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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5036-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAQUAY WILLIAMS, a/k/a JAMES WATTS,
JAMALL WILLIAMS, JAMES C. WATTS,
LAQUAI C. TERRE, LAQUAI C. TERREWILLIAMS,
and LAQUAI C. WILLIAMS,

Defendant-Appellant.

Submitted January 19, 2017 – Decided March 15, 2017

Before Judges Lihotz, Hoffman and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
13-09-2500.

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

Diane M. Ruberton, Acting Atlantic County
Prosecutor, attorney for respondent (Courtney
M. Cittadini, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant, LaQuay Williams, appeals from a May 5, 2015 judgment of conviction after trial for first-degree murder, as well as weapons offenses. We affirm for the reasons that follow.

J.M.¹ was shot and killed on December 29, 2006, in a parking lot outside a club on New York Avenue, in Atlantic City. On September 18, 2013, defendant was charged in a four count indictment with first-degree murder, N.J.S.A. 2C:11-3a(1) and (2); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4a; second-degree unlawful possession of a handgun by a convicted person, N.J.S.A. 2C:39-5b; and second-degree possession of a handgun by a convicted person, N.J.S.A. 2C:39-7. Defendant's first trial resulted in a mistrial on September 15, 2014. Defendant's second trial resulted in a conviction on the first three counts² and he was sentenced to a seventy-year aggregate term subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2 to -9.

During the trial, the jury heard from several eyewitnesses who testified they observed defendant shoot the victim. S.S.,

¹ We use initials to protect the identities of the victim and witnesses.

² Regarding the second-degree possession of a handgun by a convicted person charge, defendant waived his right to a jury trial and was found guilty by the trial judge at a bench trial.

K.M., and K.M.'s friend went to the club that night. They sat in a car in the parking lot while K.M. and his friend were smoking marijuana. S.S. rolled down the window in order to dissipate the odor of the marijuana. S.S. testified her attention was drawn to a man, because "his arm was a little too stiff." He was walking with his arm straight against his side, and it did not move with his gait. She saw the man approach the victim, raise his arm, and shoot the victim in the back of the head. The man then jumped into the passenger side of a dark, two-door coupe, being driven by a blond Caucasian woman. K.M.'s testimony matched S.S.'s account. However, unlike S.S., K.M. knew both the victim and the shooter, and identified defendant as the latter.

M.D. also witnessed the shooting. He was there the night of the shooting to visit a friend. On his way into the club, he recognized defendant, who was trying to gain admission. Later that evening, M.D. was in the parking lot waiting for his friend when he saw defendant standing in a group of people and observed as the victim and another man approached the group. M.D. saw defendant move behind the victim, raise his arm, and heard a shot go off. Defendant immediately ran to his girlfriend J.R.'s car while moving his hand to his waistband.

Another witness, a bouncer at the club, testified he knew defendant was dating J.R., a former dancer at the club. When

defendant was denied entry to the club, he went out to the parking lot, while J.R. went inside.

At approximately 4:00 a.m., the bouncer heard two gunshots outside. The bouncer looked outside and saw J.R. driving a black coupe, with defendant in the passenger seat. The car drove away "in a hurry" across the parking lot away from the club. The bouncer saw the victim on the ground and notified police.

Police interviewed J.R. on December 29, 2006, and granted her immunity. J.R. testified she was with defendant in the parking lot across from the club. J.R. testified defendant knew the victim and had spoken to him several times over the previous two months. Defendant and the victim were not close but were "cool." On the night of the shooting, J.R. and defendant visited the club and parked across the street.

J.R. went inside to meet with some of the dancers, but defendant was denied entry. The couple then went to a nearby club and returned to the parking lot of the club at around 4:00 a.m. J.R. testified another unidentified man got out of a white car, approached the victim, and shot him in the back of the head. Defendant got in her car and as they drove away, defendant told her the shooting "was meant to happen." In her first interview with police, J.R. did not mention either the gunman, or the white car.

On January 22, 2015, the day the jury returned a guilty verdict, a captain in the Atlantic County Sheriff's Office received a text message from a friend, a bartender at a local inn. The message read:

Hey, not sure if anyone was notified, but a friend of mine just served on jury duty for a murder trial and said that members of the defendants [sic] family was [sic] outside writing down license plate numbers of the jury. Can you check that they reported it? He said no one wanted to say anything because they didn't want it to look like their verdict was swayed.

The captain had seen members of the sheriff's office escorting jurors to their cars and sent back a message saying:

Nothing was reported if that was the Laquay Williams trial it is over and the jury was escorted to their vehicles by my officers not sure I understand you. Certainly if she has a concern she can call 909.7200 and make a report.

The following morning, the captain reported the conversation to his superior, and went to speak with the bartender, who identified juror #3 reported the issue. On January 28, 2015, the captain reported the exchange to the trial judge and the criminal case manager, and submitted a written account of the incident.

On February 4, 2015, with the consent of the parties, the trial judge conducted an in-camera hearing with juror #3. The

juror told the judge while he was in the jury room, he heard other jurors, including juror #1, discussing

something about possible members of the defendant's family . . . they felt a little unsafe that there were some people that were possibly looking at cars and what we're driving, and that's why we asked to have an escort out of the parking lot afterwards.

The juror told the judge the security concern arose towards the end of deliberations but he did not believe it had any effect on their discussions and did not form a basis upon which he rendered his verdict. Juror #3 did not observe any such incident in the parking lot. The juror was not aware of other discussions during deliberations or any of the regular breaks. Following the judge's in-camera hearing of juror #3, defendant filed a motion for mistrial.

On March 6, 2015, the judge held a second in-camera hearing in the presence of the parties to interview juror #1. When asked about the incident regarding the parking lot, juror #1 replied some of the jurors were concerned there were "people around" the parking lot and further explained some of the other jurors had expressed concerns about their safety.

The second juror stated the allegation regarding the parking lot did not have any bearing on his ability to be fair and

impartial. The following exchange occurred when the judge attempted to clarify the timing of the discussion:

Juror: During deliberations, no one brought anything, well, after, not during deliberations, no.

The Court: Again, without--

Juror: When we were sitting in the room determining whether or not there's guilt or innocence.

The Court: Or waiting for my instructions, or while you're gathering, or anything like that.

Juror: No.

The Court: Okay. So just to be clear, then, while you and your fellow jurors were either in the jury deliberation room or any other time you were here together in the courthouse, or any other time for that, there was no discussion about someone making observations about the jurors or their cars or anything in the parking lot.

Juror: People were saying that there were -- they said there might be family members and stuff, they expressed fear, but I was like, well, you just stay away from them.

The Court: When did that expression happen?

Juror: It was happening, it just happened here and there. It was during the trial, I guess.

The Court: During the trial. And do you recall specifically who those persons may have been?

Juror: You know, I think it was some of the ladies, you know, but you know. . . .

The Court: But getting back now to the period of time when you were discussing the evidence following my instructions on the law, did the subject come up then?

Juror: No, no, just at the end when they said we're concerned for our safety.

The trial judge found it unnecessary to question any other jurors on the issue. On April 7, 2015, the trial judge issued a letter opinion and order denying defendant's motion for a mistrial.

On April 23, 2015, the trial judge amended the unlawful possession of a weapon charge, N.J.S.A. 2C:39-5b, from a second-degree to a third-degree offense and sentenced defendant to a seventy-year term in state prison on first-degree murder, N.J.S.A. 2C:11-3a(1) and (2), subject to the NERA. On the unlawful possession of a weapon charge, N.J.S.A. 2C:39-5b, defendant was sentenced to a three-year term, and on second-degree possession of a weapon by a convicted person, N.J.S.A. 2C:39-7, defendant was sentenced to a ten-year term with a five-year period of parole ineligibility. This appeal followed.

On appeal defendant argues:

POINT I

THE TRIAL COURT FAILED TO PROPERLY INVESTIGATE POST-VERDICT CLAIMS THAT JURORS FEARED DEFENDANT AND HIS FAMILY DURING DELIBERATIONS, AND FAILED TO GRANT A MISTRIAL, THEREBY

DENYING DEFENDANT HIS RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY. U.S. CONST. AMENDS. VI, XVI; N.J. CONST. ART. I, PARS. 1 AND 10.

POINT II

THE STATE COMMITTED PROSECUTORIAL MISCONDUCT THROUGHOUT THE TRIAL BY IMPROPERLY RELYING ON EVIDENCE OUTSIDE THE RECORD IN AN ATTEMPT TO BOLSTER THE CREDIBILITY OF ITS OWN WITNESSES WHILE INFLAMING THE PASSIONS OF THE JURY.

POINT III

THE TRIAL COURT ERRED IN INSTRUCTING THE JURORS ON FLIGHT, DEPRIVING DEFENDANT OF HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL. U.S. CONST. AMEND. XIV; N.J. CONST. ART. I, PARS. 1, 9, AND 10.

POINT IV

THE SENTENCE IMPOSED WAS MANIFESTLY EXCESSIVE.

I.

We review the disposition of a motion for a mistrial for an abuse of discretion. State v. R.D., 169 N.J. 551, 559 (2001). "Application of that standard respects the trial court's unique perspective. We traditionally have accorded trial courts deference in exercising control over matters pertaining to the jury." Id. at 559-60.

A defendant's right to an impartial jury "is one of the most basic guarantees of a fair trial." State v. Loftin, 191 N.J. 172, 187 (2007). That right "includes the right to have the jury decide the case based solely on the evidence presented at trial, free

from the taint of outside influences and extraneous matters." R.D., supra, 169 N.J. at 557. When there has been an allegation of outside influence, the court has an independent duty "to interrogate the juror, in the presence of counsel, to determine if there is a taint; if so, the inquiry must expand to determine whether any other jurors have been tainted thereby." Id. at 558. (citing Pressler, Current N.J. Court Rules, cmt. 2 on R. 1:16-1 (2000)). While the court should not just accept a juror's word that no information was communicated to other jurors, it is within the discretion of the trial judge, after a thorough inquiry, to determine whether "additional voir dire is necessary to assure that impermissible tainting of the other jurors did not occur." Id. at 561. In some cases, additional voir dire of the remaining jurors would lead to inappropriate information concerning deliberation. Ibid.

Even if the court determines a juror "has been exposed to outside influence," "[a] new trial . . . is not necessary in every instance." Id. at 559. A mistrial should only be granted "to prevent an obvious failure of justice." State v. Harvey, 151 N.J. 117, 205 (1997) (citing State v. Rechtschaffer, 70 N.J. 395, 406 (1976)). The test to determine whether a new trial is necessary "is whether such matters could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the

legal proofs and the court's charge." Panko v. Flintkote Co., 7 N.J. 55, 61 (1951). The standard is therefore not whether it "actually influenced the result, but whether it had the capacity of doing so." Loftin, supra, 191 N.J. at 190. Moreover, "it is presumed the irregularity had the capacity to influence, 'unless it has affirmatively been shown [by the State that] it does not.'" State v. Wormley, 305 N.J. Super. 57, 69 (App. Div. 1997) (alteration in original) (quoting State v. Grant, 254 N.J. Super. 571, 588 (App. Div. 1992)), certif. denied, 154 N.J. 607 (1998).

The trial court "is in the best position to determine whether the jury has been tainted." R.D., supra, 169 N.J. at 559. To make that determination, the court must consider "the gravity of the extraneous information in relation to the case, the demeanor and credibility of the juror or jurors who were exposed to the extraneous information, and the overall impact of the matter on the fairness of the proceedings." Ibid.

Applying these principles, we conclude the trial court did not abuse its discretion in denying defendant's motion for a mistrial or in denying his request to interview every juror. The trial judge separately interviewed two jurors, who each assured the court the safety concerns did not affect their deliberations. The trial judge found both jurors' demeanor to be calm and their answers to be credible; therefore, no further investigation was

warranted. A review of the transcript of the interview does not demonstrate the jurors' concern for their safety had the capacity to taint deliberations and shows they came to a unanimous decision based upon facts and evidence adduced at trial. Because the trial judge is in the best position to determine the effect of the alleged prejudicial statement, see Harvey, supra, 151 N.J. at 205, we discern no error in denying defendant's motion for a mistrial or in not interviewing the remaining members of the jury.

II.

We reject defendant's arguments the prosecutor committed misconduct by making inflammatory prejudicial remarks to bolster the credibility of witnesses by inferring they were afraid or subject to retaliation. The offending remarks by the prosecutor referred to the "code of silence on the streets" and a "stop snitching mentality." Some of the State's witnesses delayed coming forward to police, sometimes for years, while others had lengthy criminal records. Defendant believes raising the inference of retaliation unsupported by the record was an attempt to bolster the credibility of the State's reluctant witnesses. Further, defendant argues these comments were designed to make the jurors fear the defendant and hint at threats that were never made.

Defendant did not object to the remarks at trial. Therefore, to warrant reversal, the remarks must be "clearly capable of

producing an unjust result." R. 2:10-2. "In evaluating claims of prosecutorial misconduct and plain error the fundamental question we must answer is whether it is clear beyond a reasonable doubt that the jury would have returned a guilty verdict if the questioned conduct had not occurred." State v. Walden, 370 N.J. Super. 549, 562 (App. Div.), certif. denied, 182 N.J. 148 (2004).

Here, the prosecutor's remarks do not meet this standard. Rather, the statements were acceptable commentary based on the testimony of K.M. and M.D., who testified about their reluctance to provide testimony, and therefore do not require reversal.

III.

Further, defendant argues the trial judge erred by instructing the jurors on flight, thereby depriving defendant of his constitutional right to a fair trial. We disagree.

Our Supreme Court has noted that determining whether to issue jury charges relating to flight is discretionary. State v. Long, 119 N.J. 439, 499 (1990). We accordingly review the trial court's ruling for an abuse of discretion. State v. Wakefield, 190 N.J. 397, 491 (2007) (citing State v. Brown, 170 N.J. 138, 147 (2001)), cert. denied, 552 U.S. 1146, 128 S. Ct. 1074, 169 L. Ed. 2d 817 (2008).

Defendant asserts the trial court erred in charging the jury on flight because the evidence did not support such a charge.

Evidence of flight is generally admissible for purposes of demonstrating "consciousness of guilt, and therefore of [demonstrating] guilt." State v. Ingram, 196 N.J. 23, 46 (2008) (citing Long, supra, 119 N.J. at 499). Mere departure from a crime scene, however, is an insufficient basis to find flight. State v. Wilson, 57 N.J. 39, 48 (1970). "For departure to take on the legal significance of flight, there must be circumstances present and unexplained which, in conjunction with the leaving, reasonably justify an inference that it was done with a consciousness of guilt and pursuant to an effort to avoid an accusation based on that guilt." Ingram, supra, 196 N.J. at 46 (quoting State v. Mann, 132 N.J. 410, 418-19 (1993)). In giving a jury charge, the trial court must "require the jury first to find that there was a departure, and then to find a motive for the departure, such as an attempt to avoid arrest or prosecution, that would turn the departure into flight." Mann, supra, 132 N.J. at 421 (citing Wilson, supra, 57 N.J. at 49).

The trial court's instruction properly charged the jury on how to use flight evidence: by establishing that the evidence is to be used as evidence of consciousness of guilt. The evidence could reasonably demonstrate consciousness of guilt because several witnesses testified defendant and J.R. sped away in her car immediately after the shooting. The jury also heard evidence

that when confronted by a United States Marshall on the date of his arrest, defendant gave a fake name and a false date of birth. Taken together, this evidence was sufficient to charge the jury with the flight instruction and the trial court did not abuse its discretion.

IV.

Finally, we are unconvinced defendant's sentence was manifestly excessive. "[Our] review of sentencing decisions is relatively narrow and is governed by an abuse of discretion standard." State v. Blackmon, 202 N.J. 283, 297 (2010) (citing State v. Jarbath, 114 N.J. 394, 401 (1989)). We consider whether the trial court has made findings of fact grounded in reasonably credible evidence, whether the factfinder applied correct legal principles in exercising discretion, and whether application of the facts to law has resulted in a clear error of judgment and to sentences that "shock the judicial conscience." State v. Roth, 95 N.J. 334, 363-65 (1984).


N.J.S.A. 2C:44-1 established factors to be weighed during sentencing. Here, the court applied three aggravating factors: N.J.S.A. 2C:44-1(a)(3), the risk of re-offense; N.J.S.A. 2C:44-1(a)(6), the nature and extent of the defendant's prior record; and N.J.S.A. 2C:44-1(a)(9), the need for deterrence. The trial judge made findings as to each of the aggravating factors found.

N.J.S.A. 2C:44-1(a)(3), the risk of re-offense, was found based on the defendant's "frequent contact with the criminal and juvenile justice system." N.J.S.A. 2C:44-1(a)(6), the nature and extent of the defendant's prior record, was described by the judge as the factor with the "greatest weight." Defendant has prior juvenile adjudications for various offenses. As an adult, defendant has been arrested ten times, with nine convictions. Lastly, the judge found N.J.S.A. 2C:44-1(a)(9), the need for deterrence, based upon the manner in which the unsuspecting victim was shot in the middle of a crowd. The determination this act requires deterrence is well founded. See Jarbath, supra, 114 N.J. at 405 (holding a sentence can have both a general and personal deterrence effect). No mitigating factors were found.

Following our review, we reject defendant's sentencing challenge. As noted, the applied mitigating factors were supported and the length on the sentence fell within the permissible range. Finally, the sentence does not shock our judicial conscience. For all of these reasons, we find defendant's sentence was not manifestly excessive.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION