SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3251-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CONOR R. MAHONEY,

Defendant-Appellant.

Submitted April 25, 2017 — Decided May 17, 2017

Before Judges Fasciale and Gilson.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Accusation No. 15-01-0097.

Joseph E. Krakora, Public Defender, attorney for appellant (Michael Confusione, Designated Counsel, on the brief).

Fredric M. Knapp, Morris County Prosecutor, attorney for respondent (Paula C. Jordao, Assistant Prosecutor, on the brief).

PER CURIAM

Following the denial of his motion to suppress physical evidence, defendant Conor R. Mahoney pled guilty to third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1). He was sentenced

in accordance with his plea agreement to one year of probation. Defendant now appeals the denial of his motion to suppress and his sentence. We affirm.

I.

The relevant facts were developed at an evidentiary hearing, during which one witness, Officer Jorge Reyes, testified. According to Officer Reyes, on October 26, 2014, at approximately 4:50 p.m., he observed a vehicle with a rear center brake light that was not operating. Officer Reyes effectuated a motor vehicle stop. There were two occupants in the vehicle. Defendant was the driver and there was a male passenger. As the officer approached the vehicle, he observed that the driver and passenger "appeared to be picking their hips up as if they were concealing something." Officer Reyes then observed pieces of wax paper inside the vehicle, which he knew based on his training and experience were used to package heroin. The officer also requested defendant to provide his credentials and, during that process, he observed defendant open the glove compartment in which he could see a folding knife.

The officer called for backup and asked defendant to step out of the car. While outside the vehicle, Officer Reyes observed that defendant had fresh needle-track marks on his arm. The officer waited approximately three minutes for backup officers to arrive and, when they did, he conducted a pat-down search of

defendant. During that search, he felt a bulge in defendant's left pocket.[1] Officer Reyes then arrested defendant and retrieved approximately forty-five folds of heroin from defendant's pocket.

After hearing the testimony and reviewing a video from the police vehicle showing the stop and Officer Reyes' interaction with defendant, the motion judge found that the stop of the vehicle was lawful and the pat-down search was incident to defendant's arrest. In that regard, the motion judge reasoned that the officer had probable cause to arrest defendant before he conducted the pat-down search. The court embodied its rulings in an order, together with a written statement of reasons, issued on January 7, 2016.

As noted earlier, following the denial of his motion to suppress, defendant pled guilty to possession of heroin. He was sentenced to one year of probation as called for in his plea agreement.

II.

On appeal, defendant makes two arguments:

[1] Officer Reyes asked defendant what was in his pocket and defendant responded that it was "dope." The motion judge suppressed that and other statements made by defendant because he had not been given his Miranda warnings. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

> Point I – The trial court erred in denying defendant's motion to suppress physical evidence seized by police.
>
> Point II – Defendant's sentence is improper and excessive.

In reviewing a motion to suppress, we defer to the trial court's factual and credibility findings, "so long as those findings are supported by sufficient credible evidence in the record." State v. Handy, 206 N.J. 39, 44 (2011) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). Deference is afforded "because the 'findings of the trial judge . . . are substantially influenced by his [or her] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Reece, 222 N.J. 154, 166 (2015) (first alteration in original) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). "An appellate court should disregard those findings only when a trial court's findings of fact are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015) (citing State v. Johnson, 42 N.J. 146, 162 (1964)). The legal conclusions of a trial court are reviewed de novo. Id. at 263 (citing State v. Gandhi, 201 N.J. 161, 176 (2010)).

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution protect individuals from unreasonable searches and seizures. U.S. Const.

amend. IV; N.J. Const. art. I, ¶ 7. "There is a constitutional preference for" law enforcement officers to obtain a warrant from a neutral magistrate before conducting a search or seizure. State v. Pineiro, 181 N.J. 13, 19 (2004); State v. Ravotto, 169 N.J. 227, 236 (2001). Among the exceptions to a search or seizure conducted without a warrant is a search incident to a lawful arrest. State v. Minitee, 210 N.J. 307, 318 (2012).

Here, the motion judge found that Officer Reyes had probable cause to arrest defendant based on the officer's observation of the wax folds in plain view. The motion judge also relied on the officer's testimony that he observed defendant trying to hide evidence and that defendant had fresh needle-track marks on his arm. Defendant argues that there was insufficient probable cause to arrest him for possession of drug paraphernalia. Moreover, defendant points out that he was never charged with possession of drug paraphernalia.

A lawful arrest is predicated on probable cause or "a well-grounded suspicion that a crime has been or is being committed." State v. Marshall, 199 N.J. 602, 610 (2009) (quoting State v. O'Neal, 190 N.J. 601, 612 (2007)). The facts and circumstances must show "reasonable ground for belief of guilt." Ibid. (quoting O'Neal, supra, 190 N.J. at 612). "Although several factors considered in isolation may not be enough," when analyzed under

the totality of the circumstances, their cumulative effect can support probable cause. State v. Moore, 181 N.J. 40, 46 (2004).

Officer Reyes was the only witness who testified at the evidentiary hearing. Although the motion judge did not expressly find the officer's testimony credible, he clearly relied on that testimony. See Locurto, supra, 157 N.J. at 473 ("[T]he Court found it unnecessary for a trial court to enunciate credibility findings when the record as a whole made the findings clear[.]" (citing State v. Hodgson, 44 N.J. 151, 163 (1965), cert. denied, 384 U.S. 1021, 86 S. Ct. 1929, 16 L. Ed. 2d 1022 (1966))). Based on the testimony of Officer Reyes, there was probable cause to arrest defendant for possession of drug paraphernalia and illegal drug possession. Accordingly, the officer had the lawful right to conduct a pat-down search incident to the arrest. That pat-down search revealed the heroin, which was then lawfully seized.

A. The Sentence

Defendant contends that this matter should be remanded for resentencing because the sentencing judge did not sufficiently explain the facts supporting the aggravating factors. We disagree.

We accord substantial deference to sentencing determinations and will "not substitute [our] judgment for that of the sentencing court." State v. Fuentes, 217 N.J. 57, 70 (2014). We will affirm a criminal 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. (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).]

Here, the sentencing judge found aggravating factors three and nine, N.J.S.A. 2C:44-1(a)(3) and (9), and mitigating factors one, two, six, and ten, N.J.S.A. 2C:44-1(b)(1), (2), (6) and (10). The judge articulated the facts supporting each of these findings of aggravating and mitigating factors. We discern no abuse of discretion or error in the sentence.

Affirmed.