

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**Nos. 96-0947-CR
96-0948-CR
96-0949-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ERIC C. ABRAMS,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Eric Abrams entered a guilty plea to three counts of second-degree sexual assault, one count of exposing a child to harmful materials, and two counts of exposing genitals or pubic area to a child. See §§ 940.225(2)(a), 948.11(2)(a) and 948.10, STATS.

The trial court accepted the plea, rendered judgments of guilty, and imposed sentence. Abrams claims that the trial court improperly (1) denied his motion to suppress his saliva, blood and hair test results because the search warrant was not supported by probable cause; and (2) denied his motion to modify his sentence. We affirm.

On June 9, 1994, an adult woman was sexually assaulted at her home in Fox Point. The woman reported her assailant as a white thin male with brown hair. She further reported him to be approximately five feet, ten inches tall, eighteen-nineteen years old, with a neat “preppy” look. A composite sketch was created based upon this description. A witness reported that he saw a man matching Abrams’s description riding on a dark colored mountain bike coming from the driveway of the woman’s house near the time of the assault. Abrams was questioned by the Fox Point police about the sexual assault. Abrams denied any knowledge of the incident and stated that he did not own or ride a mountain bike. During a subsequent interview with one of Abrams’s co-workers, however, it was learned that Abrams talked a lot about bike riding and that he had brought several bike magazines to work. Further, during a visit to Abrams’s Whitefish Bay home a police officer investigating the sexual assault observed a dark colored mountain bike parked along Abrams’s garage.

On August 25, 1994, in Shorewood, a ten-year-old boy and his friend were shown a drawing depicting sexually explicit material by a male fitting Abrams’s description. Abrams was arrested and charged with one count of exposing a child to harmful materials. On September 6, 1994, in Bayside, a man approached two seven-year-old girls in one of the girl’s backyard and exposed his

penis to them. Abrams was arrested and charged with two counts of exposing genitals or pubic area to a child.

On October 18, 1994, a search warrant authorizing the seizure of blood, saliva and head and pubic hair samples from Abrams was issued in connection with the investigation of the Fox Point sexual assault. The sworn statements submitted with the application for the search warrant explained that Abrams had been charged in the cases involving the children, and that, based on the proximity of the locations of the crimes, as well as Abrams's false statements about the mountain bike and a composite sketch drawn from the victim's description that was extremely similar to Abrams's photograph, there was probable cause to believe that Abrams sexually assaulted the Fox Point woman. A finding of probable cause was made, and Abrams provided the requested samples. Abrams was subsequently arrested and charged with four counts of second-degree sexual assault and burglary.

After the cases were consolidated, the trial court accepted Abrams's guilty plea to three counts of second-degree sexual assault, one count of exposing a child to harmful materials, and two counts of exposing genitals or pubic area to a child. Abrams was sentenced to a total of 32 years in prison on all counts. Abrams subsequently filed a motion to modify his sentence. The trial court denied his motion.

Abrams's first claim is that the affidavit in support of the search warrant seeking the blood, saliva and hair samples did not establish probable cause. The gravamen of Abrams's complaint is that the trial court could not have found probable cause on the facts relied on, and, therefore, could not have issued a valid warrant.

Our discussion of this issue is guided by the principle that appellate review of an affidavit's sufficiency to support a search warrant is limited; we pay great deference to the determination made by the issuing magistrate. *See State v. Reed*, 156 Wis.2d 546, 554, 457 N.W.2d 494, 497 (Ct. App. 1990). The existence of probable cause is determined by applying the totality of the circumstances test adopted in *Illinois v. Gates*, 462 U.S. 213 (1982). *State v. Anderson*, 138 Wis.2d 451, 468, 406 N.W.2d 398, 406 (1987). When issuing a search warrant, the magistrate must simply make a common sense determination that the objects sought by the warrant are linked with a crime. *State v. Benoit*, 83 Wis.2d 389, 395, 265 N.W.2d 298, 301 (1978). In making this decision, the trial court must consider all of the circumstances set forth in the affidavit, including the "veracity" and the "basis of knowledge" of the persons supplying hearsay information. *See Anderson*, 138 Wis.2d at 468, 406 N.W.2d at 406. Elaborate specificity, however, is not required, and suppliers of information in support of the warrant are entitled to the benefit of usual inferences that reasonable people draw from facts. *State v. Marten*, 165 Wis.2d 70, 75, 477 N.W.2d 304, 306 (Ct. App. 1991).

Probable cause was present here. The search warrant affidavit contained the following information. Abrams had been charged with two counts of exposing himself to children in Bayside, a suburb contiguous to Fox Point. Abrams confessed to that crime. Abrams was also implicated in other episodes of exposing himself to young children in the North Shore area. A witness to the sexual assault saw someone matching Abrams's description flee on a mountain bike from the victim's house at the time of the attack. A police officer investigating the crime asked Abrams about the bike. Abrams denied owning or riding a bike but when the police officer visited Abrams's home, he observed a similar bike parked along side Abrams's garage. Also, a person who worked with

Abrams revealed that Abrams talked a lot about bike riding. Further, the composite sketch of the assailant closely resembled Abrams. The trial court correctly concluded that under the totality of the circumstances, there was probable cause to issue the search warrant. *See Benoit*, 83 Wis.2d at 394, 265 N.W.2d at 301 (quantum of evidence necessary to support a determination of probable cause for a search warrant is less than that required for conviction or bindover following a preliminary hearing).

Abrams also claims that his sentence is excessive because the trial court did not give sufficient consideration to his rehabilitative needs relative to the increased risk of re-offending if he is not treated for his “sexual compulsions.”

The trial court exercises discretion in sentencing and on appeal review is limited to determining whether that discretion was erroneously exercised. *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary factors to be considered by the trial court are the gravity of the offense, the character of the offender, and the need to protect the public. *Id.*, 141 Wis.2d at 427, 415 N.W.2d at 541. An erroneous exercise of discretion occurs if the trial court fails to state on the record the factors influencing the sentence. *Id.*, 141 Wis.2d at 428, 415 N.W.2d at 542. The weight to be given to each factor, however, lies solely within the sentencing court’s discretion. *State v. Patino*, 177 Wis.2d 348, 385, 502 N.W.2d 601, 616 (Ct. App. 1993).

Denying his motion for sentence modification, the trial court noted it had considered “the total defendant, his needs, his acts, and their effect on the community” as well as “his background, his acceptance of responsibility for his acts, and his family’s efforts to pay for treatment.” During sentencing, the trial court discussed Abrams’s treatment by several doctors and their recommendations

for future treatment of Abrams to reduce the possibility of him committing more offenses. The trial court noted that even though Abrams had received treatment, the doctors still found that he had “deep rooted psychological problems and obviously he’s not cured.” Although the trial court considered Abrams’s treatment needs, it concluded that the other factors, the nature of the offense and the need to protect the community, outweighed those needs:

In this case, the need for punishment and societal protection due to the violent and brutal nature of the offense ... far outweighed the rehabilitative needs of the defendant.

The trial court properly evaluated the relevant factors and adequately explained its rationale for imposing sentence. We, therefore, conclude that the trial court did not erroneously exercise its discretion in sentencing Abrams.

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

