

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5156-13T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

J.R.T., Jr.,

Defendant-Appellant.

Submitted September 27, 2016 – Decided June 16, 2017

Before Judges Kennedy and Gilson.

On appeal from the Superior Court of New
Jersey, Law Division, Passaic County,
Indictment Nos. 09-11-1280 and 10-02-0149.

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

Camelia M. Valdes, Passaic County Prosecutor,
attorney for respondent (Robert J. Wisse,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Following the denial of his motion to suppress his statements
to a law enforcement officer, defendant J.R.T., Jr. pled guilty

to two counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). He was sentenced in accordance with his plea agreement to concurrent terms of nine years in prison. Defendant appeals the denial of his motion to suppress and his sentences. We affirm.

I.

In 2009, the Passaic County Prosecutor's Office (PCPO) received information that defendant had allegedly sexually assaulted his two children. The assaults reportedly occurred a number of years earlier, between 1994 and 2004, when the children were less than thirteen years of age.

A detective with PCPO opened an investigation. Initially, the detective spoke with both children. On November 13, 2009, the detective went to where defendant resided and asked him to come to PCPO for an interview. Defendant agreed.

The interview was video and audio recorded. At the beginning of the interview, the detective read defendant his Miranda¹ rights. Defendant stated that he understood each of his rights and he agreed to speak with the detective.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

During the interview, the detective told defendant that he wanted defendant to respect him and he would respect defendant.

The detective stated:

I want to talk about certain things, one of the things I want you to know is, between these four walls, just like, when we went to your house, [inaudible] treated you with respect, you treated me with respect, and I hope and expect to receive the same in this room. Between these four walls, you know? I'm gonna respect you and at the very least I would expect to receive the respect back too.

Later in the interview, the detective told defendant:

This is your chance now. This is like an open forum. This is almost like going to church, you have the podium, you air it out. Like going to drug counseling where you state your name and [say] you have a problem.

Thereafter, defendant made incriminating statements concerning the sexual assaults of his children.

In 2010, a grand jury indicted defendant on six counts of sexual assault and endangering the welfare of his two children. With regard to his daughter, defendant was indicted for first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1); second-degree sexual assault, N.J.S.A. 2C:14-2(b); and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). With regard to his son, defendant was indicted for second-degree attempting to commit aggravated sexual assault, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:14-2(a)(1); second-degree sexual assault, N.J.S.A.

2C:14-2(b); and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a).

Defendant moved to suppress the statements that he had given to the detective. An evidentiary hearing was held, during which the detective was the only witness. The State also submitted into evidence a DVD containing the recorded interview between defendant and the detective.

After hearing the detective's testimony and reviewing the video recording of the interview, the court denied the motion to suppress the statements. The court found that defendant had been given his Miranda warnings, defendant understood his rights, and defendant voluntarily agreed to speak with the detective. The court then found that the detective's statements to defendant, when viewed in the totality of the circumstances, did not contradict or undermine the Miranda warnings. Specifically, the court found that the detective's statements did not amount to a promise or assurance that any statement made by defendant would be treated as off the record, secret, or confidential. On April 21, 2011, the court entered an order denying defendant's motion to suppress his statements.

In June 2011, defendant pled guilty to two counts of second-degree endangering the welfare of his children. Defendant had also previously pled guilty to third-degree possession of heroin,

N.J.S.A. 2C:25-10(a)(1). On March 14, 2014, defendant was sentenced on all three convictions.² In accordance with his plea agreement, defendant was sentenced to nine years in prison on each of the convictions for second-degree endangering the welfare of a child. Those sentences were run concurrent. Defendant was also sentenced to three years in prison for the conviction for third-degree possession of heroin. That sentence was run concurrent to the sentences for the second-degree convictions.

II.

On appeal, defendant raises two arguments:

POINT I — BECAUSE THE POLICE CONVEYED TO [J.R.T.] THAT HIS STATEMENTS WOULD BE CONFIDENTIAL, HIS STATEMENT WAS UNCONSTITUTIONALLY OBTAINED, REQUIRING SUPPRESSION

POINT II — BECAUSE THE COURT CONSIDERED [J.R.T.'s] ADDICTION IN AGGRAVATION, NEGLECTED TO CONSIDER MEDICAL RECORDS SUBSTANTIATING MITIGATING FACTOR ELEVEN, AND CONDUCTED A QUANTITATIVE RATHER THAN QUALITATIVE ANALYSIS, A REMAND FOR RESENTENCING IS REQUIRED

² The record does not explain why there was almost a three-year gap between when defendant pled guilty in June 2011, and his sentencing in March 2014. Defendant did move to withdraw his guilty plea to the second-degree endangering the welfare of children indictments, but that motion was denied. The denial of the motion to withdraw the guilty plea has not been challenged on this appeal and we deem that issue to be waived and abandoned. See El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 155 n. 2 (App. Div. 2005) (citing In re Certification of Need of Bloomingdale Convalescent Ctr., 233 N.J. Super. 46, 48 n. 1 (App. Div. 1989)).

We are not persuaded by either of these arguments, and we will address them in turn.

A. The Motion to Suppress

The Fifth Amendment of the United States Constitution guarantees all persons with the privilege against self-incrimination. U.S. Const. amend. V. This privilege applies to the states through the Fourteenth Amendment. U.S. Const. amend. XIV; Griffin v. California, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233, 14 L. Ed. 2d 106, 110 (1965). Moreover, in New Jersey, there is a common law privilege against self-incrimination, which has been codified in statutes and rules of evidence. N.J.S.A. 2A:84A-19; N.J.R.E. 503; State v. Reed, 133 N.J. 237, 250 (1993). Accordingly, it has long been established that when a person is taken into custody or otherwise deprived of his or her freedom, that person is entitled to certain warnings before he or she can be questioned. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

After receiving Miranda warnings, a suspect may knowingly and intelligently waive these rights and agree to answer questions or make statements. Ibid. The State, however, must establish beyond a reasonable doubt that a waiver of the Miranda rights was intelligent, voluntary, and knowing. State v. Nyhammer, 197 N.J. 383, 400-01, cert. denied, 558 U.S. 831, 130 S. Ct. 65, 175 L. Ed.

2d 48 (2009); State v. Presha, 163 N.J. 304, 313 (2000); State v. Galloway, 133 N.J. 631, 654 (1993).

In determining whether a statement is voluntary, courts consider the totality of the circumstances, including the characteristics of the accused and the details of the questions. State v. Knight, 183 N.J. 449, 462-63 (2005) (citing Galloway, supra, 133 N.J. at 654). "Relevant factors include the defendant's age, education, intelligence, advice concerning his [or her] constitutional rights, length of detention, and the nature of the questioning" State v. Bey, 112 N.J. 123, 135 (1988) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S. Ct. 2041, 2047, 36 L. Ed. 2d 854, 862 (1973)).

When reviewing a trial court's decision on a motion to suppress statements, appellate courts generally defer to the fact-findings of the trial court when they are supported by sufficient credible evidence in the record. See Nyhammer, supra, 197 N.J. at 409 (citing State v. Elders, 192 N.J. 224, 243-44 (2007)); see also State v. W.B., 205 N.J. 588, 603 n.4 (2011) ("As the finding of compliance with Miranda and voluntariness turned on factual and credibility determinations, we need only find sufficient credible evidence in the record to sustain the trial judge's findings and conclusions." (citing Elders, supra, 192 N.J. at 242-44)). Moreover, we defer to a trial court judge's findings "which are

substantially influenced by [the judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy[.]" State v. Davila, 203 N.J. 97, 109-10 (2010) (quoting State v. Johnson, 42 N.J. 146, 161-62 (1964)).

When a defendant's statement is videotaped, however, and "the trial court's factual findings are based only on its viewing of a recorded interrogation that is equally available to the appellate court . . ., deference to the trial court's interpretation is not required." State v. Diaz-Bridges, 208 N.J. 544, 566 (2012). We review de novo the trial court's legal conclusions that flow from established facts. See State v. Mann, 203 N.J. 328, 337 (2010).

Here, defendant contends that the detective made two statements that effectively assured defendant that any statements he made would be confidential. The trial court, however, rejected that argument and found that the detective's statements did not convey an assurance of confidentiality.

In the first statement, the detective referenced the interview taking place "[b]etween these four walls[.]" The trial court found that the statement was made in the context of the detective telling defendant that he would respect defendant and that he wanted defendant to respect him. Moreover, the trial court also found that when the detective made that statement, the

detective also told defendant that he would have to speak with his superiors. Thus, the trial court found that when viewed in the totality of the circumstances, the statement by the detective was not an assurance of confidentiality.

In the second statement, the detective told defendant that it was his chance to speak at "an open forum," similar to church, or at drug counseling. While the trial court did not directly address that statement, the court did find that all of the detective's statements had to be viewed in the totality of the circumstances and that none of the statements by the detective gave defendant an assurance of confidentiality.

Having reviewed the record and considered the arguments of defendant, we discern no error in the trial court's findings. Defendant was given his Miranda warnings. Defendant understood those warnings and then voluntarily and intelligently agreed to speak with the detective. Thereafter, nothing the detective said to defendant undercut or contradicted the Miranda warnings when viewed in the totality of the circumstances. Accordingly, we affirm the denial of the motion to suppress.

In arguing that the detective's statements violated his Fifth Amendment rights, defendant relies on this court's decision in State v. Pillar, 359 N.J. Super. 249 (App. Div.), certif. denied, 177 N.J. 572 (2003). The facts in Pillar, however, are

distinguishable from the facts of this case. The defendant in Pillar was charged with sexually abusing a child. Id. at 257. When questioned by a detective, defendant invoked his right to have an attorney before providing a statement. Id. at 262. The defendant then stated that he wanted to "say something 'off-the-record.'" Ibid. After the detective agreed to listen, the defendant confessed to fondling the minor victim. Ibid. Given those facts, we held that "the statement, made immediately following administration of Miranda warnings and after an assurance from an officer that defendant could make a statement 'off-the-record,' was not only obtained in violation of Miranda but was involuntary." Id. at 257. In this case, defendant never requested an attorney. Moreover, the detective did not agree to speak with defendant off the record.

The facts in this case are also distinguishable from the facts in State v. Puryear, 441 N.J. Super. 280 (App. Div. 2015). The two defendants in Puryear each made certain incriminating statements to the police while in custody. Id. at 287-88. Before making those statements, the police provided incorrect and misleading advice that effectively neutralized the Miranda warnings. Id. at 288-290. Specifically, a detective told defendant Puryear that he could not hurt himself by giving the statement prior to administering the Miranda warnings. Ibid. In

defendant Brown's case, after he was provided with the Miranda warnings, Brown asked a detective what it meant that his statement could be used against him in a court of law. Ibid. A detective told Brown that it meant that if Brown lied, his statement could be used against him. Ibid. Under the totality of the circumstances, we found that the State failed to prove that the defendants in Puryear completely understood all of their Miranda rights. Id. at 297. Here, as the trial court found, defendant understood his rights and waived those rights. The statements made by the detective did not undermine or contradict the Miranda warnings.

B. The Sentences

Defendant contends that the sentencing court improperly found certain aggravating factors by considering defendant's history of drug addiction. Defendant also contends that the court failed to consider his medical records in evaluating mitigating factors. Finally, defendant contends that the sentencing court engaged in a quantitative, rather than a qualitative, analysis and failed to articulate the weight afforded to each of the aggravating and mitigating factors.

We review sentencing decisions for an abuse of discretion. State v. Blackmon, 202 N.J. 283, 297 (2010). Accordingly, if a sentencing court finds and balances the aggravating and mitigating

factors based on competent, credible evidence in the record and imposes a sentence within the range established by statute, we will generally affirm such a sentence unless it shocks the judicial conscience. State v. Fuentes, 217 N.J. 57, 70 (2014). Furthermore, when a defendant receives the sentence he bargained for, a presumption of reasonableness attaches to that sentence. Id. at 70-71.

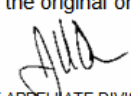
In sentencing defendant here, the court found aggravating factors three, the likelihood that defendant would commit other crimes, N.J.S.A. 2C:44-1(a)(3), and nine, the need to deter, N.J.S.A. 2C:44-1(a)(9). The court amply explained the factual basis for those findings. The court also did not inappropriately consider defendant's past use of illegal drugs.

The sentencing judge then found mitigating factor eleven, excessive hardship, N.J.S.A. 2C:44-1(b)(11). The court explained that the aggravating factors preponderated over the mitigating factor.

Having appropriately evaluated the aggravating and mitigating factors, the court imposed the sentence agreed to in the plea agreement. We find no error or abuse of discretion in defendant's sentences.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION