

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
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-4398-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMAAL CAMPBELL,

Defendant-Appellant.

Submitted December 21, 2016 – Decided September 13, 2017

Before Judges Simonelli and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 14-12-3442.

Joseph E. Krakora, Public Defender, attorney for appellant (Jason A. Coe, Assistant Deputy Public Defender, of counsel and on the briefs).

Diane M. Ruberton, Acting Atlantic County Prosecutor, attorney, for respondent (Sevan Biramian, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jamaal Campbell appeals from a May 4, 2015 judgment of conviction for second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), charged in count twenty-one of Indictment No. 14-12-3442. Defendant was initially charged as a juvenile in a complaint alleging acts of delinquency that, if committed by an adult, would constitute second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count one), and second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count two). After the State prevailed on its motion to waive jurisdiction by the Family Part and prosecute defendant as an adult pursuant to N.J.S.A. 2A:4A-26(a),¹ he was charged with both offenses in counts twenty-one and twenty-two, respectively, of Indictment No. 14-12-3442. Thereafter, defendant entered a negotiated guilty plea to count twenty-one of the indictment and was sentenced to a five-year term of imprisonment with a three-year period of parole ineligibility pursuant to the Graves Act, N.J.S.A. 2C:43-6(c). On appeal, defendant challenges the Family Part order waiving jurisdiction, arguing that the State failed to establish probable cause that he possessed a handgun for an

¹ We note that this case was adjudicated long before N.J.S.A. 2A:4A-26 was repealed and replaced by N.J.S.A. 2A:4A-26.1, which went into effect on March 1, 2016. L. 2015, c. 89, § 1. Accordingly, all references to the waiver statute are to the prior law.

unlawful purpose, a Chart 1 offense, and that the State abused its discretion in seeking a waiver. After reviewing the arguments advanced on appeal, in light of the record and applicable law, we affirm.

I.

Over the course of four days, two witnesses testified for the State at the waiver hearing, Detective Charles Stewart and Sergeant Christopher Barber, both veteran officers with the Atlantic City Police Department. Defendant's mother testified for the defense. Barber was qualified as an expert in the areas of organized criminal gang activity and firearms. The State's proofs demonstrated that on June 23, 2013, defendant, then seventeen-years-old, possessed a handgun to further the illicit activities of two known gang members who had engaged in a nightlong spree of violence against rival gang members and innocent civilians that began on June 22, 2013. During the previous month, approximately fourteen gang-related shootings were attributed to two rival gangs, Dirty Blok and 800 Blok. Defendant was believed to be associated with Dirty Blok, and specifically, two of Dirty Blok's senior members, Austin Clark and Abdul Bailey.

The crime spree began at 5:30 p.m. on June 22, 2013, when police responded to a report of ten shots fired in the Carver Hall section of Atlantic City, an area known for drug trafficking,

shootings, homicides and gang activity. The shooter, who was described as an African-American male wearing a blue fisherman-style hat and a blue and white shirt, was identified as Clark. Although neither Clark nor the intended target were located, two .380 caliber shell casings were found at the scene. Next, at 6:24 p.m., police responded to a report of a carjacking at gunpoint in the 300 block of Madison Avenue. The victim reported that an African-American male wearing a blue fisherman-style hat and a blue jacket took his black SUV after pointing a handgun in his face. The victim later identified Clark as the carjacker. A male who was with Clark fled on foot and three males at the scene tried to intimidate the victim while he was talking to the police by pointing at him.

Five minutes later, at 6:29 p.m., the ShotSpotter, a gunshot detection system, alerted police dispatch that three shots were fired in the area of North Maryland Avenue, a high crime area and essentially the home territory for the 800 Blok gang. Within a minute of the alert, a 9-1-1 caller reported that their home located on North Maryland Avenue was struck by gunfire. When police responded to the scene, they found a man who was shot in the leg but refused to cooperate with law enforcement. Witnesses reported, however, that the shots were fired from a black SUV

matching the description of the vehicle that was carjacked five minutes earlier.

At 7:35 p.m., police responded to a report of an armed robbery on Belfield Avenue. The victim reported that an African-American male wearing a fisherman-style hat pulled up in a black SUV while he was standing outside of his home and ordered him to turn over his belongings. When the victim hesitated, the robber shot him in the arm and fled. A .380 caliber shell casing was recovered in the street and the victim later identified Clark as the robber. At 7:38 p.m., the ShotSpotter again alerted police dispatch to gunfire in the 600 block of Drexel Avenue. When police responded, they found a parked blue Volkswagen and the adjacent residence hit by gunfire. The fender of the Volkswagen was also struck by a black vehicle.

At 7:43 p.m., the ShotSpotter and a 9-1-1 caller alerted police to gunfire in the area of North Rhode Island. When police responded, they discovered that a residence located on North Rhode Island was struck by five gunshots. Witnesses reported that, before the shooting, a black SUV was seen near three African-American males standing on the block. After the gunshots were fired, the SUV fled. Police were unable to locate the three purported targets but shattered glass believed to be from the carjacked black SUV was recovered at the scene.

At 8:23 p.m., police received a tip that Clark was seen on New Jersey Avenue and, at 8:27 p.m., police recovered the carjacked black SUV in a vacant lot parallel to Drexel Avenue and close to Clark's residence. The SUV's windows were shattered and three bullets were found inside the vehicle, consistent with someone shooting at the vehicle. At 10:14 p.m., police responded to a report of a disturbance at the Schoolhouse Apartments located on North Martin Luther King Boulevard, another high crime area. The Schoolhouse Apartments and the Stanley Holmes Village, a housing project located just north of the Schoolhouse Apartments, was the home territory for the Dirty Blok gang.² Police located a blood trail at the Schoolhouse Apartments that led to an apartment where the residents reported that Clark pistol-whipped one of the residents who was a known Dirty Blok associate, while saying "[t]hat ni**er just tried to play me. I'm going to kill you." Clark then reportedly fled towards the Stanley Holmes Village.

At 11:35 p.m., dispatch received a 9-1-1 call reporting another armed robbery on J.J. Waters Street. When police responded, the victims reported that two males stole their cell phones and fired a single shot before fleeing. The gunman was

² After the State rested, defendant's mother testified that defendant lived with her in the Stanley Holmes Village. She testified further that although she was not home on the dates in question, defendant was there with his older sister.

identified as Clark and the other robber was identified as Bailey, who lived less than a block away on Robinson Avenue. Sometime after midnight, while police responded to the Robinson Avenue address in pursuit of Clark and Bailey, a gunshot was heard in that area. In response, a large police presence, consisting of a SWAT team as well as uniformed and plain-clothes officers, converged on Robinson Avenue and secured the residence as well as the outside perimeter. Bailey was found in the perimeter and arrested. Defendant was also found in the perimeter in proximity to Bailey. Defendant was initially detained by police but was later arrested when a .45 caliber semi-automatic handgun with six rounds in the magazine and one round loaded in the chamber was recovered from his front waistband. Barber testified that the gun was cocked, loaded and ready to be discharged and could be quickly retrieved from its location. While defendant and Bailey were awaiting transportation to police headquarters, Bailey told defendant "Keep your mouth shut. Don't say a f**king thing." In response, defendant calmly nodded in the affirmative.

Around the same time, police spotted Clark on an exterior stairwell of an Indiana Avenue residence, which faced the rear patio of Bailey's home on Robinson Avenue. A foot pursuit ensued which resulted in Clark's apprehension. A .380 caliber handgun with an empty magazine inserted inside was recovered on the

stairwell where Clark was first spotted. According to Barber, the handgun had a round stuck between the slide and the ejection port that caused the gun to malfunction. Barber also testified that a live .45 caliber round was recovered on the rear patio of Bailey's residence that was in the same condition as the rounds found in the handgun recovered from defendant. According to Barber, the handgun recovered from defendant was missing one round. No other ammunition was found in the rear of Bailey's residence and the location of the round was a position from which cover could have been provided for Clark. A blue and white sweat jacket was also found in the back yard of Bailey's residence and a fisherman-style hat was recovered inside Bailey's home.

In describing the operation, structure, membership and hierarchy of the Dirty Blok gang, Barber explained that the gang was a criminal enterprise that primarily made money through drug trafficking and was prone to violence and subject to internal conflicts and jockeying for leadership positions. Barber described the distinction between membership and associate membership and explained that membership could be established through self-reporting, social media, tattoos, clothing, and congregating in certain geographical areas. According to Barber, a newcomer to the gang could rise within the organization by performing designated tasks such as watching out for rival gang

members or police coming into the area, providing security to protect both gang territory and other gang members, facilitating drug trafficking, or enforcing the rules of the organization both internally and externally through acts of violence.

Barber testified that although he was unaware of defendant's affiliation with the Dirty Blok gang prior to the events that transpired from June 22 to 23, 2013, after those events he detected a pattern. According to Barber, the events showed that defendant was associated with the Dirty Blok gang based on defendant's proximity to Bailey and Clark at the time and place in question, Bailey's order to defendant to keep his mouth shut to which defendant assented, and the fact that defendant was armed with a cocked and loaded readily accessible firearm in an area where a known gang member was being sought by police.

Following the waiver hearing, in a written decision issued on May 13, 2014, Judge Joseph Marczyk found probable cause that defendant possessed the loaded handgun for an unlawful purpose and concluded that the prosecutor's decision to seek waiver did not constitute an abuse of discretion under the Attorney General's Guidelines. The judge acknowledged there was no evidence defendant was present during any of the violent crimes committed by Clark and Bailey prior to their arrest and that defendant was not identified by law enforcement as a member or associate of the

Dirty Blok gang prior to his arrest. The judge acknowledged further that defendant was never observed in the rear of the Robinson Avenue address and the live .45 caliber round found there was a different color than the rounds found in the handgun recovered from defendant.

However, Judge Marczyk rejected defendant's argument that there was insufficient evidence defendant possessed the handgun for an unlawful purpose or was associated or involved with gang activity. Judge Marczyk found "there was sufficient evidence produced . . . to demonstrate the existence of the Dirty Blok and 800 Blok gangs" and "that Austin Clark and Abdul Bailey were associates or members of the gang." The judge found further that "Austin Clark and Abdul Bailey were involved in gang related criminal activity on June 22, 2013 shortly before their arrest in the area of the . . . Robinson Avenue residence."

In concluding that the State established probable cause that defendant possessed the handgun for an unlawful purpose, the judge explained:

Specifically, [defendant] entered into an area that he knew was being monitored by police while carrying a loaded .45 caliber handgun. Moreover, he remained in the location of . . . Robinson Avenue after a shot was heard in the area shortly after the robbery on JJ Waters Avenue involving Austin Clark and Abdul Bailey. Shortly after the robbery, he was found in front of the . . . Robinson Avenue

residence with Abdul Bailey who had just been purportedly involved in an armed robbery. It should also be noted that [defendant] was arrested with Bailey and in the vicinity of where Clark was arrested shortly thereafter. In the context of an evening in which Austin Clark and Abdul Bailey participated in a series of shootings, robberies and assaults, [defendant] was found with a loaded handgun in his waistband, with Bailey and in the vicinity of Clark. This evidence and the reasonable inferences demonstrate for the purposes of probable cause, that he was operating to further the interest of the Dirty Blok gang and in particular, two of the members or associates, Austin Clark and Abdul Bailey. It should also be noted that the weapon found on [defendant] was one round short of being full. An unspent .45 caliber round was located following his arrest in the back of the . . . Robinson Avenue property in the area . . . where Austin Clark's bucket style/fisherman's hat was located. His presence at the scene of the arrests of the Dirty Blok gang members or associates, Clark and Bailey, coupled with the fact that he was carrying a loaded high caliber handgun leads the [c]ourt to believe there is a well-grounded suspicion that [defendant] possessed the weapon for the unlawful purpose of furthering the interests of the Dirty Blok gang and to use it unlawfully against the person or property of another. This is further supported by the testimony that after the seizure of his weapon, [defendant] nodded affirmatively to Abdul Bailey who told him to keep his mouth shut and not say a f***ing thing.

The judge also rejected defendant's argument that the State abused its discretion in seeking waiver. Judge Marczyk considered defendant's assertions that "[defendant] was not present at any

of the sites of the criminal activity that took place earlier in the evening[,]" and "there [was] no evidence that [defendant] acted in collusion or as an accomplice with Clark or Bailey." The judge also considered defendant's contention that "while bench warrants were outstanding at the time of his arrest, he had never been adjudicated [delinquent] of any prior offenses." However, Judge Marczyk was persuaded by the State's analysis that "notwithstanding the lack of prior adjudications, . . . the ongoing conflict between the Dirty Blok gang and the 800 Blok gang and the negative impact on the quality of life of large segments of the community coupled with the evidence that [defendant] was associated with the Dirty Blok organization" supported the State's decision to seek waiver. The judge concluded that the statement of reasons provided by the State "describe[d] in great detail the nature of the offense and the surrounding circumstances" rather than "a 'series of cursory conclusions.'" Moreover, according to the judge, the State adequately "addresse[d] the other factors set forth in the guidelines[.]"

On appeal, defendant argues:

POINT I

THE FACTS AND ALLEGATIONS PRESENTED BY THE STATE, AND THE FINDINGS OF THE TRIAL COURT, WERE INSUFFICIENT AS A MATTER OF LAW TO ESTABLISH PROBABLE CAUSE THAT J.C. COMMITTED THE OFFENSE OF POSSESSING A WEAPON FOR AN

UNLAWFUL PURPOSE BECAUSE NO ACTUAL UNLAWFUL PURPOSE WAS EVER DEFINED.

POINT II

BY IMPROPERLY ANALYZING SOME OF THE FACTORS SET FORTH IN THE ATTORNEY GENERAL JUVENILE WAIVER GUIDELINES, AND FAILING TO CONSIDER OTHERS, THE STATE ABUSED ITS DISCRETION IN DECIDING TO SEEK WAIVER IN THIS CASE.

POINT III

THE STATE VIOLATED J.C.'S DUE PROCESS RIGHTS BECAUSE IT CHARGED HIM WITH POSSESSION FOR AN UNLAWFUL PURPOSE SOLELY TO SECURE A TACTICAL ADVANTAGE BY PREVENTING HIM FROM ASSERTING THE POSSIBILITY OF REHABILITATION AS A DEFENSE TO WAIVER.

We reject each of these contentions and affirm substantially for the reasons expressed in Judge Marczyk's cogent and well-reasoned written opinion. We conclude Judge Marczyk's decision to grant the waiver met all constitutional and statutory requirements and followed the applicable legal standards. We add only the following comments.

N.J.S.A. 2A:4A-24 confers jurisdiction over offenses committed by juveniles to the Family Part. N.J.S.A. 2A:4A-26(a) vests the prosecutor with discretion to seek a waiver of this jurisdiction for certain specified offenses committed by a juvenile fourteen years of age or older. These offenses are referred to as "Chart 1" offenses, and include unlawful possession of a weapon, N.J.S.A. 2A:4A-26(a)(2)(a), possession of a weapon

for an unlawful purpose, N.J.S.A. 2A:4A-26(a)(2)(i), and offenses committed in "an aggressive, violent and willful manner." N.J.S.A. 2A:4A-26(a)(2)(d).

We consider the Family Part judge's decision in juvenile waiver cases under an abuse of discretion standard, which requires that "findings of fact be grounded in competent, reasonably credible evidence" and "correct legal principles be applied." In re State ex rel. A.D., 212 N.J. 200, 214-15 (2012) (citation omitted). Only where the Family Part judge exercises a "'clear error of judgment that shocks the judicial conscience'" will we substitute our own discretion for that of the waiver court. Id. at 215 (quoting State v. R.G.D., 108 N.J. 1, 15 (1987)).

In the case of a juvenile sixteen years or older charged with a Chart 1 offense, the only issue to be determined by the Family Part judge at the waiver hearing is whether there is probable cause to believe the juvenile committed the delinquent act. "Probable cause is a well-grounded suspicion or belief that the juvenile committed the alleged crime." State v. J.M., 182 N.J. 402, 417 (2005) (citing State v. Moore, 181 N.J. 40, 45 (2004)). "Probable cause may be established on the basis of hearsay evidence alone, because a probable cause hearing does not have the finality of trial . . . and need not be based solely on evidence admissible in the courtroom." State in Interest of B.G., 247 N.J. Super.

403, 409 (App. Div. 1991) (citations omitted). Moreover, the nature of a probable cause determination "'does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations [will] seldom [be] crucial in deciding whether the evidence supports a reasonable belief in guilt.'" J.M., supra, 182 N.J. at 417 (quoting Gerstein v. Pugh, 420 U.S. 103, 122, 95 S. Ct. 854, 867, 43 L. Ed. 2d 54, 69 (1975)).

"On a finding of probable cause for any of [the] enumerated offenses, no additional showing is required for waiver to occur. Jurisdiction of the case shall be transferred immediately." R. 5:22-2(c)(3). "Simply stated, when a sixteen-year old or above is charged with an enumerated offense, the prosecutor need only establish probable cause for the court to waive the juvenile to adult court." J.M., supra, 182 N.J. at 412. That being said, "a juvenile seeking to avoid the 'norm' of waiver . . . when probable cause is found to exist, must carry a heavy burden to clearly and convincingly show that the prosecutor was arbitrary or committed an abuse of his or her considerable discretionary authority to compel waiver." State in re V.A., 212 N.J. 1, 29 (2012).

To ensure uniform application of the waiver statute, pursuant to N.J.S.A. 2A:4A-26(f), the Attorney General has promulgated guidelines that prosecutors must follow in making the waiver

decision. Attorney General's Juvenile Waiver Guidelines (March 14, 2000) (Guidelines), available at <http://www.nj.gov/oag/dcj/agguide/pdfs/AG-Juvenile-Waiver-Guidelines.pdf>. The Guidelines, in turn, "require preparation of a written statement of reasons for waiver, in which the prosecutor must 'include an account of all factors considered and deemed applicable.'" V.A., supra, 212 N.J. at 12 (quoting Guidelines, supra, at 7). The factors to be considered by the prosecutor are: the nature of the offense; deterrence; the effect of waiver on co-defendants; the maximum sentence and length of time to be served if prosecuted as an adult or as a juvenile; the juvenile's prior record, if any; trial considerations and the victim's input. Guidelines, supra, at 5-6.

The prosecutor's statement of reasons must reflect an individualized consideration of the evidence, taking into account all applicable factors. See V.A., supra, 26-27. If the statement "is a mere regurgitation of the Guidelines' language, that will not show that the prosecutor engaged in an individualized decision, rendering the overall decision susceptible to the claim that it is arbitrary and constitutes an abuse of discretion." Id. at 28. The burden of proof rests with the juvenile to show "clearly and convincingly that a prosecutor abused his or her discretion[.]" Id. at 26.

Judged by these standards, we agree with Judge Marczyk that the prosecutor established probable cause that defendant, an associate with the Dirty Blok gang and its two senior members, possessed a cocked, loaded and accessible handgun for an unlawful purpose, namely, to be used in connection with unlawful gang violence. Further, defendant failed to carry his heavy burden to show that the prosecutor's decision to seek waiver constituted an abuse of discretion. The prosecutor's statement of reasons discussed in sufficient detail all of the Guidelines' factors that were relevant to the waiver decision and made a reasoned, qualitative evaluation of those factors. We therefore conclude Judge Marczyk's findings of fact were "grounded in competent, reasonably credible evidence," he applied the "correct legal principles[,]" and there was no "clear error of judgment that shocks the judicial conscience." R.G.D., supra, 108 N.J. at 15.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION