[Cite as *State v. Whitt,* 2010-Ohio-5291.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 3
v.	:	T.C. NO. 09CR675
JOHN WHITT	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 29th day of October, 2010.

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FROELICH, J.

{¶ 1} After the trial court overruled his motion to suppress evidence, John Whitt pled no contest in the Clark County Court of Common Pleas to trafficking in powder cocaine in an amount greater than 100 grams, a second degree felony. The trial court found him guilty and sentenced him to the maximum term of eight years in prison, a mandatory $7,500

fine, and a five-year driver's license suspension. The court also ordered that certain personal property be forfeited to the Clark County Sheriff's Office.

{¶ 2} Whitt appeals from his conviction, claiming that the trial court erred in denying his motion to suppress and in imposing the maximum prison term. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} Detective Andrew Reynolds was the sole witness at the hearing on Whitt's motion to suppress. His testimony established the following facts:

{¶ 4} The Clark County Sheriff's Office, with the assistance of a confidential informant (CI) and an undercover police officer, purchased powder cocaine from Bill Money and/or Barbara Money on four separate occasions in the spring of 2009. The Sheriff's Office, and Detective Reynolds in particular, performed surveillance during the controlled transactions. The Moneys were the focus of the investigation, and sheriff's deputies did not observe Whitt sell the cocaine directly to the CI or the Moneys. However, Detective Reynolds believed that Whitt supplied the powder cocaine to the Moneys for the purpose of selling it to the CI.

{¶ 5} The first of the four transactions occurred on March 20, 2009, at or near Whitt's residence, located at 1361 Perry Street in Springfield, Clark County, Ohio. On that date, the CI picked up Bill Money in his vehicle and drove Money to Whitt's residence. Just prior to the sale, the CI gave money to Bill Money, who exited the CI's vehicle and approached Whitt, who was outside his home. Whitt and Money "walked up to the house," entered Whitt's residence, and remained there for a few minutes. Bill Money then returned

to the vehicle where the CI was waiting. Almost immediately thereafter, Bill Money sold an "8-ball" of powder cocaine to the CI. The CI took Bill Money directly back to his home.

{¶ 6} The second transaction occurred on April 2, 2009. The CI called Bill Money, who informed the CI that he was at work but the CI could obtain drugs from his wife, Barbara, in about an hour. The CI went to the Moneys' residence, located at 1342 West Jefferson Street in Springfield, Ohio. Just prior to the transaction, Bill Money called the CI and informed him that "my supplier," named "Frank," was at the house. Immediately thereafter, Whitt drove up to the Moneys' residence. Soon after, the CI entered the residence and Barbara Money sold powder cocaine to the CI. Detective Reynolds did not know if Whitt went by the name "Frank."

{¶ 7} The third transaction occurred on April 7, 2009, at or near Whitt's residence, when Bill Money sold powder cocaine to the CI. Like the March 20, 2009 transaction, the CI and Bill Money went to Whitt's home. While en route, the CI gave money to Bill Money. At Whitt's residence, Bill Money exited the vehicle, entered the residence, remained there for four minutes, and then returned to the vehicle where the CI was waiting. Almost immediately thereafter, Bill Money sold powder cocaine to the CI. The CI and Bill Money returned to the Moneys' house.

{¶ 8} The final transaction occurred at the Moneys' home on April 13, 2009. Bill Money called the CI and the undercover officer and informed them that drugs were at his home. The CI and the officer went inside the home at 12:10 p.m., purchased four ounces of powder cocaine from Bill Money, and left the residence at 12:18 p.m. Sheriff's deputies remained in the area.

{¶ 9} Approximately one hour after the transaction, Whitt drove up to the Moneys' house, exited his vehicle, and entered the Moneys' residence. When Whitt left the residence approximately five minutes later, he entered his vehicle and drove off. Whitt went to his uncle's home, which was nearby. As Whitt headed home approximately thirty minutes later, Detective Reynolds stopped Whitt's vehicle, placed him under arrest, and searched him and his vehicle. Reynolds testified that the purpose of the stop was to arrest Whitt for trafficking in drugs, based on the transaction that had just occurred and the three prior transactions. The Sheriff's Office had not obtained a warrant for Whitt's arrest.

{¶ 10} Because members of Whitt's family were in the vehicle and another family member had pulled over at the traffic stop, the Sheriff's Office decided to "freeze" Whitt's residence (i.e., have all individuals leave Whitt's house) until a search warrant could be obtained so that evidence in the house would not be destroyed. Search warrants were obtained for Whitt's home, and the house was subsequently searched.

{¶ 11} Whitt was taken down to the Clark County Sheriff's Office for questioning. After Whitt was informed of and waived his *Miranda* rights, he made incriminating statements to the officers.

{¶ 12} In August 2009, Whitt was indicted on four counts of trafficking in powder cocaine (Counts One through Four) and one count of possession of powder cocaine in an amount equal to or greater than twenty-five grams (Count Five); each of the trafficking charges contained a specification that the offense was committed in the vicinity of a school, which elevated the degree of the offense.[1] The fourth trafficking charge also included a

[1]Count Three stated that the amount of powder cocaine was equal to or greater

forfeiture specification, which stated that $4,110.75 in currency and a 1994 Chevy Camaro were subject to forfeiture under R.C. 2925.42.

{¶ 13} In October 2009, Whitt filed a five-branch motion to suppress the evidence against him. The motion challenged the lawfulness of the stop, arrest, and search of his vehicle on April 13, 2009, the search of his residence, and the officer's questioning of him following his arrest. After a hearing, the trial court overruled the motion. The court reasoned that the officers had probable cause to arrest Whitt for drug trafficking and that R.C. 2935.04 permitted the police to arrest Whitt in a public place for a felony without a warrant.

{¶ 14} Whitt subsequently pled no contest to one count of trafficking in powder cocaine with a forfeiture specification (Count Four), a second degree felony; the offense did not include the school specification. The court found him guilty and dismissed the remaining counts. On December 21, 2009, the court sentenced Whitt to the maximum term of eight years in prison, as described above.

{¶ 15} Whitt appeals from his conviction, raising three assignments of error.

II

{¶ 16} Whitt's first assignment of error states:

{¶ 17} "THE TRIAL COURT ERRED IN HOLDING THE ARREST OF

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than ten grams. With the school specification, Count Three was a second degree felony. R.C. 2925.03(C)(4)(d). The amount of powder cocaine in Count Four was equal to or greater than 100 grams. With the school specification, Count Four was a first degree felony. R.C. 2925.03(C)(4)(e). Counts One and Two did not specify the amount of powder cocaine. Under R.C. 2925.03(C)(4)(a), trafficking in cocaine is generally a felony of the fifth degree; that offense is a fourth degree felony if it is committed in the vicinity of a school. R.C. 2925.03(C)(4)(b). The drug possession charge, Count Five, was a third degree felony. R.C. 2925.11(C)(4)(c).

APPELLANT WAS VALID."

{¶ 18} Whitt claims that the trial court erred in denying his motion to suppress, because his arrest was not supported by probable cause and the officers lacked a warrant for his arrest.

{¶ 19} In addressing a motion to suppress, the trial court assumes the role of the trier of fact. *State v. Morgan*, Montgomery App. No. 18985, 2002-Ohio-268, citing *State v. Curry* (1994), 95 Ohio App.3d 93, 96. The court must determine the credibility of the witnesses and weigh the evidence presented at the hearing. Id. In reviewing the trial court's ruling, an appellate court must accept the findings of fact made by the trial court if they are supported by competent, credible evidence. Id. However, "the reviewing court must independently determine, as a matter of law, whether the facts meet the appropriate legal standard." Id.

{¶ 20} The Fourth Amendment to the United States Constitution states that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Moreover, Ohio's Constitution, Section 14, Article I, provides: "The right of the people to be secure in their persons *** against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing *** the person *** to be seized."

{¶ 21} The Supreme Court of Ohio has recognized that a warrantless arrest that is based upon probable cause and occurs in a public place does not, in general, violate the Fourth Amendment. *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, ¶66, citing *United States v. Watson* (1976), 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598. See, also, *Maryland v.*

Pringle (2003), 540 U.S. 366, 370, 124 S.Ct. 795, 157 L.Ed.2d 769. And R.C. 2935.04 explicitly permits warrantless arrests for felonies. See *Brown* at ¶66. That statute provides: "When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

{¶ 22} Probable cause to arrest exists "if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed." *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, ¶73, citing *Henry v. United States* (1959), 361 U.S. 98, 102, 80 S.Ct. 168, 4 L.Ed.2d 134. Probable cause is a "practical, nontechnical conception," *Brinegar v. United States* (1949), 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879, that "turn[s] on the assessment of probabilities in particular factual contexts." *Illinois v. Gates* (1983), 462 U.S. 213, 232, 103 S.Ct. 2317, 76 L.Ed.2d 527. The existence of probable cause is determined by looking at the totality of the circumstances. See *Gates*, 462 U.S. at 230-232.

{¶ 23} The State bears the burden of proof on whether a warrantless arrest was based on probable cause. See *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 218.

{¶ 24} First, Whitt asserts that his arrest was not based on probable cause. He argues that, at the time of his arrest, he "had no connection to the fourth buy, and limited connection to the prior three." He emphasizes that the Moneys were the individuals who exchanged drugs for money, and there was no evidence that he (Whitt) was "Frank," the supplier. In addition, he states that half of the buys occurred at the Moneys' house, when he

was not present, and there was no evidence that he was present during the drug transactions outside his home.

{¶ 25} Although Detective Reynolds testified that Whitt was not observed engaging in "hand-to-hand" drug transactions with the CI and undercover officer, the detective's observations during the drug buys, when considered together, were sufficient to create probable cause that Whitt had engaged in drug trafficking. During the first and third transactions (which occurred on March 20 and April 7), the CI drove Bill Money to Whitt's residence and the CI gave money to Bill Money in the vehicle; upon arriving at Whitt's home, Bill Money went inside Whitt's residence for a very short period of time, and completed the drug transaction upon returning to the car where the CI was waiting. And, prior to the March 20 transaction, the detective observed Bill Money and Whitt enter Whitt's residence together. Although there is no evidence about what transpired inside Whitt's residence, Detective Reynolds reasonably inferred that Whitt provided Bill Money with the powder cocaine to complete the transactions.

{¶ 26} The second transaction (April 2) provided additional circumstantial evidence that Whitt himself was involved in the drug transactions. When the CI contacted Bill Money, the CI was informed that Money's wife could complete the transaction in approximately an hour. When Bill Money later contacted the CI to say that Money's supplier, Frank (Whitt's middle name is Franklin), was at the Moneys' house, Whitt drove up to Moneys' residence. Barbara Money then completed the drug transaction. Finally, Whitt went to the Moneys' home, a known drug house, on April 13 after the CI had completed a drug transaction there, and Whitt stayed there for five minutes, consistent with prior drug

activity. Although there was no direct evidence that Whitt had supplied the Moneys with powder cocaine, when considering the totality of the circumstances surrounding these drug transactions, Detective Reynolds had probable cause to believe that Whitt had supplied the Moneys with powder cocaine for the three drug transactions.

{¶ 27} Whitt next claims that, even if probable cause existed, the officers arrested him unlawfully because they should have previously secured an arrest warrant. Whitt relies on our recent opinions in *Jones*, supra, and *State v. VanNoy*, 188 Ohio App.3d 89, 2010-Ohio-2845, which followed *Jones*.

{¶ 28} In *Jones*, the police were aware of alleged criminal activity by Jones (namely, the sale of drugs), but they did not immediately arrest him. The police later looked for Jones but were unable to find him. Weeks later, their efforts intensified when they initiated a drug roundup and told some informants that they were looking for Jones. The police later located Jones through a tip from an informant, and the police stopped a vehicle in which Jones was traveling in order to arrest him for the drug offenses that had happened at least several weeks earlier. The police had not obtained an arrest warrant.

{¶ 29} We concluded that Jones's arrest was unlawful because, despite the fact that the officers had probable cause to arrest him, "the police officers clearly had ample opportunity and time to obtain an arrest warrant, but failed to do so." *Jones* at ¶27. We reasoned:

{¶ 30} "There were no circumstances that made it impracticable to obtain an arrest warrant between the time of the controlled drug buys with police officers and the time Jones was spotted on the interstate at least several weeks later. Indeed, the passage of several

weeks made it virtually impossible to establish the impracticability of obtaining a warrant. The existence of probable cause did not excuse the unexplained failure of police officers to procure an arrest warrant when there was ample opportunity to do so. In our view, to hold that an arrest warrant was not required under these circumstances would render the Fourth Amendment's prohibition of warrantless searches and seizures meaningless." (Internal citations omitted.) Id.

{¶ 31} Following *Jones*, we held in *VanNoy* that the defendant's warrantless arrest was unlawful when the State had failed to demonstrate that it was impracticable for detectives to obtain an arrest warrant prior to stopping and arresting VanNoy on July 31, 2008, for drug activities occurring in March and April 2008.

{¶ 32} As a threshold matter, the State claims that Whitt failed to preserve this issue for appeal, because his motion to suppress did not provide notice to the State that he was challenging the lack of an arrest warrant. The State asserts that, as a result, it was unaware of the need to present testimony to establish that it was impracticable to obtain an arrest warrant prior to Whitt's arrest.

{¶ 33} In order to seek the suppression of evidence obtained as a result of a warrantless search or seizure, the defendant must "raise the grounds upon which the validity of the search or seizure is challenged in such a manner as to give the prosecutor notice of the basis for the challenge." *Wallace*, 37 Ohio St.3d 216, at paragraph two of the syllabus. As stated in *Wallace*:

{¶ 34} "*** [T]he prosecutor cannot be expected to anticipate the specific legal and factual grounds upon which the defendant challenges the legality of a warrantless search.

{¶ 35} "The prosecutor must know the grounds of the challenge in order to prepare his case, and the court must know the grounds of the challenge in order to rule on evidentiary issues at the hearing and properly dispose of the merits. Therefore, the defendant must make clear the grounds upon which he challenges the submission of evidence pursuant to a warrantless search or seizure. Failure on the part of the defendant to adequately raise the basis of his challenge constitutes a waiver of that issue on appeal." Id. at 218 (internal citations omitted).

{¶ 36} Whitt's motion to suppress contained five branches. Of relevance to this appeal, the first branch claimed that the officers lacked probable cause to arrest him, and the second branch sought an order suppressing "the seizures, on or about April 13, 2009 at 1:52 p.m., as a result of the illegal and warrantless search of the Defendant's person and motor vehicle, for the reasons set forth in the attached Memorandum ***." The portion of the memorandum regarding Branch II stated, in its entirety:

{¶ 37} "It is the position of the Defendant that no probable cause existed for the detention and arrest of the Defendant. More importantly, no warrant or consent was obtained herein, rather the police officer performed an illegal search and seizure of the Defendant's person and his motor vehicle. *State v. Chandler* [(1989)], 54 Ohio App. 3d. 92 and *Florida v. Royer*, 460 U.S. [491], 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983)."

{¶ 38} *Chandler* addressed whether the defendant was properly convicted of possession of criminal tools rather than possession of drug abuse instruments, whether the officers had a reasonable and articulable suspicion of criminal activity to warrant an investigatory stop of the defendant and to conduct a subsequent protective search, and

whether defendant's conviction was based on sufficient evidence. *Royer*, an airport detention case, concerned whether the officer's stop and investigation of an airline passenger had exceeded the scope of a permissible investigatory detention when the passenger consented to the search of his luggage. Neither of these cases discussed whether a police officer was required to obtain an arrest warrant prior to making a warrantless arrest in a public place. Although Whitt relies upon *Jones* in his appeal, his motion did not cite to *Jones*, which was rendered on September 4, 2009, one month before his motion to suppress was filed.

{¶ 39} Whitt argues that his counsel asked questions on cross-examination during the suppression hearing that should have alerted the prosecutor that he was challenging his warrantless *arrest*, as opposed to the search. For example, Whitt's counsel asked Detective Reynolds whether the detective had an arrest warrant on April 13, the basis for the April 13 stop, and why an arrest warrant was not sought. However, *Wallace* makes clear that a defendant's *motion* must set forth the bases for suppression so that the State may adequately prepare a response.

{¶ 40} Based on the wording of Whitt's motion to suppress and the accompanying memorandum, including the cases to which he cited to support Branch II, we agree with the State that the motion to suppress failed to inform the State that Whitt was challenging his warrantless arrest for the reasons stated in *Jones*. Accordingly, Whitt has waived any challenge based on the officer's failure to obtain an arrest warrant.

{¶ 41} Even if we were to consider the issue under a plain error analysis, as we did in *Jones*, we would find that the present circumstances are distinguishable from our precedent in

Jones and *VanNoy*. In both *Jones* and *VanNoy*, the officers arrested the defendant, without a warrant, based on events that had occurred weeks or months previously. In contrast, events were continuing to unfold until the time that Whitt was arrested. Based on events between March 20 and April 7, 2009, the Clark County Sheriff's Office had reason to believe that Whitt supplied powder cocaine to Bill Money for sale. Approximately one hour after the CI purchased powder cocaine from Bill Money at the Moneys' home on April 13, Whitt came to the Moneys' residence and stayed for approximately five minutes. Previously, Bill Money had twice gone to Whitt's home (on March 20 and April 7) apparently to obtain drugs for drug transactions and had stayed a similar length of time. Although the deputies did not witness Whitt directly engaging in drug trafficking, they had reason to believe that Whitt's short visit to Money's home on April 13 was also drug-related. Deputies followed Whitt from the Moneys' residence; they stopped and arrested him approximately 30 minutes later. Under these circumstances, the trial court could have reasonably concluded that obtaining an arrest warrant before Whitt's arrest was impracticable, and the trial court did not commit plain error when it denied Whitt's motion to suppress.

{¶ 42} The first assignment of error is overruled.

III

{¶ 43} Whitt's second assignment of error states:

{¶ 44} "THE SEARCH OF APPELLANT'S PERSON AND THE STATEMENT HE MADE SUBSEQUENT TO HIS UNLAWFUL ARREST MUST BE SUPPRESSED AND THE TRIAL COURT ERRED IN FINDING THIS EVIDENCE ADMISSIBLE."

{¶ 45} Whitt claims that all evidence obtained as a result of his unlawful arrest must

be suppressed as "fruit of the poisonous tree." He further argues that this evidence could not form the basis for a search warrant and, to the extent that his statements formed a basis for the search warrants, the search warrants are also invalid.

{¶ 46} Because we find that Whitt's arrest was lawful, the second assignment of error is overruled.

IV

{¶ 47} "THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING THE MAXIMUM SENTENCE TO APPELLANT."

{¶ 48} In his third assignment of error, Whitt claims that the trial court abused its discretion in sentencing him to the maximum term of eight years in prison. Whitt asserts that the trial court failed to address Ohio's sentencing statutes (R.C. 2929.11 and 2929.12) and that his sentence was improperly based on the State's representation that he was in charge of the trafficking operations.

{¶ 49} We review a felony sentence using a two-step procedure. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶4. "The first step is to 'examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.'" *State v. Stevens*, 179 Ohio App.3d 97, 2008-Ohio-5775, ¶4, quoting *Kalish* at ¶4. "If this step is satisfied, the second step requires that the trial court's decision be 'reviewed under an abuse-of-discretion standard.'" Id.

{¶ 50} The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. R.C. 2929.11(A).

Unless otherwise required by R.C. 2929.13 and R.C. 2929.14, the trial court has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11. R.C. 2929.12(A). The trial court must consider the seriousness of the offender's conduct, its impact upon the victim, and the sentences imposed for similar crimes committed by similar offenders. R.C. 2929.11(B). It may consider any other factors that are relevant to achieving the purposes and principles of sentencing. R.C. 2929.12. See, also, *State v. Arnold*, Clark App. No. 2008 CA 25, 2009-Ohio-3510, ¶8.

{¶ 51} At the sentencing hearing, Whitt's counsel presented the trial court with statements from family members who attested that Whitt was a good father, a hard worker, and did not deserve a lengthy prison sentence. Counsel argued to the court that Whitt had no prior record, that "Mr. Money was trying to bring [Whitt] into the business," that Whitt was "lower in that hierarchy" than Bill Money, and that Money had "heavily influenced" Whitt.

{¶ 52} Whitt exercised his right of allocution, and expressed that he had "messed up," that he regretted his actions, and that he would "never do anything like that again." Whitt acknowledged that he needed to be punished, but stated that he wanted to be with his children and asked the court not to impose the maximum sentence.

{¶ 53} In response, the State asserted that the facts did not support the conclusion that Whitt had just begun trafficking in drugs. The prosecutor argued:

{¶ 54} "[Whitt] claims that he basically became involved in January of 2009 because he lost his job and this might be a way of making some money to pay the bills; and yet within a three-month period of time he's dealing in multiple ounces of powder cocaine. And that just simply doesn't happen. One doesn't just decide to become a dope dealer and get

involved in the dope trade and jump straight into dealing ounces of powder cocaine. ***"

{¶ 55} The trial court informed Whitt that his offense carried a mandatory prison term and orally sentenced Whitt to eight years – the maximum sentence – without additional explanation. A subsequent sentencing entry stated that the trial court had considered the record, oral statements of counsel, the defendant's statement, the pre-sentence investigation report, the principles and purposes of sentencing under R.C. 2929.11, and had balanced the seriousness and recidivism factors under R.C. 2929.12.

{¶ 56} Although the court did not indicate at the sentencing hearing that it had considered these factors, absent an affirmative showing to the contrary, an appellate court will generally presume that the trial court did consider the statutory factors. Moreover, since *State v. Foster,* 109 Ohio St.3d 1, 2006-Ohio-856, a trial court has discretion to impose any sentence within the statutory range and is no longer required to make findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. Id. at ¶100; *State v. Mathis,* 109 Ohio St.3d 54, 2006-Ohio-855, at ¶37. The trial court stated in its judgment entry that it considered the factors set forth in R.C. 2929.11 and R.C. 2929.12 in imposing Whitt's sentence and imposed a sentence within the statutory range; Whitt's sentence is not clearly and convincingly contrary to law.

{¶ 57} Whitt further claims that his maximum sentence was unlawful because the trial court did not make findings under R.C. 2929.14. Although the Ohio Supreme Court eliminated the need for such findings in *Foster,* Whitt contends that *Foster* is no longer viable after *Oregon v. Ice* (2009), _____ U.S. _____, 129 S.Ct. 711, 172 L.Ed.2d 517. However, Whitt did not raise the issue of the constitutionality of the Ohio Supreme Court's

holding in *Foster* in light of the United States Supreme Court's holding in *Ice* before the trial court. As the issue was not raised before the trial court, the issue has been waived and we decline to consider it for the first time on appeal.

{¶ 58} Having concluded that Whitt's sentence was not contrary to law, we must consider whether the trial court abused its discretion in imposing the sentence that it did. *Stevens* at ¶4; *State v. Watkins*, 186 Ohio App.3d 619, 2010-Ohio-740, ¶41. The abuse of discretion standard is an "appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence." *State v. Boles*, 187 Ohio App.3d 345, 2010-Ohio-278, ¶18, quoting Black's Law Dictionary, Eighth Edition (2004), at 11; *Watkins* at ¶41.

{¶ 59} Whitt asserts that the eight-year sentence was an abuse of discretion, because he was a first-time offender and the sentence was based on the State's allegedly unsubstantiated assertion that he was in charge of the trafficking operation. Although a statement of the bases for a defendant's sentence facilitates appellate review of the sentence, the trial court provided no explanation for its sentence. We cannot determine if the State's arguments at the sentencing hearing had any bearing on Whitt's sentence.

{¶ 60} Nevertheless, based on the record before us, including the presentence investigation report which we have reviewed, we do not find that the eight-year sentence was an abuse of discretion in this case. In determining an appropriate sentence, the trial court "is not confined to the evidence that strictly relates to the conviction offense because the court is no longer concerned, like it was during trial, with the narrow issue of guilt." *State v. Bowser*, 186 Ohio App.3d 162, 2010-Ohio-951, ¶14, citing *Williams v. New York* (1949), 337

U.S. 241, 246-47, 69 S.Ct. 1079, 93 L.Ed. 1337. In addition to statutory factors, the court may consider the contents of a presentence investigation report, facts supporting a charge of which the defendant was ultimately acquitted, allegations of crimes for which the defendant was never prosecuted, and facts supporting a charge that was dismissed in a plea agreement. Id. at ¶15-16; *State v. Miller*, Clark App. No. 09-CA-28, 2010-Ohio-2138, ¶47, fn.2.

{¶ 61} Whitt had been charged with five offenses, one of which was a first degree felony. As part of Whitt's plea agreement, Count Four was reduced to a second degree felony, and the additional four charges were dismissed. The offense included a minimum mandatory sentence of two years. Although the presentence investigation report indicated that the sole remaining drug trafficking charge was Whitt's first offense, the investigator notes and crime laboratory results included in the presentence investigation report corroborated the prosecutor's assertion that Whitt had supplied multiple ounces of powder cocaine to the Moneys between March 20 and April 13, 2009, as alleged in the indictment. The trial court could have considered the plea agreement and the facts underlying all of the counts in the indictment, as reflected in the presentence investigation report; we cannot find on this record that the court's conclusion that an eight-year sentence was the appropriate sanction for the single charge of which he was convicted was an abuse of discretion.

{¶ 62} The assignment of error is overruled.

V

{¶ 63} The judgment of the trial court will be affirmed.

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DONOVAN, P.J and BROGAN, J., concur.

Copies mailed to:

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Hon. Douglas M. Rastatter