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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4002-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD JONES, JR.,

Defendant-Appellant.

Argued May 9, 2017 – Decided August 14, 2017

Before Judges Messano and Grall.

On appeal from the Superior Court of New
Jersey, Law Division, Cumberland County,
Municipal Appeal No. 07-15.

Robert J. Pinizzotto argued the cause for
appellant (Mr. Pinizzotto, attorney; Mr.
Pinizzotto and Nicole E. Wise, on the
brief).

Stephen C. Sayer, Assistant Prosecutor,
argued the cause for respondent (Jennifer
Webb-McRae, Cumberland County Prosecutor,
attorney; Mr. Sayer, of counsel and on the
brief).

PER CURIAM

Defendant Richard Jones, Jr., pled guilty to operating "a
motor vehicle with a blood alcohol concentration of 0.08% or

more," N.J.S.A. 39:4-50(a), but he reserved his right to appeal the municipal court's denial of his pre-trial motion to exclude the Alcohol Influence Report (AIR) generated by an Alcotest 7110 MKIII-C breath-testing device (Alcotest). State v. Chun, 194 N.J. 54, 63 (2008), cert. denied, 555 U.S. 825, 129 S. Ct. 158, 172 L. Ed. 2d 41 (2008); see R. 7:6-2(c) (authorizing guilty pleas reserving "the right to appeal [an] adverse determination of any specified pretrial motion").

In entering his plea, defendant acknowledged State Trooper Michael Katz had reason to stop his car in Millville on June 24, 2014, and reason to ask him to submit to a test of his breath. Katz performed the breath-test utilizing Alcotest # ARWC-0054 located at the New Jersey State Police Barracks in Port Norris. The AIR reported a blood alcohol concentration (BAC) of .20%, which defendant acknowledged he had no reason to believe was inaccurate.¹

Accepting the plea, the municipal court imposed the minimum penalties available given defendant's prior conviction for driving while under the influence. The court also granted the

¹ The prosecutor was also prepared to establish defendant's guilt through Trooper Katz's testimony on his observations. He provided his consent to the conditional plea, but he reserved his right to present evidence establishing guilt without reliance on the Alcotest results in the event defendant prevailed on appeal.

State's motion to dismiss a related charge for an unsafe lane-change, N.J.S.A. 39:4-88(b).

Defendant appealed to the Law Division. For reasons stated in a written opinion filed on April 8, 2016, the judge affirmed the municipal court's evidentiary ruling and addressed and rejected additional claims defendant had not raised or preserved in the municipal court. Those claims are fairly characterized as general challenges to municipal court prosecutions for drunk driving. Defendant appeals and challenges the Law Division's determinations, which we now affirm.²

Defendant presents these issues for our consideration:

I.

THE COURT IMPROPERLY ADMITTED INTO EVIDENCE THE ALCOHOL INFLUENCE REPORT AND ALCOTEST CALCULATION RESULTS DOCUMENTS OVER DEFENSE OBJECTION, AND THUS, IMPROPERLY ADMITTED DEFENDANT'S BREATH TEST RESULT.

II.

DUE PROCESS AND JUDICIAL INDEPENDENCE MUST REMAIN HALLMARKS OF AMERICAN AND NEW JERSEY JURISPRUDENCE.

III.

THE STATUTORY SCHEME OF THE MUNICIPAL COURTS OF THE STATE OF NEW JERSEY PREVENTED THE

² Defense counsel included the Law Division's written decision in the appendix but did not provide a copy of a judgment or order entered in the Law Division. Defense counsel provided documents admitted in municipal court in response to the court's request.

DEFENDANT FROM OBTAINING A FAIR AND IMPARTIAL HEARING ON THE MERITS.

IV.

THE COURT ERRED IN DENYING DEFENDANT'S MOTION SEEKING RECUSAL OF THE MUNICIPAL COURT JUDGE WHO SAT BELOW.

V.

THE MUNICIPAL PROSECUTOR IS NOT A FAIR AND IMPARTIAL ADVOCATE AS REQUIRED BY NEW JERSEY'S SYSTEM OF JUSTICE AND MUST BE DISQUALIFIED/RECUSED FROM PROSECUTING THE WITHIN MATTER.

I.

Defendant moved to exclude the AIR by oral application on the day of trial, and the municipal court conducted a hearing on admissibility pursuant to N.J.R.E. 104(a). In conformity with the Supreme Court's order in Chun, Trooper Katz, as the "operator who conducted the tests," was "available to testify." 194 N.J. at 154. Defense counsel did not challenge Trooper Katz's qualifications to operate or his operation of the Alcotest and in fact stipulated Katz is a certified Alcotest operator.

Defense counsel challenged the admissibility of "foundational documents" required by Chun, 194 N.J. at 154, for admission of defendant's AIR – specifically, the most recent Alcotest 7110 Calibration Record, the "Alcotest 7110 Calibration

Certificate Part I - Control Tests," and its "Part II - Linearity Tests." We refer to the documents at issue collectively as the calibration documents.

Sergeant Michelle Goncalves, of the New Jersey State Police, was the qualified coordinator who performed the calibration and certified and signed the calibration documents, all of which related to testing of Alcotest # ARWC-0054, which is the device Trooper Katz operated. The Supreme Court's order in Chun includes the calibration documents in the select group of "foundational documents" that "shall be offered into evidence to demonstrate the proper working order of the device." Ibid. The order in Chun does not require the State to make the coordinator available to testify. Id. at 150-54.

Defense counsel sought exclusion of the calibration documents based on the State's failure to authenticate them and establish an adequate foundation for their admission as business records pursuant to N.J.R.E. 803(c)(6). The only witness, Trooper Katz, could not identify Goncalves's signature, had never met her and had no personal knowledge of her assignment or duties. Moreover, he testified he had not seen the calibration documents until they were shown to him during the hearing.

Relying on Chun, the municipal court determined the calibration documents were admissible without the need for testimony from the coordinator.

In the Law Division, the judge relied on Chun, but not exclusively. The judge considered Sergeant Goncalves's detailed certifications, which were included in and part of the calibration documents she had signed.

The calibration documents were duplicate copies. See N.J.R.E. 1001, 1003. The copies show the seal of the New Jersey State Police printed under or over the text of the certifications. The copies plainly show a signature purporting to be that of Sergeant Michelle Goncalves, her badge number, and, among other things, the serial number of the Alcotest device she tested on May 6 and Trooper Katz operated on June 25, 2014.

The text of Sergeant Goncalves's identical certifications state:

Pursuant to law, and the "Chemical Breath Testing Regulations" N.J.A.C. 13:51, I am a duly appointed Breath Test Coordinator/Instructor. In my official capacity, and consistent with "Calibration Check Procedure for Alcotest 7110," as established by the Chief Forensic Scientist of the Division of State Police, I perform calibration checks on approved instruments employing infrared analysis and electrochemical analysis, when utilized in a

single approved instrument as a dual system of chemical breath testing. Pursuant to, and consistent with, the current "Calibration Check Procedure for Alcotest 7110," as established by the Chief Forensic Scientist, I performed a Calibration Check on the approved instrument identified on this certificate. The results of my Calibration Check are recorded on this certificate, which consists of two parts on two pages: Part I - Control Tests; and Part II - Linearity Tests. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

We agree with the judge that this certification provides the necessary authentication. Pursuant to N.J.R.E. 902(a), "[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to . . . [a] document purporting to bear a signature affixed in an official capacity by an officer or employee of the State of New Jersey." Sergeant Goncalves's certification includes a signature purporting to be hers and states she prepared and signed the document in her official capacity as a duly appointed Alcotest coordinator. Thus, the calibration documents were self-authenticating, N.J.R.E. 902(a).

In the Law Division, defendant argued the calibration documents did not qualify as self-authenticating pursuant to N.J.R.E. 902(a), because they were copies and required an additional certification in conformity with N.J.R.E. 902(d). We

disagree. N.J.R.E. 902(d) provides an additional basis for self-authentication, not an additional requirement for authenticating a copy of a document that is self-authenticating pursuant to N.J.R.E. 902(a).

As defense counsel acknowledges on appeal, N.J.R.E. 1003 allows admission of copies as duplicates. He now contends that either a certification or testimony indicating these copies were "true copies" was required. In making that argument, he ignores N.J.R.E. 901, which permits authentication or identification "by evidence sufficient to support a finding that the matter is what its proponent claims," and N.J.R.E. 1003, which provides copies are admissible "unless (a) a genuine question is raised as to the authenticity of the original, or (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original." The circumstances under which defense counsel received the copies of the calibration documents, as part of the discovery mandated by Chun, provided adequate circumstantial evidence to demonstrate the documents were copies of the self-authenticating calibration documents. There was no unfairness in admitting the documents because the State was willing to obtain a witness or proceed to trial on Trooper Katz's observations, efforts defendant mooted by entering the conditional plea.

As the judge explained in his written decision, there was "no genuine issue raised as to the authenticity of the original." Defense counsel's only argument was that it is possible to alter the calibration documents the State produced in discovery. A possibility of alteration does not raise a genuine issue.

The certifications quoted above also provide the foundation required for admission of the calibration documents as business records pursuant to N.J.R.E. 803(c)(6). They establish that Sergeant Goncalves tested the device and reported the results on May 6, 2014, in the regular course of her duties as a duly authorized Alcotest coordinator and based on what she did and observed. And, in Chun, the Supreme Court plainly stated that all of the "foundational documents" it recognized "qualify as business records." 194 N.J. at 142.

Defendant has not demonstrated error warranting reversal of the denial of his motion to exclude the calibration documents.

II.

Defendant's remaining arguments, which were not raised in municipal court or preserved for appeal with his conditional guilty plea, have insufficient merit to warrant extended comment. R. 2:11-3(e)(2).

"Generally, a defendant who pleads guilty is prohibited from raising, on appeal, the contention that the State violated his constitutional rights prior to the plea." State v. Crawley, 149 N.J. 310, 316 (1997); accord State v. Knight, 183 N.J. 449, 470 (2005) (quoting Crawley and citing and quoting Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 1608, 36 L. Ed. 2d 235, 243 (1973)). We address defendant's claims of judicial partiality and threats to judicial independence creating an appearance of partiality because the claims implicate proceedings that followed entry of his guilty plea.

Defendant's first point in this series of arguments (Point II of his brief) is a general discussion of the importance of judicial independence and impartiality. It provides a backdrop for the arguments that follow and requires no comment.

His second point in this series (Point III of his brief) includes two arguments concerning the municipal courts in this State.

The first argument is a claim that statutes addressing appointment of the municipal court judges and the duration of their appointments pose a threat to defendant's right to a neutral magistrate. The laws defendant challenges are authorized by Article VI, Section 1, ¶ 1 of our State Constitution. The municipal officials and governing bodies

authorized to appoint municipal court judges, N.J.S.A. 2B:12-1, do so as "statutory" agents of the Legislature. Kagan v. Caroselli, 30 N.J. 371, 379 (1959). Moreover, municipal courts and the judges appointed to serve there are subject to oversight of the Supreme Court. Ibid.

The second claim is an argument supported with reference to extrajudicial statements and reports of revenue collected from costs, fees, fines and monetary penalties imposed by courts. Defendant perceives this system as one providing undue pressure and incentive for judges to order monetary sanctions and enhance revenue available to fund municipal courts and their judges. Remuneration for services of judges of the municipal court is based on salary established pursuant to N.J.S.A. 2B:12-7(b), not on the volume of revenues from fines and penalties. Any impact such revenues may have on judicial salaries and working conditions is indirect, attenuated and simply not comparable to circumstances addressed in cases defendant cites involving impartiality and its appearance attributable to judges' personal interest in the outcome of cases.

The next argument defendant presents (Point IV of his brief) suggests a claim that the Law Division erred in denying his motion to recuse the municipal court judge, which the judge properly denied because it was not presented to the municipal

court judge. R. 2:12-2. In actuality, defendant quotes passages from Supreme Court decisions torn from their context and contends the Court's enunciated "judicial policy" has placed judges of the municipal and superior courts "in the untenable and unenviable position of being required to follow the policy . . . , which conflicts with the Code of Judicial Conduct."³ He continues and argues, "Defendant herein is therefore deprived of fundamental due process rights under the Constitutions of the United States and the State of New Jersey and therefore must be acquitted of all charges."

Defendant argues the quotations he selected direct judges to favor conviction of drunk drivers. The Court's decisions cannot be understood to direct anything other than an impartial consideration of the evidence in light of the relevant substantive, procedural and constitutional law. In selecting quotes, defendant overlooks what the Court said in Chun - "Zealousness in ridding our roads of drunk drivers cannot overcome our ordinary notions of fairness to those accused of these offenses." 194 N.J. at 118.

³ The quotations are from State v. Tischio, 107 N.J. 504, 514 (1987) (discussing developments in the drunk driving laws and their application), appeal dismissed, 484 U.S. 1038, 108 S. Ct. 768, 98 L. Ed. 2d 855 (1988), and In re Collester, 126 N.J. 468, 472 (1992) (discussing appropriate collateral consequences).

Defendant's final argument is based on N.J.S.A. 22A:3-4. He contends the statute provides an impermissible financial incentive for municipal prosecutors to pursue convictions and disregard their obligation to do justice. See State v. Timmendequas, 161 N.J. 515, 587 (1999) (discussing prosecutors' well-established duty to serve the interest of justice). The statute requires a "prosecutor" who seeks, but fails to obtain, a municipal court conviction to pay statutory costs. N.J.S.A. 22A:3-4. Defendant presents no evidence or authority establishing the Legislature intended the reference to include "municipal prosecutors," who are "person[s] appointed to prosecute all offenses over which the municipal court has jurisdiction." N.J.S.A. 2B:25-2(a). When questioned about application of the statute in the Law Division, defense counsel did not provide a responsive answer. Without any indication municipal courts order individual municipal prosecutors to pay costs pursuant to N.J.S.A. 22A:3-4, the claim does not warrant discussion.

In conclusion, review of the record and briefs discloses no reason to reverse or modify any determination made by the judge who decided the de novo appeal in the Law Division.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION