2005)).

<sup>9</sup> *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 236 (1983)).

had a substantial basis for concluding that probable cause existed.”<sup>10</sup> The Court “will review the Superior Court’s application of the law of probable cause *de novo*.”<sup>11</sup>

### **Merits of the Argument**

Cooper argues that “the warrant to search 3607 Downing Drive, Unit 8, did not set forth sufficient facts for the issuing magistrate to reasonably conclude that contraband would be found at that location.” Op. Br. at 7. Further, he argues that while “the application for [2238 West 18<sup>th</sup> Street, Apartment 1] states facts which connect Mr. Cooper to the property . . . [the] warrant lacks a sufficient nexus to connect the property to the contraband identified by the informant.” Op. Br. at 28. Finally, he argues that, if this Court agrees that a sufficient nexus is lacking in these two warrants, the Instagram warrants must be excised and revisited “because information contained in the applications for the Instagram warrants related to Mr. Cooper’s possession of guns and drugs found at the properties.” Op. Br. at 38-39. Because the four corners of the warrants presented to, and approved by, a Superior Court judge established a fair probability that contraband associated with Cooper’s illegal drug and gun business would be found in both physical locations, Cooper’s challenges to both the physical and digital searches fail.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



Under the Fourth Amendment to the United States Constitution<sup>12</sup> and Article I, Section 6 of the Delaware Constitution,<sup>13</sup> a search warrant may only issue upon a showing of probable cause.<sup>14</sup> Chapter 23 of Title 11 of the Delaware Code sets forth the provisions whereby a Delaware judicial officer may issue a search warrant. First, “[a]ny Judge of the Superior Court . . . [may] issue a warrant to search any person, house, building, conveyance, place or other thing for,” among other things, items the possession of which is illegal, and things related to, or evidence of, the commission of a crime.<sup>15</sup> Section 2306 of Title 11 sets forth the required contents of a warrant:

The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.<sup>16</sup>

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<sup>12</sup> U.S. Const. amend IV.

<sup>13</sup> Del. Const. Art. I, Sec. 6.

<sup>14</sup> *Bradley v. State*, 2019 WL 446548, at \*5 (Del. Feb. 4, 2019) (quoting *Fink v. State*, 817 A.2d 781, 786 (Del. 2003)).

<sup>15</sup> 11 *Del. C.* §§ 2304, 2305.

<sup>16</sup> 11 *Del. C.* § 2306

If the reviewing judge determines the application or complaint for a search warrant recites sufficient facts to constitute probable cause, that judge may authorize the requested search.<sup>17</sup>

“It is well settled that any finding of probable cause must be based on the information that appears within the four corners of the application or affidavit.”<sup>18</sup> Probable cause exists where, under all of the circumstances presented, “there is a fair probability that contraband or evidence of a crime will be found in a particular place.”<sup>19</sup> A nexus must be established between the “items to be sought and the place to be searched;” however, “[c]oncrete firsthand evidence that the items sought are in the place to be searched is not always required in a search warrant.”<sup>20</sup> Rather, the affidavit must provide sufficient facts “for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place.”<sup>21</sup> The Superior Court judges’ conclusions that investigators

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<sup>17</sup> 11 *Del. C.* § 2307(a).

<sup>18</sup> *Valentine v. State*, 207 A.3d 566, 571 (Del. 2019) (citing *State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013); *Dorsey v. State*, 761 A.2d 807, 811) (Del. 2000)).

<sup>19</sup> *Bradley*, 2019 WL 446548, at \*5 (quoting *Stones v. State*, 1996 WL 145775, at \*2 (Del. Feb 23, 1996) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983))).

<sup>20</sup> *Bradley*, 2019 WL 446548, at \*5 (quoting *Hooks v. State*, 416 A.3d 189, 203 (Del. 1980)).

<sup>21</sup> *Id.* (quoting *Sisson*, 903 A.3d at 296).

provided probable cause and a sufficient nexus between the items sought and the places to be searched must be afforded great deference.<sup>22</sup>

Addressing Cooper's motions to suppress, the Superior Court appropriately confined its assessment of probable cause to the four corners of the search warrant (A45), applied deferential review to the findings of the issuing judges (A46), and took a "practical approach to what the meaning is within the four corners of the search warrant." A46. Against this backdrop, the court concluded:

So what we have here, given the background of Mr. Cooper has been identified as someone who is engaged in the business of dealing heroin and has had in his possession weapons, some weight, although it's appropriate to give to the officer's description about what people have engaged in those kinds of activities. Now, I say that with a caveat. And [the] caveat is, that I think that type of information must supplement the more substantial information and can't stand [alone] as a basis for justifying an intrusion.

Here we have from the confidential informant, who has been corroborated, at least in part and has proven reliable in the past, that person has seen Mr. Cooper with drugs and might be a residence and guns – excuse me, and in a location, some type of business, auto detailing, I guess near Governor [Printz] Boulevard.

When the drugs and the guns are ordered, Mr. Cooper is seen leaving the 18<sup>th</sup> Street address. And I think there are a lot of ways you can establish residency, but the information that's been provided in the affidavit does establish, at least probable cause, that Mr. Cooper resided at the 18<sup>th</sup> Street apartment. And then went to the Downing Drive business – we call that a unit, off of Governor [Printz] – for some purpose went inside and then went directly to the dealer.

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<sup>22</sup> *Id.* at \*5 (quoting *Smith v. State*, 887 A.2d 470, 473 (Del. 2005)).

Probable cause obviously is not the same as a proof sufficient to convict and it is more than mere suspicion, in that between area. But when Mr. Cooper left the 18<sup>th</sup> Street apartment, he was going to make a drug and gun deal and there had to be some reason for him to – then left with a package. There had to be some reason for him to interrupt his trip to where the drug deal and gun deal was going to occur by going to the Downing Drive address. And so assuming inferentially there was a purpose to go there which in some way facilitated the drug deal. Given there is information that people are engaged in this business do keep guns, drugs, etc. in disbursed locations, that would lead to a conclusion that he went there to facilitate, as I said, a drug deal and gun deal.

So, contrary to what the argument that leaving there with a bag sort of eliminates any inference that he did something at the Downing Drive address, that infers that he did because otherwise there must have been a purpose to stop there, so there must have been a purpose of stopping there and then going directly to the drug deal.

So all of those things taken together and given the standard that the Court applies, I find that there was probable cause to search both the Downing Drive address and the 18<sup>th</sup> Street address and the motion to suppress is denied. And it follows from that , that the motion to suppress the Instagram warrant is also denied.<sup>23</sup>

The Superior Court did not abuse its discretion in denying Cooper’s motions to suppress.

#### **A. Apartment 1 and Unit 8**

Cooper encourages this Court to apply a myopic review of the individual paragraphs set forth in the affidavits of probable cause to conclude investigators failed to provide the issuing judge a nexus between his criminal conduct and the

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<sup>23</sup> A45-49.

likely existence of evidence of his criminal conduct within Unit 1 and Apartment 8. “To be sure, search warrant affidavits must be ‘considered as a whole and not on the basis of separate allegations.’”<sup>24</sup> Cooper encourages this Court to ignore the totality of the circumstances set forth in the affidavits. The nexus between criminal conduct and the location of a search may be inferred from the factual circumstances, including “the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences” regarding a criminal might hide evidence.<sup>25</sup>

The warrant established a logical nexus between Cooper’s criminal activity and Unit 8 and Apartment 1.<sup>26</sup> Multiple individuals informed police that Cooper possessed and discharged weapons to facilitate his drug dealing business. A past-proven and reliable informant told police from personal knowledge that Cooper sold drugs and possessed firearms. Cooper had shown the informant firearms, including a rifle, tech-9, and handguns, within a residence within what appeared to be a car detailing shop on Governor Printz Boulevard. In fact, Cooper had posted pictures

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<sup>24</sup> *Valentine v. State*, 207 A.3d 566, 575 (Del. 2019) (quoting *Gardner v. State*, 567 A.2d 404, 409 (Del. 1989) (quoting *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984))).

<sup>25</sup> *State v. Cannon*, 2007 WL 1849022, at \*4 (Del. Super. June 27, 2007) (citing *State v. Ivins*, 2004 WL 1172351, at \*4 (Del. Super. May 21, 2004) (quoting *United States v. Feliz*, 182 F.3d 82, 88 (1st Cir. 1999))).

<sup>26</sup> Cooper correctly states that “[t]he applications for the two warrants were identical except for the different properties sought to be searched.” Op. Br. at 9, 28.

of some of the weapons from this cache to his social media account and both the informant and one of the investigators observed this post.

The informant coordinated the purchase of heroin and a firearm from Cooper. Cooper agreed with the informant on a date, time, and location for the sale. On the agreed upon date, investigators observed Cooper leave Apartment 1 with a bag, drive to Unit 8, then drive directly to the predetermined meeting location where he fulfilled the terms of the agreement by providing heroin and a handgun to the informant. Investigators knew, and informed the reviewing judicial authority, that “it is common for drug traffickers to secret contraband . . . in secure locations within their residence and/or business for their ready access and to conceal from law enforcement officers,” (A53 at ¶ 4; A63 at ¶ 4) and that “drug traffickers only transport enough drugs that they will need for the sale,” and “[t]hat they will maintain the other drugs at a secured location, including but not limited to their residence.” A53 at ¶ 9; A63 at ¶ 9.

The affidavits in support of the Unit 8 and Apartment 1 warrants set forth facts sufficient for a judicial officer to form a reasonable belief that evidence of Cooper’s criminal activity would be found within those location. By arguing that “there is no statement as to why contraband is suspected to exist at Downing Drive [Unit 8], and the Magistrate was left to infer the connection,” Cooper ignores the fact that he arranged to sell drugs and a weapon to CS5 and, immediately before doing so, left

his Apartment 1 with a bag, traveled to Unit 8, entered Unit 8 for a brief time, then drove to the agreed upon meeting location where he did, in fact, provide heroin and a firearm to CS5. A57 at ¶ 26; A67 at ¶ 26. The officers' first-hand observations of Cooper's conduct coupled with the confirmed purchase of contraband from Cooper provided "facts adequate for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place."<sup>27</sup>

Cooper, citing to *Dorsey v. State*,<sup>28</sup> contends that investigators had cause to arrest Cooper following the controlled buy, but lacked probable cause to search Apartment 1 or Unit 8. "Probable cause to search and probable cause to arrest are not fungible legal concepts, and each involves a distinctly separate inquiry."<sup>29</sup> Probable cause to search involves an assessment of place – "whether contraband or evidence will be found in a particular location" – while probable cause to arrest involves an assessment of person – "whether a criminal offense has been or is being committed by the person to be arrested."<sup>30</sup> Cooper is correct that investigators could arrest him for the conduct associated with the controlled buy; however, that conduct,

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<sup>27</sup> *Bradley*, 2019 WL 446548 at \*5 (quoting *Sisson*, 902 A.2d at 296).

<sup>28</sup> 761 A.2d 807 (2000).

<sup>29</sup> *Id.* at 812.

<sup>30</sup> *Id.*

coupled with the information gathered by investigators through informants and first-hand observations, provided probable cause to believe drugs and weapons would be found in Apartment 1 and Unit 8.

Cooper argues that the Superior Court decisions in *State v. Ada*,<sup>31</sup> *State v. Cannon*,<sup>32</sup> and *State v. McCants*<sup>33</sup> support suppression here. He is wrong. In each of those cases, the affidavits failed to set forth any direct observations of illegal or suspicious activity associated with the place to be searched.<sup>34</sup> In *Ada*, there was no police observation of illegal or suspicious activity occurring at the location sought to be searched.<sup>35</sup> In *Cannon*, probable cause was supported “solely by a statement of police expertise combined with mere presence of defendant’s car at both a drug transaction and his residence.”<sup>36</sup> Further, in *McCants*, the affidavit offered no corroboration of an informant’s tip and the surveillance conducted by investigators “yielded no more than he was residing where he last stated.”<sup>37</sup>

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<sup>31</sup> 2001 WL 660227 (Del. Super. June 8, 2001).

<sup>32</sup> 2007 WL 1849022 (Del. Super. June 27, 2007).

<sup>33</sup> 2019 WL 1503937 (Del. Super. Apr. 4, 2019).

<sup>34</sup> *See, Bradley*, 2019 WL 446548.

<sup>35</sup> *Id.* (citing *Ada*, 2001 WL 660227, at \*5)

<sup>36</sup> *Id.* (quoting *Cannon*, 2007 WL 1849022, at \*6).

<sup>37</sup> *McCants*, 2019 WL 1503937, at \*4.



The nexus offered in the warrant here is nearly identical to that set forth in *Bradley*.<sup>38</sup> In *Bradley*, a past-proven reliable informant observed Bradley purchase a gun in a location, and investigators conducting surveillance on Bradley observed individuals enter and leave the location in a manner consistent with drug dealing.<sup>39</sup> Unlike in *Ada*, *Cannon*, and *McCants*, the affidavit in *Bradley* “provided at least two observations of suspicious activity at the garage.” The same happened here.

CS5 informed investigators that CS5 observed Cooper with weapons inside a residence and what appeared to be a car detailing shop somewhere on Governor Printz Boulevard. Investigators established Cooper claimed Apartment 1 as a residence and observed him regularly coming and going from that location. Immediately preceding his scheduled sale of drugs and a gun to CS5, investigators watched Cooper depart Apartment 1, travel to Unit 8, enter Unit 8 “for a brief period of time” and then drive directly to the agreed upon meeting location. A57 at ¶ 26; A67 at ¶ 26. The informant’s prior observations coupled with Cooper’s suspicious behavior immediately preceding the arranged transaction supported the authorizing judge’s reasonable belief that heroin or firearms would be found in Apartment 1 and Unit 8.

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<sup>38</sup> *Bradley*, 2019 WL 446548.

<sup>39</sup> *Id.* at \*5.

Cooper, relying on *Buckham v. State*,<sup>40</sup> argues that the description of Unit 8 “lacks the particularity that is essential for the issuance of a search warrant.” Op. Br. at 13. Not so. *Buckham* addressed the breadth of information available on electronic devices such as cell phones. “[W]arrants issued to search electronic devices call for particular sensitivity’ because ‘[m]odern smartphones store an unprecedented volume of private information, and a top-to-bottom search of one can permit the government access to far more than the most exhaustive search of a house.”<sup>41</sup> But, where a warrant seeks to search a defined physical location for specific types of items, the concerns addressed by *Buckham* do not materialize.<sup>42</sup> Here, as in *Bradley*, investigators sought to search a defined location and specified the evidence they sought to seize if found. Thus, the warrant described with sufficient particularity the thing to be searched and the items to be seized.

Next, relying on *Valentine v. State*,<sup>43</sup> Cooper contends CS5 was unreliable or, alternatively, that investigators failed to provide sufficient information establishing CS5’s reliability. He is incorrect. In *Valentine*, investigators included in an affidavit of probable cause for a search warrant the “conclusory allegation” of an informant’s

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<sup>40</sup> 185 A.3d 1 (Del. 2018).

<sup>41</sup> *Bradley*, 2019 WL 446548, at \*6 (quoting *Buckham*, 185 A.3d at 18).

<sup>42</sup> *Id.*

<sup>43</sup> 207 A.3d 566 (2019).

past performance.<sup>44</sup> Investigators “were apparently unable” to allege the informant had first-hand information concerning the “presence of drugs and a handgun in Valentine’s apartment,”<sup>45</sup> and “police surveillance uncovered no facts relevant to or corroborative of the informant’s tip save Valentine’s association with the Broom Street apartment.”<sup>46</sup> The Court concluded:

Where the police are acting on the basis of an unidentified informant’s tip whose past performance as an informant and basis of knowledge of the subject matter of the current tip are not set forth in the affidavit and where the tip is devoid of detail and not corroborated in any meaningful way, a conclusion that there was probable cause for a search warrant is not reasonable.<sup>47</sup>

Here, investigators included detailed, first-hand information provided by CS5 setting forth her prior observations of Cooper with guns in a residence and a car detailing shop. A55 at ¶ 18; A65 at ¶ 18. The informant and investigators observed photographs, posted by Cooper to his social media account, displaying firearms. These observations were corroborated by CS5’s ability to arrange for, and complete, the purchase of drugs from Cooper within days of contact.<sup>48</sup> Investigators set forth

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<sup>44</sup> *Id.* at 572.

<sup>45</sup> *Id.* at 573.

<sup>46</sup> *Id.* at 577.

<sup>47</sup> *Id.*

<sup>48</sup> CS5 contacted Cooper “during the first week of January 2018” to arrange a purchase of heroin and a firearm. A57 at ¶ 25; A67 at ¶ 25. This transaction was completed during the same week. A57 at ¶ 26; A67 at ¶ 26.

sufficient information to establish the reliability and veracity of the information provide by CS5 and independently observed facts corroborating that information.

### **B. Instagram Account**

Cooper argues that “[t]he application for the [Instagram] warrant listed the same facts as the applications for the warrants of Unit 8 and 18<sup>th</sup> Street, except it included the additional fact that guns and drugs were found pursuant to the search of those two properties.” Op. Br. at 38. Thus, he contends, if the Unit 8 and Apartment 1 warrants are found to lack a sufficient nexus, any evidence secured from those searches must be “excised from the [Instagram] applications and the matter should be remanded to the Superior Court to determine whether to grant the defendant’s motion to suppress based on whether probable cause to issue the warrant existed after the facts are removed.” Op. Br. at 39.

The affidavits in support of both Apartment 1 and Unit 8 provided probable cause to reasonably conclude contraband – heroin and firearms – would be found in each location. But, even if that were not so, the evidence acquired from these searches and included within the Instagram warrants is not essential to a finding of probable cause to secure information from Cooper’s Instagram account. “[T]ainted allegations in an affidavit ‘do not vitiate a warrant which is otherwise validly issued upon probable cause reflected in the affidavit.’”<sup>49</sup> A reviewing court may “excise

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<sup>49</sup> *Jones v. State*, 28 A.3d 1046, 1058 (Del. 2011) (quoting *Dorsey*, 751 A.2d at 814).

the tainted evidence and determine whether the remaining, untainted evidence would provide a neutral magistrate with probable cause to issue [the] warrant.”<sup>50</sup>

Independent of the evidence secured from Unit 8 and Apartment 1, investigators included the fact that they Cooper sent CS5 photographs of weapons from his Instagram account – makeamill\_pt2. A81 at ¶ 8d. Furthermore, investigators “observed conversations where Cooper was trying to barter” a rifle. A84 at ¶ 23. Cooper was prohibited from possessing firearms based upon his prior felony convictions. A84 at ¶ 18. The fact that a person prohibited from possessing firearms directs photographs of firearms to others via social media and seeks to barter weapons through digital means provides probable cause to believe “Cooper utilizes Instagram to traffic firearms.” A84 at ¶ 23. The Superior Court did not err in denying Cooper’s motions to suppress.

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<sup>50</sup> *Id.* (quoting *United States v. Herrold*, 962 F.2d 1131, 1138 (3d Cir.1992) (quoting *United States v. Vasey*, 834 F.2d 782, 788 (9th Cir.1987))).

## II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN SENTENCING COOPER.

### Question Presented

Whether the Superior Court abused its discretion by declining to direct Cooper's sentences to run concurrently and imposing a sentence of 75 years incarceration.

### Standard and Scope of Review

This Court's "review of a sentence is extremely limited and its inquiry is generally limited to determining whether the sentence falls within the statutory limits prescribed by the legislature."<sup>51</sup> This Court may review a sentence for an abuse of discretion; "a sentencing court abuses its discretion if it sentences on the basis of inaccurate or unreliable information," or "information which is either false or which lacks minimal indicia of reliability."<sup>52</sup> "[T]his Court will not find error of law or abuse of discretion unless it is clear from the record below that a sentence has been imposed on the basis of demonstrably false information or information lacking a minimal indicium of reliability."<sup>53</sup>

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<sup>51</sup> *Ramsey v. State*, 2019 WL 1319761, at \*2 (Del. Mar. 22, 2019) (citing *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992))

<sup>52</sup> *Mayes*, 604 A.2d at 843.

<sup>53</sup> *Id.*

## Merits of the Argument

Cooper contends that by declining to impose his sentences concurrently, his aggregate sentence of 75 years of incarceration is disproportionate to the crimes he committed. Op. Br. at 40-42. Cooper argues that because certain crimes for which he was convicted – PFBPP and PABPP – are not excluded from concurrent sentencing, the legislature did not intend for these convictions to run consecutively. He is wrong.

Prior to 2014, Title 11, Section 3901 prohibited a sentencing court from imposing any sentence of confinement “concurrently with any other sentence of confinement imposed on such criminal defendant.”<sup>54</sup> In 2014, the Delaware General Assembly lifted this complete ban on concurrent sentencing by permitting a sentencing court to impose concurrent sentences of incarceration for all but an enumerated list of crimes.<sup>55</sup> Thus, the General Assembly afforded sentencing courts wider discretion regarding how sentences of incarceration are imposed, but expressly permitted a sentencing court to exercise its discretion in determining a

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<sup>54</sup> *State v. Thomas*, 2019 WL 5704287, at \*4 (Del. Super. Oct. 31, 2019) (citing Del. Code. Ann. Tit. 11, § 3901(d) (1977) (as amended by enactment of 61 Del. Laws ch. 158 (1977))).

<sup>55</sup> *Id.* In 2019, the General Assembly “further expanded Delaware sentencing judges’ discretion to order consecutive terms of incarceration.” *Id.* Cooper committed the crimes for which he was sentenced in 2018; thus, the 2014 statute applies to him.

sentence within statutory parameters for crimes other than those expressly excluded from concurrent sentencing.

Cooper states, “[t]he Superior Court did not address whether convictions for PFBPP could be sentenced concurrently under Section 3901.” Op. Br. at 42. Cooper misinterprets the Superior Court’s sentencing remarks. The Superior Court, in its discretion, found Cooper deserving of a lengthy sentence and stated, “whether 1448 convictions are, in your situation, permissibly sentenced concurrently or not is not something I’m going to decide today because I would exercise my discretion not to apply that. I am going to sentence you consecutively. So even if I could, I wouldn’t.” A94. Cooper “used [his] abilities and [his] talents in a very bad way to create a lot of harm because drug dealing in heroin . . . and possessing weapons when you are prohibited is a very dangerous activity which the [G]eneral [A]ssembly rightly creates substantial penalties for committing.” *Id.* The Superior Court properly exercised its discretion in crafting a sentence based on Cooper’s conduct and his unique circumstances.

Nonetheless, Cooper argues his sentence warrants proportionality review under the Eighth Amendment to the United States Constitution. Op. Br. at 42. Proportionality review is reserved for the rare case where a comparison of the crime committed to the sentence imposed “leads to an inference of gross



disproportionality.”<sup>56</sup> Only when this inference exists must a sentencing court compare a defendant’s “sentence with other similar cases to determine whether the trial court acted out of step with sentencing norms.”<sup>57</sup> Cooper’s sentence offers no inference of gross disproportionality. Cooper engaged in a series of dangerous and potentially lethal acts of violence to support his drug-dealing operation and was apprehended with a substantial quantity of heroin and a cache of firearms and ammunition. “His priors include two Title 11 violent felonies, murder in the second degree, robbery in the first degree.” A89. Unlike the defendant in *Crosby* who this Court concluded received an excessive sentence because he was “too much trouble for the criminal justice system,”<sup>58</sup> Cooper warranted an extended sentence based on his convictions for violent felonies and his proven danger to society.<sup>59</sup> A94.

Where, as here, the threshold comparison of the defendant’s crime to the sentence imposed fails to yield an inference of gross disproportionality, a

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<sup>56</sup> *Crosby v. State*, 824 A.2d 894, 907 (Del. 2003) (quoting *Harmelin v. Michigan*, 501 U.S. 957, 997 (1991)).28

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 908.

<sup>59</sup> *See Reed v. State*, 2015 WL 667525, at \*2 (Del. Feb. 12, 2015) (Delaware Supreme Court clarified in *State v. Evans*, 872 A.2d 539, 558 (Del. 2005) “that the *Crosby* holding applied to non-violent habitual offenders under Section 4214(a)”). *Crosby* received a sentence of 45 years as an habitual offender, rather than the normal maximum penalty of 2 years, for committing a class G felony – Forgery in the Second Degree. *Crosby*, 824 A.2d at 907.

comparison of sentences for similar crimes is unwarranted.<sup>60</sup> The Superior Court did not abuse its discretion when it sentenced Cooper within the statutory range,<sup>61</sup> and further proportionality review is unwarranted.

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<sup>60</sup> *Lacombe v. State*, 2017 WL 2180545, at \*3-4 (Del. May 17, 2017).

<sup>61</sup> *See Mayes v. State*, 604 A.2d 839, 842-43 (1992).

## CONCLUSION

For the foregoing reasons, the State respectfully submits that this Court should affirm the judgment below.

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Dated: November 12, 2019

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE COOPER, )  
 )  
 Defendant-Below, )  
 Appellant, )  
 )  
 v. ) No. 261, 2019  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff-Below, )  
 Appellee. )

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT  
AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 6,758 words, which were counted by Microsoft Word 2016.

Dated: November 12, 2019

/s/ Sean P. Lugg