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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0718-17T1

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

MANSI PATEL,

Defendant-Respondent.

Argued May 3, 2018 – Decided May 14, 2018

Before Judges Haas and Gooden Brown.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
16-12-1816.

Patrick F. Galdieri, II, Assistant Prosecutor,
argued the cause for appellant (Andrew C.
Carey, Middlesex County Prosecutor, attorney;
Patrick F. Galdieri, II, of counsel and on the
brief).

David A. Parinello argued the cause for
respondent (Law Office of Howard S.
Teitelbaum, LLC, attorney; David A. Parinello,
of counsel and on the brief).

PER CURIAM

The State appeals from the Law Division's September 28, 2017 order admitting defendant into the Pre-Trial Intervention (PTI) program over the prosecutor's objection. We reverse.

During the evening of April 20, 2016, defendant drank four glasses of wine during a meal of "pizza, mac + cheese, [and] french fries" at a restaurant. Sometime later, she got in her Porsche Cayenne, and began driving. Around 11:00 p.m., she swerved across a double yellow center line into the oncoming traffic and crashed head-on into the victim's Toyota Camry. The impact of defendant's car smashing into the victim's vehicle caused her Porsche to overturn. The victim's car was severely damaged, and both drivers were trapped in their vehicles until rescue workers extricated them.

Defendant was not injured in the crash and she refused medical attention at the scene. However, the victim sustained fractures to his nose, sternum, and hand. He had to be taken to the hospital, where he underwent surgery. The victim remained in the hospital until his discharge on April 24, 2016. The victim was unable to work for approximately one month. In addition, his Toyota "was totaled for \$5,500 and was taken to the junkyard."

Defendant told the investigating police officer that as she was driving, "she saw her cell phone illuminating and when she reached for it in the passenger seat, she saw oncoming headlights

and the crash occurred." However, the officer smelled the odor of alcohol as soon as defendant began speaking. The officer observed that defendant's "eyelids were droopy, her eyes were watery, her movements were lethargic[,] and she was swaying as she sat on the stretcher" provided to her by the first aid squad.

Because of the officer's observations, he performed a series of field sobriety tests on defendant and she failed each of them. Defendant was unable to maintain her balance while walking, continued swaying, and had to take the arm of another officer to remain on her feet. At that point, the officer arrested defendant for driving while intoxicated (DWI), and transported her to the police station.

At the police station, the officer attempted to administer the Alcotest, and began a twenty-minute observation period. However, defendant vomited, and the officer began another twenty-minute observation period. Once again, defendant vomited. Finally, the officer was able to complete the full twenty-minute observation period and performed the Alcotest. The test revealed that defendant's blood alcohol content (BAC) was 0.09%, which was over the legal limit.

Based upon these facts, a grand jury charged defendant in a four-count indictment with second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count one); third-degree assault by auto,

N.J.S.A. 2C:12-1(c)(2) (count two); fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(3) (count three); and fourth-degree assault by auto, N.J.S.A. 2C:12-1(c)(1) (count four).¹

Defendant applied for PTI. Eligibility for PTI is based primarily on "the applicant's amenability to correction, responsiveness to rehabilitation and the nature of the offense." N.J.S.A. 2C:43-12(b). "Admission [into the PTI program] requires a positive recommendation from the PTI director and the consent of the prosecutor." State v. Negran, 178 N.J. 73, 80 (2003) (citing State v. Nwobu, 139 N.J. 236, 246 (1995)). A determination whether to admit a defendant is "'primarily individualistic in nature,' and a prosecutor must consider an individual defendant's features that bear on his or her amenability to rehabilitation." Nwobu, 139 N.J. at 255 (quoting State v. Sutton, 80 N.J. 110, 119 (1979)). In determining eligibility, prosecutors and PTI program directors must consider the factors set forth in N.J.S.A. 2C:43-12(e), Rule 3:28, and the accompanying Guidelines to that Rule (Guidelines), which "elucidate the 'purposes, goals, and

¹ The police also issued summonses to defendant for DWI, N.J.S.A. 39:4-50; reckless driving, N.J.S.A. 39:4-96; careless driving, N.J.S.A. 39:4-97; and failure to maintain a lane, N.J.S.A. 39:4-88(b).

considerations relevant to PTI.'" Negran, 178 N.J. at 80-81 (quoting State v. Brooks, 175 N.J. 215, 223 (2002)).

After reviewing defendant's application, interviewing her, and attempting to speak to the victim,² the Criminal Division Manager, serving as the PTI director (the director), provided a report to the prosecutor and recommended that defendant not be admitted into the program. In her detailed report, the director considered the mitigating information presented by defendant, including her: lack of a prior record; completion of college; relative youth,³ apparent lack of substance abuse issues; and prior three-month temporary employment. However, the director concluded that these nonidiosyncratic factors did not outweigh the serious nature of the offenses and the facts of the case. The director also noted that defendant admitted during her interview that she consumed alcohol on at least one occasion after she injured the victim as a result of her alcohol consumption.

Thereafter, an assistant prosecutor (prosecutor) notified defendant that the State did not consent to PTI. In her written

² At the time the director spoke to the victim, he declined to take a position on whether defendant should be admitted to PTI because he first wanted to talk to his attorney, who was pursuing a civil lawsuit against defendant.

³ Defendant was twenty-two years old at the time she drove her car into the victim's vehicle.

decision, and in a subsequent brief the State presented to the trial court, the prosecutor considered each and every one of the factors set forth in N.J.S.A. 2C:43-12(e), Rule 3:28, and the accompanying Guidelines. As did the director, the prosecutor noted that the offenses were very serious, and included a second-degree aggravated assault charge. The victim had to be hospitalized for surgery, missed work, and suffered the loss of his car. In spite of the fact that defendant was legally intoxicated at the time she crashed into the victim, she drank again just four months later. As did the director, the prosecutor considered applicable mitigating factors. However, the prosecutor found that those facts did not outweigh the strong need to deter.

At the time the State filed these written submissions, the victim still did not want to make a statement. However, at oral argument on defendant's request for admission to PTI, the prosecutor advised the trial judge that the victim, through his attorney, was "not comfortable" with defendant's application. Although the victim was not "looking for [defendant] to go to jail[,]" he believed defendant "does need to face some kind of consequence here" and should not be permitted to "leav[e] this case with no record."

After the State sent defendant the first letter, she obtained a report from the Alpha Healing Center, indicating that she did

not have a problem with drugs or alcohol. Defendant also completed a six-hour safe driving course, and submitted two character reference letters. The prosecutor considered these documents, and continued to object to defendant's admission to PTI.

Defendant filed a motion to compel her entry into the program. Following oral argument, the trial judge rendered a written decision, reversing the prosecutor's determination and admitting defendant into PTI. Although the judge found that the prosecutor had considered all of the relevant factors, she determined that the prosecutor had incorrectly weighed them in denying defendant's application.

In so ruling, the judge first concluded that the prosecutor gave too much weight to the nature of defendant's offenses and the facts underlying them. Without considering that defendant was charged with second-degree aggravated assault,⁴ the judge stated that defendant's crimes were "diminished by the low BAC reading, along with its questionable validity and the potential for an alternate cause of the accident, namely, reaching for a cell phone." The judge further opined that "if the alcohol issue were

⁴ Guideline 3(i)(3) states that a defendant charged with a second-degree offense "should ordinarily not be considered for enrollment in a PTI program except of joint application by the defendant and the prosecutor." No such joint application was submitted in this case.

excised from the facts, and we were faced solely with the alleged reckless behavior of reaching for a cell phone as the cause of the accident, the stigma of drunk driving and the apparent automatic rejection would be negated."

In this regard, the judge found that although the prosecutor considered all the required factors, the prosecutor made a "per se" rejection of defendant's PTI application simply because she was intoxicated at the time she crashed into the victim's car and caused him to be hospitalized. The judge held that despite the information to the contrary set forth in the prosecutor's written submissions, the prosecutor "engaged in a categorical rejection based upon the offenses that is proscribed by the case law."⁵

The judge also criticized the prosecutor for relying upon the same facts in her consideration of factors one, two, and three under N.J.S.A. 2C:43-12(e). In addition, the judge stated that the prosecutor placed too much emphasis on defendant's decision to drink alcohol again after she injured defendant, and failed to give sufficient weight to the fact that defendant was a college graduate, held a job for approximately two months prior to her arrest, and "aspire[d] to a bright future[.]"

⁵ In support of this conclusion, the judge cited State v. Caliquiri, 305 N.J. Super. 9 (App. Div. 1997), a decision we will discuss further below.

The judge also found that the prosecutor gave too much weight to the victim's opposition to PTI. The judge reasoned that since the victim stated he did not think defendant should go to jail, he did not really oppose PTI, which the judge stated would involve a period of supervision akin to probation. The judge stayed her decision pending the resolution of the State's appeal.

On appeal, the State argues the trial judge incorrectly substituted her judgment for that of the prosecutor, and that the prosecutor's decision to reject defendant's PTI application was based upon a thorough consideration of all appropriate factors and did not constitute a gross and patent abuse of discretion. We agree.

Established precedents guide our task on appeal. The decision whether to accept or reject a defendant's PTI application is essentially a prosecutorial function. State v. Leonardis, 73 N.J. 360, 381 (1977). Therefore, a "[d]efendant generally has a heavy burden when seeking to overcome a prosecutorial denial of his [or her] admission into PTI." State v. Watkins, 193 N.J. 507, 520 (2008). "In respect of the close relationship of the PTI program to the prosecutor's charging authority, courts allow prosecutors wide latitude in deciding whom to divert into the PTI program and whom to prosecute through a traditional trial." Negran, 178 N.J. at 82.

Indeed, "[b]ecause of the recognized role of the prosecutor, we have granted enhanced deference to prosecutorial decisions to admit or deny a defendant to PTI." State v. DeMarco, 107 N.J. 562, 566 (1987) (citing State v. DalGLISH, 86 N.J. 503, 513-14 n.1 (1981)). Accordingly, there is an "expectation" by the Supreme Court that a prosecutor's decision to reject a PTI applicant "will rarely be overturned." State v. Wallace, 146 N.J. 576, 585 (1996) (quoting Leonardis, 73 N.J. at 380).

"Issues concerning the propriety of the prosecutor's consideration of a particular [PTI] factor are akin to 'questions of law[.]'" State v. Maddocks, 80 N.J. 98, 104 (1979). "Consequently, on such matters an appellate court is free to substitute its independent judgment for that of the trial court or the prosecutor should it deem either to have been in error." Id. at 105. While we exercise de novo review over the propriety of considering a certain PTI factor, we afford prosecutors "broad discretion to determine if a defendant should be diverted." State v. K.S., 220 N.J. 190, 199 (2015). This discretion arises out of the prosecutor's charging authority. Id. at 200.

It has been long-established that the scope of judicial review of a prosecutor's decision to reject a defendant's application into PTI is "severely limited" and "serves to check only 'the most egregious examples of injustice and unfairness.'" Negran, 178

N.J. at 82 (quoting Leonardis, 73 N.J. at 384). "Prosecutorial discretion in this context is critical for two reasons. First, because it is the fundamental responsibility of the prosecutor to decide whom to prosecute, and second, because it is a primary purpose of PTI to augment, not diminish, a prosecutor's options." Nwobu, 139 N.J. at 246 (quoting State v. Kraft, 265 N.J. Super. 106, 111-12 (App. Div. 1993)).

"A trial court does not evaluate a PTI application 'as if it [stands] in the shoes of the prosecutor.'" State v. Hoffman, 399 N.J. Super. 207, 216 (App. Div. 2008) (quoting Wallace, 146 N.J. at 589). Moreover, a trial court "cannot substitute its own judgment for that of the prosecutor even when 'the prosecutor's decision is one which the trial court disagrees with or finds to be harsh.'" Ibid. (quoting Kraft, 265 N.J. Super. at 112-13). Therefore, the question presented to a trial court reviewing a defendant's appeal from a prosecutor's denial of a PTI application "is not whether [the court] agree[s] or disagree[s] with the prosecutor's decision, but whether the prosecutor's decision could not have been reasonably made upon weighing the relevant factors." Nwobu, 139 N.J. at 254.

In order for a defendant to succeed in overturning the prosecutor's denial of his or her admission into PTI, the defendant must "clearly and convincingly establish that the prosecutor's

decision constitutes a patent and gross abuse of discretion." Watkins, 193 N.J. at 520. An abuse of prosecutorial discretion is established when a defendant demonstrates "that a prosecutorial veto (a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in judgment[.]" State v. Roseman, 221 N.J. 611, 625 (2015) (quoting State v. Bender, 80 N.J. 84, 93 (1979)). "In order for such an abuse of discretion to rise to the level of 'patent and gross,' it must further be shown that the prosecutorial error complained of will clearly subvert the goals underlying" PTI. Ibid.

Guided by these principles, we are constrained to conclude that the trial judge mistakenly ordered defendant's admission into PTI over the prosecutor's objection. We are convinced from our review of the record that the prosecutor considered, weighed, and properly balanced all of the requisite factors, including those personal to defendant as well as the facts and circumstances of the offenses.

The linchpin of the judge's contrary conclusion, and of defendant's appellate arguments in support of the judge's decision, was the judge's belief that the prosecutor "engaged in a categorical rejection" of defendant's application based solely upon the fact that defendant was driving while intoxicated when

she drove into the victim's car. In so ruling, the judge relied upon our decision in Caliquiri. In that case, we held that a categorical exclusion from PTI based solely on the nature of the offense without consideration of the individual defendant was patently and grossly arbitrary. Caliquiri, 305 N.J. Super. at 17. However, Caliquiri is completely distinguishable from the case at hand.

Caliquiri was a consolidated case involving two different defendants. 305 N.J. Super. at 12. One of the defendants, Munos, was indicted for assault by auto while intoxicated. Id. at 16-17. The prosecutor in the Munos case did not provide a statement of reasons for the denial of PTI and, instead, merely stated:

[D]iversion in cases such as this would serve to undermine the joint efforts of [the prosecutor's office] and the sentencing courts in this [c]ounty to create an atmosphere wherein it is always known that persons who drink to excess and injure others by driving their vehicles when they are under the influence of alcohol will face vigorous prosecution for their conduct. Any other result would be a disservice to the public interest.

[Id. at 17.]

In affirming the court's order compelling Munos's admission to PTI, we agreed that the prosecutor arbitrarily rejected the defendant solely based on the category of the offense (assault by

auto) without analyzing the Guidelines and statutory factors "of the offense and the offender." Ibid.

This was certainly not the case here where, unlike in Caliquiri, the prosecutor's rejection of defendant's application for PTI was predicated on specific enumerated statutory factors and considerations identified in the Guidelines and applicable to the facts of defendant's case. The prosecutor evaluated every factor, including mitigating factors, and did not categorically exclude assault by auto offenses from PTI. The prosecutor also considered relevant and rational evidence in the record, and treated defendant as an individual. Therefore, the judge incorrectly relied upon Caliquiri, and mistakenly overturned the prosecutor's reasoned decision denying defendant's PTI application.

The judge made other mistakes that require reversal. For example, the judge determined that defendant had several possible defenses that might negate the results of the Alcotest. However, it is well-established that "the PTI process is not designed to assess the weight of the State's case. '[T]he appropriate administration of the program militates against basing enrollment upon the weight of the evidence of guilt.'" Nwobu, 139 N.J. at 252 (quoting State v. Smith, 92 N.J. 143, 147 (1983)). Indeed, as our Supreme Court observed thirty-five years ago,

"[c]onsideration of guilt or innocence is in fact inconsistent with Guideline 4 that conditions enrollment in PTI programs upon neither informal admission nor entry of a plea of guilt." Smith, 92 N.J. at 147. Thus, the judge erred by considering defendant's possible defenses to the admission of the Alcotest results.

In making this mistake, the judge also ignored the equally well-settled rule that a DWI conviction may be based upon physical evidence, such as symptoms observed by the arresting police officer or failure of the defendant to perform adequately on balance and coordination tests. State v. Liberatore, 293 N.J. Super. 580, 589 (Law Div. 1995), aff'd o.b., 293 N.J. Super. 535 (App. Div. 1996). A defendant's demeanor, physical appearance, slurred speech, or bloodshot eyes, together with an odor of alcohol or an admission of the consumption of alcohol and poor performance on field sobriety tests, are sufficient to sustain a DWI conviction. State v. Bealor, 187 N.J. 574, 588-89 (2006).

Here, defendant admitted she drank four glasses of wine earlier in the evening, smelled of alcohol, had watery eyes and droopy eyelids, and was swaying even while sitting. She failed all of the field sobriety tests and vomited twice at the police station. Thus, even if the results of the Alcotest were suppressed, and assuming that the account of the arresting officer proves credible at trial, the record clearly supports the

conclusion that defendant was driving while intoxicated. Therefore, the judge erred by "excis[ing] [defendant's intoxication] from the facts," and treating defendant's crashing her car into another vehicle as a case of mere "reckless behavior."

There was also no basis for the judge's criticism of the prosecutor's reliance upon the facts of this case to support her findings on more than one of the statutory factors. As we noted in State v. Lee, a prosecutor may rely upon "the State's version of the facts where those facts [are] relevant to the applicable PTI factors. The facts certainly can be discussed more than once within a PTI denial letter, insofar as they may bear on the discrete criteria for eligibility." 437 N.J. Super. 555, 570 (App. Div. 2014).

We also reject the judge's conclusion that the prosecutor gave short shrift to the mitigating factors. Among other things, the prosecutor considered defendant's age, her lack of a prior criminal record, her college education, her employment history, and her lack of past violent behavior. Contrary to the judge's conclusion, there was simply nothing "extraordinary or unusual, something 'idiosyncratic,' in . . . [defendant's] background" that compelled her admission into the program over the prosecutor's objection. Nwobu, 139 N.J. at 252-53 (citation omitted).

Moreover, the prosecutor was entitled to consider, on the other side of the ledger, the nature and facts of the case, defendant's admission that she drank again after she struck the victim while intoxicated, the personal and economic injuries the victim sustained, and the victim's stated opposition to defendant "leaving this case with no record."

In sum, the prosecutor evaluated the relevant factors and exercised permissible discretion in rendering her determination. Under these circumstances, we discern no patent and gross abuse of discretion by the prosecutor in denying defendant's admission into PTI. While it is possible that reasonable minds could differ in analyzing and balancing the applicable factors in this case, judicial disagreement with a prosecutor's reasons for rejection, as occurred here, does not equate to prosecutorial abuse of discretion so as to merit a judicial override of the prosecutor's decision. DeMarco, 107 N.J. at 566-67. We are therefore constrained to reverse.

Reversed.

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


CLERK OF THE APPELLATE DIVISION