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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3137-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CARLOS LOPEZ,

Defendant-Appellant.

Submitted December 11, 2017 – Decided April 5, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
14-02-0183.

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

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Nancy A. Hulett,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Carlos Lopez appeals from a December 9, 2015 judgment of conviction after a jury trial, arguing: (1) the trial court failed to correctly tailor the self-defense jury charge; and (2) at the sentencing hearing, the trial judge omitted a relevant mitigating factor. We affirm.

I.

We discern the following facts from the record on appeal. On July 27, 2013, Marcos, the son of defendant's girlfriend, Gloria, was walking home from a bar and encountered the victim. The victim asked Marcos to drink beers with him at Gloria's house. As they were talking outside of the house, Marcos' brother, Angel, told him to come inside because it was late.

Shortly thereafter, defendant came outside and told the victim to leave. Defendant and the victim exchanged insults. Angel then came outside and told the victim to leave, but he did not go away and the victim took of his belt and threatened to hit defendant. Defendant and the victim eventually moved around the corner a few buildings away to the front of a restaurant and began to fight.

After a few minutes, Marcos and Angel walked around the corner and witnessed the two men fighting, the victim was on the ground, and defendant was on top of him. Angel pushed defendant off of the victim and defendant fell down. At trial, Marcos testified

he noticed defendant was holding something in his hand but could not identify it. Defendant then stood up and walked away towards Gloria's house. At this point, the victim was bleeding.

A passing vehicle stopped, and the victim asked the driver to call for help. Marcos stayed with the victim until the police arrived. Emergency personnel arrived, and the victim was transported to the hospital, where he was pronounced dead a short time later.

The police did not recover a knife from the scene of the incident. They also searched defendant's home and nothing of evidential value was recovered.

The medical examiner determined that out of eight stab wounds, the wound to the victim's heart was the cause of death. The victim's blood alcohol content, at the time of death, was 0.246.

On February 20, 2014, a Middlesex County Grand Jury indicted defendant on the following charges: first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count two); and third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count three).

A jury trial was conducted between November 17 and December 9, 2015. At trial, several witnesses testified on defendant's behalf, opining he was trustworthy, honest, hard-working, and non-

aggressive. Angel testified that the victim had a reputation for being aggressive and was being aggressive that night.

The jury was shown surveillance videos taken from nearby restaurants that corroborated the testimony given at trial. Defendant testified about past occasions when the victim assaulted him. On one such occasion, in 2009, the victim kicked defendant, causing his collarbone to break and forcing him to miss work for about two months. Defendant further testified he was very afraid of the victim.

Defendant testified he acted in self-defense. According to defendant, when he told the victim to leave Gloria's house, the victim threatened to kill him. Defendant then recalled falling to the ground after the victim hit him in the head with a bottle. He stated his head was spinning, and the victim cut his arm with a knife. He testified he disarmed the victim, grabbed the knife, and hit the victim two or three times.

On December 9, 2015, the jury found defendant guilty of the lesser-charged reckless manslaughter on count one, count two, and count three.

The judge sentenced defendant to seven-and-a-half-years imprisonment, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, for count one. He merged count two and three and sentenced

defendant to a concurrent term of four years. This appeal followed.

II.

For the first time on appeal, defendant argues the jury charge should have been tailored to include a determination as to whether he accidentally stabbed the victim, and the history of violence between the victim and himself.

Because defendant did not challenge the jury charge at trial, we will reverse only if the error was "clearly capable of producing an unjust result." R. 2:10-2.

In the context of a jury charge, plain error requires demonstration of legal impropriety of the charge prejudicially affecting the substantial rights of the defendant sufficiently grievous to justify notice by the reviewing court and to convince the court that of itself the error possessed a clear capacity to bring about an unjust result.

[State v. Walker, 203 N.J. 73, 90 (2010) (quoting State v. Burns, 192 N.J. 312, 341 (2007)).]

Our Supreme Court has observed "error in a jury instruction that is 'crucial to the jury's deliberations on the guilt of a criminal defendant' is a 'poor candidate[] for rehabilitation' under the plain error theory." Burns, 192 N.J. at 341 (quoting State v. Jordan, 147 N.J. 409, 422 (1997)) (alterations in original). Nonetheless, an alleged error must "be evaluated in light 'of the

overall strength of the State's case.'" Ibid. (quoting State v. Chapland, 187 N.J. 275, 289 (2006)).

Applying these principles, we are satisfied there was no plain error. The evidence presented for the jury fully provided adequate information to determine the extent of defendant's culpability. The jury verdict alone indicates that the jury considered defendant's defense of accidental conduct when it convicted him of the lesser-charged reckless manslaughter, instead of first-degree murder. See N.J.S.A. 2C:2-2 ("A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct.") (emphasis added).

Furthermore, the judge instructed the jury that "self defense exonerates a person who uses force in a reasonable belief that such action was necessary to prevent his or her death or serious injury." The jury heard defendant testify that the victim had violently assaulted him in the past. Angel also testified that the victim had a reputation for being aggressive and was aggressive that night. Nevertheless, the jury convicted defendant of reckless manslaughter.

We reject defendant's argument because it cannot be said that the jury charge produced an unjust result.

III.

Lastly, defendant argues the sentencing judge failed to find that he did not contemplate his conduct would cause serious harm as a mitigating factor. In particular, he contends the judge incorrectly found he intended to stab the victim because the jury only found him culpable of being reckless.

"Appellate review of the length of a sentence is limited." State v. Miller, 205 N.J. 109, 127 (2011). An appellate court should "assess the aggravating and mitigating factors to determine whether they 'were based upon competent credible evidence in the record.'" State v. Bieniek, 200 N.J. 601, 608 (2010) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).

In determining the sentence to be imposed, the judge may consider certain mitigating circumstances, including "[t]he defendant did not contemplate that his conduct would cause or threaten serious harm." N.J.S.A 2C:44-1(b)(2).

The sentencing judge determined the above-mentioned mitigating factor was inapplicable based on credible evidence in the record. The judge concluded:


I cannot find that the defendant did not contemplate that his conduct would cause or threaten serious harm, and despite the fact that the defendant may have been intoxicated, he was able to converse, walk, follow the victim, and ultimately stab him several times. So he had an opportunity to contemplate what

his conduct was and would be, and therefore what the consequences were. He had an intent to stab the victim, and physically did so.

After reviewing the record, we conclude the testimony at trial, along with the videos, support the judge's determination. The victim and defendant exchanged insults at Gloria's home, and defendant ostensibly agreed to fight the victim. They walked to the street, the fight ensued, and the victim was stabbed. Undeniably, defendant must have contemplated that his actions would cause or threaten serious harm when he decided to follow the victim into the streets.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION