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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0497-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAREEF HOLDER, a/k/a PUMPKIN
HOLDER, SHAREEF T. HOLDER,

Defendant-Appellant.

Submitted February 15, 2017 – Decided March 1, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New
Jersey, Law Division, Middlesex County,
Indictment No. 14-01-0021.

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

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Jason M. Boudwin,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Shareef Holder appeals from an order denying his
motion to suppress evidence seized from the trunk of his car

pursuant to a search warrant. Defendant also appeals from the judgment of conviction imposing an aggregate twenty-one-year prison term with an eighty-five-percent parole ineligibility period pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2(a). For the reasons that follow, we affirm.

I.

The telephonic search warrant was based on the recorded oral affidavit of Investigator Scott Crocco of the Middlesex County Prosecutor's Office (MCPO). Crocco had been assigned to the MCPO's Homicide Unit since January 2008, and had "multiple different trainings and schooling [] in different areas related to homicide and fatal crashes."

Crocco averred that at approximately 9:53 p.m. on September 28, 2013, New Brunswick Police Officer Keven Hendricks stopped defendant's vehicle after observing it pass by with substantial front end damage from an accident that appeared to have just occurred. Defendant exited his vehicle but then re-entered it and fled the scene at a high rate of speed, traveling in excess of 100 miles per hour. Hendricks initially gave chase, but discontinued his pursuit due to safety concerns. A short time later, defendant collided with three other vehicles at an intersection, killing the twenty-two-year-old driver of one of the cars. Defendant exited his vehicle without any substantial injuries, but he appeared to

be "under the influence of either narcotics or drugs in that his [] speech was slurred and his motor skills were very slow." Defendant was transported to a local hospital, where police observed "a strong smell of alcoholic beverage coming from his breath." At the accident scene, officers observed a glass vial of what appeared to be marijuana in plain view on the passenger floor, and could smell marijuana through the car window.

A warrantless blood sample was taken from defendant by the North Brunswick Police Department prior to Crocco's arrival at the hospital. Based on Crocco's sworn testimony, Judge Arnold L. Natali, Jr. issued a warrant to take a second blood sample from defendant and to search his car, its passenger compartment, and "all other accessible areas . . . including the trunk, compartments, and all containers or other items." In defendant's trunk, police found 948 glassine packets of heroin. Police also found twenty-five bags of marijuana and a digital scale. A laboratory analysis of "defendant's blood sample proved positive for ethyl alcohol and drugs (THC-COOH-a marijuana metabolite). The BAC was determined to be 0.138%."

Defendant was indicted and charged with: (1) first-degree aggravated manslaughter by recklessly causing death under circumstances manifesting extreme indifference to human life, N.J.S.A. 2C:11-4a(1) (count one); (2) first-degree aggravated

manslaughter by causing death while fleeing or attempting to elude a police officer, N.J.S.A. 2C:11-4a(2) (count two); (3) second-degree eluding, N.J.S.A. 2C:29-2b (count three); (4) third-degree possession of heroin, N.J.S.A. 2C:35-10a(1) (count four); (5) second-degree possession with intent to distribute heroin, N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(2) (count five); and (6) fourth-degree possession with intent to distribute marijuana, N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(12) (count six).

Defendant moved to suppress the first blood sample taken without a warrant, and the second blood sample and drug evidence seized after the search warrant issued. Following a hearing, Judge Joseph Paone suppressed the warrantless blood sample, but denied the motion to suppress the second sample and the drug evidence.¹ Pertinent to this appeal, in his thorough oral opinion, Judge Paone reasoned:

Not only did Crocco advise [Judge] Natali that [MCPO Investigator Greg] Morris observed a small glass vial of marijuana in the passenger compartment, he also swore to [Judge] Natali that Morris smelled marijuana emanating from the vehicle. Those facts taken together amounted to a well grounded suspicion that the marijuana could be found in the trunk of [] defendant's car. It is entirely reasonabl[e] for Judge Natali to assume . . . that the smell of marijuana could not have come from

¹ The State did not appeal the suppression of the first blood sample, nor does defendant challenge the denial of the motion to suppress the second blood sample.

the small glass container found on the passenger side floor and that the trunk contained additional contraband. Therefore, based on Crocco's affidavit, there existed probable cause to authorize the search of the trunk[.]

On January 9, 2015, defendant pled guilty to count one, first-degree aggravated manslaughter, and count five, second-degree possession with intent to distribute heroin. The remaining charges were dismissed pursuant to the negotiated plea agreement. On February 27, 2015, the court sentenced defendant in accordance with the plea agreement to a twenty-one-year term of imprisonment subject to NERA on count one, and a concurrent extended term of twelve years imprisonment with forty-five months of parole ineligibility on count five.

On appeal, defendant raises the following issues for our consideration:

POINT I

BECAUSE THE POLICE DID NOT HAVE PROBABLE CAUSE TO SEARCH THE TRUNK OF THE CAR, THE DRUGS SEIZED FROM THE TRUNK MUST BE SUPPRESSED.

POINT II

THE SENTENCE OF [TWENTY-ONE] YEARS, WITH A MANDATORY PAROLE TERM OF ALMOST [EIGHTEEN] YEARS IS EXCESSIVE AND NOT BASED ON CONSIDERATION OF RELEVANT MITIGATION.

II.

We first address defendant's challenge to the search warrant. Defendant argues, as he did before the trial court, that the warrant was invalid because the police lacked probable cause to believe the trunk contained drugs. We disagree.

"[A] search executed pursuant to a warrant is presumed to be valid" and "a defendant challenging its validity has the burden to prove 'that there was no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" State v. Jones, 179 N.J. 377, 388 (2004) (citation omitted). "Accordingly, courts 'accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant.'" State v. Keyes, 184 N.J. 541, 554 (2005) (alteration in original) (citation omitted).

"[A]n appellate court's role is not to determine anew whether there was probable cause for the issuance of the warrant, but rather, whether there is evidence to support the finding made by the warrant-issuing judge." State v. Chippero, 201 N.J. 14, 20-21 (2009). "Doubt as to the validity of the warrant 'should ordinarily be resolved by sustaining the search.'" Keyes, supra, 184 N.J. at 554 (citations omitted).

To determine whether there was probable cause, we look only at the information within "'the four corners of the supporting

affidavit.'" Chippero, supra, 201 N.J. at 26 (citation omitted). This probable cause inquiry requires courts "to make a practical, common sense determination whether, given all of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Marshall, 199 N.J. 602, 610 (2009) (citation omitted).

Defendant relies, as he did before the trial court, on State v. Patino, 83 N.J. 1, 12-13 (1980), to support his position that the police lacked probable cause to search his vehicle's trunk. In Patino, the police stopped the defendant's automobile for a routine motor vehicle check, without witnessing any traffic violation or other suspicious activity. Id. at 5. Upon requesting the occupants' credentials, the officer observed a small clear plastic bag containing suspected marijuana on the floor next to the front seat. Ibid. The occupants were removed from the car and placed under arrest for possession of marijuana. Ibid. After finding nothing else incriminating in the passenger area, the officer directed Patino to unlock the trunk, where a shopping bag containing cocaine was found. Id. at 6. In invalidating the seizure of the trunk's contents, the Court reasoned:

[T]he bare circumstance of a small amount of marijuana does not constitute a self-evident proposition that more marijuana or other contraband might be elsewhere in the automobile. The presence of the marijuana

alone does not under these facts give rise to an inference that would lead a police officer of ordinary prudence and experience conscientiously to entertain a strong suspicion that additional criminal contraband is present in the trunk of the automobile. The officer knew of no prior history of illegal conduct by these defendants. There was no erratic driving, suspicious gestures, or other incriminating activity observed. Nothing found in the interior of the passenger area or in the conduct of the defendants generated any suspicion of a drug cache in the trunk or of any personal danger to the officer.

[Id. at 12.]

In the present case, the trial court rejected defendant's reliance on Patino and instead found that two other cases persuasively supported the State's position. The court first cited State v. Kahlon, 172 N.J. Super. 331 (App. Div. 1980), cert. denied sub nom., Kahlon v. New Jersey, 454 U.S. 818, 102 S. Ct. 97, 70 L. Ed. 2d 88 (1981). In Kahlon, the defendant's vehicle was observed traveling on Interstate Highway 287 at an unusually slow speed, creating a traffic hazard. Id. at 335. When the defendant opened his car window, the officer smelled an odor he believed to be burning marijuana. Id. at 336. After the defendant admitted smoking marijuana in the vehicle, the officer searched the passenger compartment and discovered a half-burned marijuana cigarette in the ashtray and a half-ounce of marijuana and rolling papers in the passenger side visor. Ibid. The officer continued

to smell raw marijuana and, after searching the backseat without success, he removed the keys from the ignition and opened the trunk. There, he found thirty pounds of marijuana in bags, a scale, and over \$3000. Id. at 337. In concluding that the search of the trunk was lawful, we found that

[the officer's] inability to pinpoint the source of the smell of unburned marijuana while in [the rear interior] of the automobile although it appeared to emanate from the rear of the vehicle, together with the marijuana already found in the car, reasonably could leave him to conclude, . . . that the odor came from the car's trunk and accordingly established probable cause to search the trunk[.]

[Id. at 338 (citations omitted).]

In State v. Guerra, 93 N.J. 146 (1983), the second case on which the trial court based its decision, police stopped defendant's car after noticing a taillight out. Id. at 148-49. While speaking with the driver, the officer detected a strong odor of marijuana emanating from the interior of the car. The officer shined his flashlight into the car, but observed only a small overnight suitcase that he concluded could not be the source of the odor. Id. at 149. After the occupants refused consent to search the trunk, the vehicle was taken to police headquarters. The police obtained a telephonic warrant to search the trunk, where they discovered a large quantity of marijuana. Id. at 149-

50. On these facts, the Court concluded the police had probable cause to search the trunk for evidence of contraband. Id. at 150.

We agree with the trial court's analysis. Here, unlike Patino, the police did not act on the mere presence of a small vial of marijuana in defendant's car. Rather, after being stopped by police, defendant fled at a speed in excess of 100 miles per hour and collided with three other cars, resulting in one driver's death. Defendant appeared to be under the influence of drugs, and smelled of alcohol. Standing at the scene of the four-car collision, the officers were able to smell marijuana coming from inside defendant's car. Similar to Guerra, it was reasonable for the police to assume the small vial could not account for the odor, and to search the car, including its trunk, for the source of the odor. As previously noted, the concept of probable cause does not require certainty but only "a fair probability that contraband or evidence of a crime will be found in a particular place." Chippero, supra, 201 N.J. at 28 (citation omitted). We therefore conclude there was probable cause to issue the search warrant for the car, including its trunk, and sufficient evidence in the record to support the denial of defendant's motion to suppress the drug evidence found there.

III.

Despite the plea agreement, defendant next contends his aggregate twenty-one-year NERA sentence is excessive. Defendant argues the sentencing judge should have found mitigating factor four, that there were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense, N.J.S.A. 2C:44-1(b)(4). This argument requires little discussion.

Sentencing determinations are reviewed on appeal with a highly deferential standard. State v. Fuentes, 217 N.J. 57, 70 (2014).

The appellate court must affirm the sentence unless (1) the sentencing guidelines were violated; (2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or (3) "the application of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience."

[Ibid. (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).]

Once the trial court has balanced the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1(a) and -1(b), it "may impose a term within the permissible range for the offense." State v. Bieniek, 200 N.J. 601, 608 (2010). See also State v. Case, 220 N.J. 49, 65 (2014) (instructing that appellate courts may not

substitute their judgment for that of the sentencing court, provided that the "aggravating and mitigating factors are identified [and] supported by competent, credible evidence in the record").

Here, the judge found aggravating factors three, "[t]he risk that . . . defendant will commit another offense," N.J.S.A. 2C:44-1(a)(3); six, "[t]he extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted," N.J.S.A. 2C:44-1(a)(6); and nine, "[t]he need for deterring the defendant and others from violating the law," N.J.S.A. 2C:44-1(a)(9). The judge found no mitigating factors.


Defendant's pre-sentence report (PSR) indicates he was evaluated in 2003, and "found to be psychologically inaccessible," "bears emotional scars from past traumatic events," and "has emotional disturbances, deep, internalized anxiety and ambivalence relative to love." The PSR also reveals defendant has a history of regular marijuana and alcohol use, and he admitted he was under the influence of both those substances when he committed this offense. However, any possible mitigating factor was indubitably outweighed by the well-supported aggravating factors. Defendant has an extensive juvenile and adult criminal history, including a history of drug-related offenses that threaten and cause serious

harm. See State v. Tarver, 272 N.J. Super. 414, 435 (App. Div. 1994).

Defendant was fully aware of his potential exposure; he entered a negotiated plea agreement providing for the very sentence he received, and he confirmed during the plea hearing that he understood the sentence. The sentence is well within the permissible range, is supported by credible evidence in the record, and does not shock the judicial conscience. Accordingly, we discern no abuse of discretion.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION