SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1533-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LEWIS F. NORWOOD,

Defendant-Appellant.

Submitted February 8, 2023 - Decided April 5, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment No. 17-10-0523.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Deborah Bartolomey, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

After being charged in an indictment with first-degree murder, N.J.S.A. 2C:11-3(a)(1) and/or N.J.S.A. 2C:11-3(a)(2), and several other offenses, defendant moved to suppress evidence obtained pursuant to a computer data warrant (CDW), specifically his cell phone records. The court denied the motion on May 31, 2018. Defendant subsequently pleaded guilty to an amended count of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1). He was sentenced to twenty years in prison with a seventeen-year period of parole ineligibility. Defendant now appeals from the order denying his suppression motion and from the imposed sentence. We affirm.

After defendant's father-in-law, William Blackwell, was found dead from a gunshot wound outside his home, Trenton Police Department Detective Luis A. Vega II, then assigned to the Mercer County Homicide Task Force, prepared an affidavit to support an application for a CDW.

In the affidavit, Vega stated that Ewing Township police received a report on October 23, 2016 "of a white male laying on the ground not breathing, possibly suffering from a gunshot wound." When the officers arrived at the scene, "they observed . . . Blackwell . . . lying face down" next to a pickup truck registered to his name. The officers spoke with Blackwell's sister who found him outside.

On October 24, detectives spoke with Richard Connors, a neighbor of Blackwell's parents. Connors told the officers that defendant and his wife, Daphne Conklin, had lived in a trailer on Blackwell's property. Conklin was Blackwell's stepdaughter. Connors said Blackwell and defendant "did not get along with each other." According to Connors, Blackwell was becoming "increasingly upset" at defendant and his wife for leaving "junk" on his property, even after Blackwell asked them not to.

Connors said, "the police and town inspectors [had] come to the property recently" and that defendant told Connors he believed Blackwell called the police "to get him thrown off of the property." Connors stated the town inspectors informed defendant and his wife they were not permitted to live in the trailer on the property "with no electric or water . . . because it [wa]s not to code." Therefore, defendant was no longer living on the property on the day of Blackwell's death.

The detectives also spoke to a friend of Blackwell's, Linda Hoppock. Hoppock said she saw defendant and Blackwell get "into a heated argument . . . a few weeks ago at [Blackwell's] parent's property . . . . related to a trailer that [Blackwell] owns." She stated defendant used the trailer without Blackwell's permission and damaged its axle. According to Hoppock, Blackwell told

defendant to repair the trailer but defendant did not do so, and Blackwell made the repairs himself. When Blackwell asked defendant to pay for the repairs, defendant refused.

On the day before Blackwell's death, Hoppock stated she and Blackwell went to Blackwell's parent's property, where defendant previously lived, to drop off mail for defendant and his wife.[1] Hoppock told detectives that when Blackwell tried to place the mail in a pickup truck parked in the driveway (where he usually placed the mail), the truck was locked. Hoppock overheard defendant and Blackwell arguing on the phone about why the truck was locked and the location of the keys.

In the continuing investigation, detectives learned defendant was arrested in 2002 in Virginia and charged with "Unlawful Possession or Use of a Sawed off Shotgun and Possession, Transport of Firearms by a convicted felon." Defendant had also "been charged with various offenses in Washington, D.C., Virginia, and Maryland" and was "convicted of an armed robbery in 2008" in Washington, D.C.

[1] Defendant and Conklin's mail was routinely delivered to Blackwell's residence in Ewing.

On October 25, 2016, the trial court authorized a physical inspection of Blackwell's phone,[2] which was found on his person at the scene of his death, "as well as subscriber information, account notes, billing records, text messaging and data." However, according to Vega, because "the phone had been on [Blackwell's] person at the time that he was shot, it was exposed to blood which inhibited law enforcement's ability to extract any data from it." The phone was sent to the New Jersey Regional Computer Forensics Laboratory for examination, but at the time Vega was preparing the affidavit there was "no indication . . . the lab w[ould] be able to extract data from the phone."

On October 26, 2016, detectives spoke with Candace Brodbeck, a friend of Conklin's. Brodbeck stated she met Conklin while receiving treatment at St. Francis Hospital. According to Brodbeck, in August 2016, "she was held against her will and drugged by [Conklin] and her husband"[3] for a week, during which she was "kept in the camper." She stated defendant had four "short rifles/shotguns . . . inside of the camper on a gun rack" and he "would shoot the guns on the property and it sounded like a shotgun." She also stated Conklin's

[2] Initially, the State applied for and was granted a CDW for Blackwell's phone.

[3] Brodbeck referred to defendant as "Steve."

father owned the property and brought mail to the trailer but there was never any communication between Blackwell, defendant, and Conklin.

Brodbeck told detectives that defendant did not hit her but "would become violent at times," and that Conklin "did use force striking her on one occasion." Brodbeck stated defendant "became upset at one point at her and [Conklin]," and he "kicked a hole through the camper door." Brodbeck told the detectives Conklin is "very scared" of defendant and that defendant "beats [Conklin]." Brodbeck identified defendant in a photograph as the person she knew as "Steve" and she identified a photograph of Conklin.

On October 28, 2016, the detectives searched Blackwell's trailer and the surrounding property. The search revealed "an empty gun rack, as described by Brodbeck . . . [and] a gun cleaning kit."

Vega stated in the CDW affidavit that he had

> probable cause to believe that the subscriber information, account notes, billing records with cell sites, including sector information (to show all outgoing and incoming calls), including call detail for incoming and outgoing calls, text messages (SMS), multimedia messages (MMS), including SMS and MMS message detail, all available ranging data and/or per call measurement data (PCMD), all global positioning satellite (GPS) information and location information for [defendant's telephone number] and the obtaining of subscriber information for all telephone numbers contained in said billing records for the time

> period from 12:00 a[.]m[.] (EST) September 23, 2016 through present, may provide evidence relating to the murder of William Blackwell, including the identity of potential suspects and/or witnesses thereto.
>
> . . . .
>
> I further request to execute the Communications Data Warrants, with necessary and proper assistance from Verizon Wireless and Sprint, or other appropriate provider of wire or electronic communication service, and request that they provide specific technical information to the Mercer County Prosecutor's Office, Members of the Mercer County Homicide Task Force and members of the Ewing Police Department. This specific technical information may include, but is not limited to: the Master Subsidiary Lock code (MSL) to the specific captioned cellular telephone(s) (MSL), all cellular antenna locations, all cellular antenna sector information, antenna signal coverage, horizontal and or optimal beam width, assistance with cellular telephone mapping (if needed), RH propagation mapping (if needed) and engineering data (if needed) which are required by execution of this Communications Data Warrant.

The court granted the CDW.

Defendant subsequently moved to suppress the evidence seized pursuant to the CDW. He contended that the affidavit supporting the CDW application did not establish probable cause to satisfy the "high level of intrusion" required for the production of location data.

After reviewing the applicable law, the trial judge found probable cause was established by the following facts in the affidavit:

> the victim's death by shotgun, his relationship with defendant and the animosity between them including an argument the day before the homicide. It referenced defendant's belief that the victim called police to have him evicted and the fact that the victim had reported to police a theft/fraud case involving defendant.
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> Defendant's phone number with the 202 area code was contained in that very police report. The affidavit also included defendant's 2002 arrest in Virginia for unlawful possession or use of a sawed off shotgun and possession or transport of firearms by a convicted felon as well as his 2008 conviction for robbery in Washington, D.C.
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> Further, one person who reported being held captive by defendant and his wife on the victim's property saw rifles and at least one shotgun in defendant's possession and heard him shoot the guns including one that sounded like a shotgun. Under a totality of the circumstances, the affidavit set forth ample information to demonstrate probable cause that the requested communications data including defendant's cell phone location information would contain evidence of the crime, specifically, Blackwell's homicide . . . .

The court found "defendant has not met his burden of proving that the affidavit in support of the State's application for a [CDW] lacked the requisite probable cause." The motion to suppress evidence seized under the CDW was denied.

As stated, defendant subsequently pleaded guilty to an amended count of aggravated manslaughter. During the plea hearing, defendant admitted he killed Blackwell under circumstances manifesting extreme indifference to the value of human life. He stated at the time of the killing, he was living in Washington, D.C. with Conklin. But after Conklin told him that Blackwell previously attempted to sexually assault her when she and defendant were living in the trailer, defendant drove to Ewing to confront Blackwell. Defendant said when he reached Blackwell's house, Blackwell was outside next to his truck. Defendant said Blackwell "got extremely angry" when defendant confronted him about Conklin's allegations. Defendant stated after Blackwell took a shotgun out of his truck, defendant "took it from him and ended up pulling the trigger on it."

Defendant presents the following issues on appeal:

> POINT I
> THE WARRANT WAS NOT BASED ON PROBABLE CAUSE. THE EVIDENCE THEREBY ACQUIRED MUST BE SUPPRESSED.
>
> POINT II
> RESENTENCING IS REQUIRED BECAUSE THE COURT FAILED TO FIND AND GIVE PROPER WEIGHT TO MITIGATING FACTORS.

Defendant contends his cell phone records should be suppressed because the CDW "was not based on probable cause; it rested on weak motive, opportunity, and propensity evidence, mostly in the form of uncorroborated and unsworn hearsay statements."

In reviewing a motion to suppress evidence, we must uphold the trial judge's factual findings "when 'those findings are supported by sufficient credible evidence in the record.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). "We ordinarily will not disturb the trial court's factual findings unless they are 'so clearly mistaken that the interests of justice demand intervention and correction.'" State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). The court's legal conclusions, however, "that flow from established facts" are reviewed de novo. State v. Hubbard, 222 N.J. 249, 263 (2015).

The United States and New Jersey constitutions require a warrant be based on probable cause and describe the place to be searched and items to be seized with particularity. U.S. Const. amend. IV; N.J. Const. arts. I, VII.

In considering the information sought here—cell phone records—our Supreme Court has stated:

> Telephone billing records—a list of phone numbers dialed out of and in to a phone, along with the time and

> duration of those calls—are, of course, quite revealing. That is why they are entitled to protection under the State Constitution, even though they do not disclose the contents of any communications.
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> [State v. Lunsford, 226 N.J. 129, 147 (2016).]

A search warrant requires "sufficient specific information to enable a prudent, neutral judicial officer to make an independent determination that there is probable cause to believe that a search would yield evidence of past or present criminal activity." State v. Keyes, 184 N.J. 541, 553 (2005). Probable cause is a "flexible, nontechnical" standard "that requires balancing 'the governmental need for enforcement of the criminal law against the citizens' constitutionally protected right of privacy.'" Id. at 553-54 (quoting State v. Kasabucki, 52 N.J. 110, 116 (1968)).

New Jersey courts have adopted the United States Supreme Court's totality-of-the-circumstances test to determine whether a warrant was based on probable cause. Id. at 554 (first citing Illinois v. Gates, 462 U.S. 213, 230-32 (1983); and then citing State v. Novembrino, 105 N.J. 95, 122 (1987)). Under this test, "courts must consider all relevant circumstances to determine the validity of a warrant." Ibid. (citing State v. Smith, 155 N.J. 83, 92 (1998)).

"[A] search executed pursuant to a warrant is presumed to be valid and . . . a defendant challenging its validity has the burden to prove 'that there was

no probable cause supporting the issuance of the warrant or that the search was otherwise unreasonable.'" State v. Jones, 179 N.J. 377, 388 (2004) (quoting State v. Valencia, 93 N.J. 126, 133 (1983)).

Probable cause in the context of a search warrant requires "a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Chippero, 201 N.J. 14, 28 (2009) (citations omitted). More specifically, the judge's "inquiry in respect of a search warrant must assess the connection of the item sought to be seized (1) to the crime being investigated, and (2) to the location to be searched as its likely present location." Id. at 29.

"[A]ffidavits submitted in support of a warrant application [must] allege specific facts so that the issuing judge can determine independently whether or not probable cause has been established." Novembrino, 105 N.J. at 120. The affidavit must inform the judge "of the underlying facts or circumstances which would warrant a prudent man in believing that the law was being violated." Id. at 125 (quoting State v. Macri, 39 N.J. 250, 257 (1963)).

In denying defendant's motion to suppress, viewing the totality of the circumstances, the judge found "the affidavit set forth ample information to demonstrate probable cause that the requested communications data including

defendant's cell phone location information would contain evidence" regarding Blackwell's shooting and death.

The judge noted information presented by persons close to defendant and Blackwell described the animosity between the two men, including an argument heard over the phone the day before Blackwell was found dead. Police investigation revealed defendant believed Blackwell caused his eviction from the New Jersey property and that Blackwell had previously reported to police that defendant had committed a theft or fraud.

In addition, defendant was previously arrested for weapons-related offenses involving a shotgun. A witness reported seeing defendant possess and use a shotgun while she was in defendant's trailer. A search of the trailer revealed an empty gun rack.

Under the circumstances, we are satisfied there was sufficient credible evidence in the affidavit to support the judge's finding of probable cause for the issuance of the CDW. The judge did not abuse his discretion in denying the motion to suppress the cell phone evidence.

We turn to defendant's contentions regarding his sentence. He asserts the sentencing court "failed to find mitigating factor four, N.J.S.A. 2C:44-

1[(]b[)](4) (substantial grounds tending to excuse conduct), and improperly considered [his] substance abuse problems as an aggravating factor."

We review the imposition of a sentence under an abuse of discretion standard. State v. Torres, 246 N.J. 246, 272 (2021). Our review is "deferential." State v. Trinidad, 241 N.J. 425, 453 (2020) (quoting State v. Fuentes, 217 N.J. 57, 70 (2014)). We defer to the sentencing court's factual findings and do not "second-guess" them. State v. Case, 220 N.J. 49, 65 (2014).

When sentencing a defendant, the court considers the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1(a) and (b). See State v. Rivera, 249 N.J. 285, 298 (2021). The court must "explain and make a thorough record of [its] findings to ensure fairness and facilitate review." State v. Comer, 249 N.J. 359, 404 (2022). "[I]f the trial court fails to identify relevant aggravating and mitigating factors, or merely enumerates them, or forgoes a qualitative analysis, or provides little 'insight into the sentencing decision,' then the deferential standard will not apply." Case, 220 N.J. at 65 (quoting State v. Kruse, 105 N.J. 354, 363 (1987)).

During the sentencing hearing, the judge considered the aggravating and mitigating factors. He found aggravating factor three, a high risk of defendant committing another offense, N.J.S.A. 2C:44-1(a)(3), because defendant "has a

lengthy history with the criminal justice system which stretches back to the early 1990s" and includes both "drug and violent offenses." The judge also stated defendant's risk of recidivism was "heightened" given his history of substance abuse and because he "acknowledge[d] using crack and crystal meth around the time that he was arrested."

The judge then found aggravating factor six, the extent of defendant's prior criminal record and the seriousness of those offenses, N.J.S.A. 2C:44-1(a)(6). The judge took note of defendant's prior robbery and dangerous weapons convictions.

Lastly, the judge found aggravating factor nine, the need to deter defendant from violating the law, N.J.S.A. 2C:44-1(a)(9). The judge stated, "[a]lthough [defendant has] been on probation and parole, supervisory sanctions did nothing to deter him. In fact, he committed the instant offense while he was on parole."

With respect to mitigating factors, the judge noted defense counsel raised defendant's mental health and general physical health. However, after reviewing the presentence report, the judge stated nothing was presented "discuss[ing] the seriousness of these health and mental health issues or that they have in any way

contributed . . . to the instant offense." Nevertheless, the judge gave the health conditions described in the presentence report "minimum weight."

The judge also "accord[ed] minimal weight" to mitigating factor three, whether defendant acted under strong provocation, N.J.S.A. 2C:44-1(b)(3). The judge explained defendant had time to "cool down" during the several hours it took him to drive from Washington, D.C. to New Jersey after his wife told him about the alleged sexual assault. Moreover, there was "no indication the victim provoked . . . defendant during the encounter" because "defendant did not claim that the victim taunted him, threatened him or assaulted him or even used any type of offensive or provocative language. Defendant simply took the shotgun from the victim," who then became "unarmed."

The judge also afforded minimal weight to mitigating factor five, whether the victim of defendant's conduct induced or facilitated the commission of the offense, N.J.S.A. 2C:44-1(b)(5). Although "defendant did appear on the scene without any weapons," the fact that Blackwell approached him with a shotgun "without more does not constitute facilitation." The judge found defendant was solely responsible for taking the shotgun and shooting Blackwell.

The judge found the aggravating factors outweighed the mitigating factors and sentenced him to a twenty-year prison term with an eighty-five percent period of parole ineligibility.

We discern no reason to disturb the sentence. The court properly weighed the aggravating and mitigating factors, giving reasons for its findings and the imposition of the recommended sentence.

Any remaining arguments not addressed by the court do not warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.