SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1471-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MIGUEL A. VARGAS,

Defendant-Appellant.

Argued March 1, 2023 – Decided March 8, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 16-06-1543.

Frank M. Gennaro, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Frank M. Gennaro, on the brief).

Linda A. Shashoua, Assistant Prosecutor, argued the cause for respondent (William Reynolds, Atlantic County Prosecutor, attorney; Alyssa M. Gilroy, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Following a multi-day trial, the jury convicted defendant Miguel A. Vargas of three counts of second-degree endangering the welfare of three of the children in his care, I.D., G.V., and L.V.,[1] by abusing and neglecting them over a years-long period of time in violation of N.J.S.A. 2C:24-4(a)(2). The jury also convicted defendant of fourth-degree obstructing a criminal investigation in violation of N.J.S.A. 2C:29-1(a). The jury was unable to return a verdict on four counts associated with defendant's alleged abuse of another child, J.D., and the trial court dismissed those charges at the time of sentencing.[2] The court sentenced defendant to consecutive eight-year prison terms on each of the endangering charges, and to a concurrent one-year term on the obstruction charge. Therefore, the court imposed an aggregate twenty-four-year sentence.

On appeal, defendant raises the following contentions:

> POINT ONE
>
> THE TRIAL COURT IMPROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS THE PHYSICAL EVIDENCE SEIZED AS A RESULT OF THE WARRANTLESS SEARCH OF HIS HOME.
>
> A. Administrative Searches.

[1] We use initials to refer to the children involved in this case to protect their privacy.

[2] The trial court also dismissed a fifth charge against defendant involving J.D. at the end of the State's case.

B. Abandoned Property.

C. The Remedy.

POINT TWO

THE STATE'S REPEATED REFERENCES TO SEARCH AND ARREST WARRANTS DENIED DEFENDANT A FAIR TRIAL (Not Raised Below).

POINT THREE

THE TRIAL COURT ERRED BY FAILING TO DISMISS AND BY FAILING TO ENTER A JUDGMENT OF ACQUITTAL ON COUNT SIX OF THE INDICTMENT, ALLEGING ENDANGERING THE WELFARE OF I.D.

POINT FOUR

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL ON COUNT EIGHT WAS IMPROPERLY DENIED.

POINT FIVE

THE AGGREGATE SENTENCE OF [TWENTY-FOUR] YEARS, WHICH INCLUDES THREE CONSECUTIVE TERMS OF IMPRISONMENT IS AN EXCESSIVE SENTENCE.

We find insufficient merit in these contentions to warrant extended discussion in a written opinion. R. 2:11-3(e)(2). We add the following comments.

Defendant came to the attention of the Atlantic City police when he reported that one of his children, L.V., had run away from home. Detective Keith Wendling learned that defendant kept L.V. and his other children isolated inside his home and did not permit them to go to school or to have friends.

The child was found in a shelter in Philadelphia. She told the staff that she was afraid to return to defendant and that defendant had assaulted her older sister, J.D. Nevertheless, Philadelphia authorities returned the child to defendant and directed him to immediately bring the child with him to the Atlantic City police station.

Instead, defendant absconded with L.V. and the other children in the home. Wendling visited defendant's home on several occasions looking for the family, but no one answered the door. The landlord told Wendling that the rent was paid by HUD through direct deposits. Wendling obtained an arrest warrant for defendant after learning from a neighbor that defendant had moved the family out of the house.

Wendling was concerned with the condition of the home. The landlord did not have a key, the doorknob on the front door was missing, and there were metal gratings over the outside windows preventing anyone from leaving the house. Wendling notified Phin Nguyen, the City code enforcement officer.

Nguyen was "very concerned" and contacted the landlord for permission to enter the house to conduct an inspection. The landlord consented. Nguyen wanted to make sure the heat was on and nothing was leaking in the house, which was part of a set of rowhomes. Because he was afraid someone might be hiding in the house, Nguyen asked Wendling and another detective to come on the day of the inspection in case there was a problem.

When Nguyen arrived, the landlord fixed the doorknob on the front door and Nguyen went into the house. When he got to the second floor, Nguyen saw there were padlocks on all of the bedroom doors. Because he was afraid there could be people in the rooms, or even dead bodies, he asked Wendling and the other detective to take a look. They went in the house and knocked on each of the locked doors. No one answered and the detectives did not attempt to break into any of the rooms. They then left the house. Neither Nguyen nor the officers removed anything from the house.

About a week after the inspection, Wendling secured a search warrant so he could enter the rooms and search for bodies. The FBI later found defendant hiding his family in a cottage he rented in Avon-by-the-Sea.

The State's case against defendant on the three endangering charges was based primarily on the testimony presented by J.D., I.D., and G.V. concerning

defendant's long-term mistreatment of all of the children in his care. Defendant kept them locked in their separate rooms. Inside the rooms, they frequently had to stay inside tents, which were equipped with an air mattress. They were not allowed to leave the rooms to use the bathroom or to get food. Sometimes, the children remained in their rooms for months at a time.

Defendant refused to permit the children to attend school and told them their mother would "homeschool" them. They received no formal education and sometimes did not receive needed health care. On the few occasions they were able to go outside the home, defendant scolded them if they talked to anyone outside the family. "There was a lot of verbal abuse." Defendant's wife testified that L.V. was suicidal at the time she ran away.

In Point I, defendant argues that the trial judge should have granted his "motion to suppress the physical evidence seized as a result of the warrantless entry to his home." This argument lacks merit.

In our review of defendant's suppression motions, we defer to the trial judge's findings so long as they are "supported by sufficient credible evidence." State v. S.S., 229 N.J. 360, 374 (2017) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). Appellate courts defer to the trial judge's credibility and factual findings because of the trial court's ability to see and hear the witnesses, and

thereby obtain the intangible but crucial "feel" of the case. State v. Maltese, 222 N.J. 525, 543 (2015) (quoting State v. Hreha, 217 N.J. 368, 382 (2014)). We will not reverse a trial court's findings of fact unless the findings are clearly erroneous or mistaken. See S.S., 229 N.J. at 381. We review the trial court's legal conclusions de novo. State v. Dorff, 468 N.J. Super. 633, 644 (App. Div. 2021).

Here, the "search" that was the subject of defendant's suppression motion, was a code enforcement inspection Nguyen conducted to determine if there were any safety hazards in the rental property after defendant abandoned it. This "administrative search" of the premises was plainly permissible because it was related to suspected code violations. See State v. Heine, 424 N.J. Super. 48, 60 (App. Div. 2012) (noting that a warrant is not required to conduct an administrative search "when (1) consent is obtained[]; (2) the subject matter is in an area of long-term, traditional governmental regulation, a so-called closely-regulated industry; or (3) an emergency or public health danger is presented.[])." (footnotes omitted). Contrary to defendant's argument, Wendling and the other detective did not direct Nguyen in his inspection and Nguyen did not seize anything from the house. Although the two detectives went to the second floor to knock on the locked bedroom doors to determine if anyone was hiding or

injured, they did not seize any evidence from the house, and left as soon as they determined there was no danger. See State v. Hathaway, 222 N.J. 453, 469 (2015). Under these circumstances, we are satisfied the trial judge properly denied defendant's suppression motion.

In Point Two, defendant argues for the first time on appeal that the State's "repeated references" to the arrest and search warrants it obtained deprived him of a fair trial. After reviewing the entire record, however, we are convinced that the State's references to the warrants did not prejudice defendant.

In Point Three, defendant argues that the trial judge erred by denying his motion to dismiss count six of the indictment, charging him with endangering the welfare of I.D. by abusing and neglecting him. Defendant argues that unlike the similar charges involving his treatment of G.V. and L.V., the charge involving I.D. specified that defendant abused and neglected the child by inflicting excessive corporal punishment upon him. Because I.D. testified that the corporal punishment stopped after the family moved to Atlantic City, defendant asserts the judge should have dismissed this charge. We disagree.

As the judge explained in her decision, the gravamen of the charge involving I.D. and the other two children was that defendant abused and neglected them while the family was in Atlantic City during the years-long

periods set forth in each separate count. As defendant's attorney conceded during oral argument on the motion to dismiss, defendant and his counsel received complete discovery of the nature and scope of the abuse the State alleged defendant inflicted on I.D. and the other children. Thus, defendant was well aware that the charge included much more than excessive corporal punishment.

We review a decision to amend an indictment for an abuse of discretion standard. State v. Reid, 148 N.J. Super. 263, 266 (App. Div. 1977). We apply the same standard of review where a defendant moves to dismiss an indictment. State v. Tringali, 451 N.J. Super. 18, 27 (App. Div. 2017).

"It is axiomatic that an indictment 'must charge the defendant with the commission of a crime in reasonably understandable language setting forth all . . . critical facts and . . . essential elements' of the alleged offenses so as to enable defendant to prepare a defense." State v. Salter, 425 N.J. Super. 504, 514 (App. Div. 2012) (quoting State v. Wein, 80 N.J. 491, 497 (1979)). Rule 3:7-4 permits an amendment of an indictment to "correct an error in form or the description of the crime intended to be charged . . . provided that the amendment does not charge another or different offense from that alleged and the defendant will not be prejudiced thereby in his or her defense on the merits." "The

fundamental inquiry is whether the indictment substantially misleads or misinforms the accused as to the crime charged. The key is intelligibility." Wein, 80 N.J. at 497. The indictment must "preclude the substitution . . . of an offense which the grand jury did not in fact consider or charge." State v. LeFurge, 101 N.J. 404, 415 (1986) (quoting State v. Boratto, 80 N.J. 506, 519 (1979)).

Pursuant to these principles, we are convinced that the judge did not abuse her discretion by permitting the State to proceed with count six as amended to conform to the proofs adduced at trial, which were well known to defendant prior to the beginning of the proceedings. Contrary to defendant's contentions, the State did not alter the nature of the offense charged in the indictment, namely violating N.J.S.A. 2C:24-4(a)(2).

In Point Four, defendant argues that the trial judge should have granted his motion for a judgment of acquittal on count eight of the indictment, which involved his abuse and neglect of L.V. Because L.V. did not testify at the trial, defendant argues the State failed to present sufficient evidence to support a conviction. This contention lacks merit.

A motion for acquittal must be granted "if the evidence is insufficient to warrant a conviction." R. 3:18-1.

> On a motion for judgment of acquittal, the governing test is: whether the evidence viewed in its entirety, and giving the State the benefit of all of its favorable testimony and all of the favorable inferences which can reasonably be drawn therefrom, is such that a jury could properly find beyond a reasonable doubt that the defendant was guilty of the crime charged.
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> [State v. D.A., 191 N.J. 158, 163 (2007) (citing State v. Reyes, 50 N.J. 454, 458-59 (1967)).]

We have stated that "the trial judge is not concerned with the worth, nature[,] or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the State." State v. DeRoxtro, 327 N.J. Super. 212, 224 (App. Div. 2000) (quoting State v. Kluber, 130 N.J. Super. 336, 341 (App. Div. 1974), certif. denied, 67 N.J. 72 (1975)). Our review of a trial court's denial of a motion for acquittal is "limited and deferential[,]" and is governed by the same standard as the trial court. State v. Reddish, 181 N.J. 553, 620 (2004).

Applying these standards, we conclude that the State presented sufficient proofs both in its case-in-chief and in the full trial to establish beyond a reasonable doubt that defendant abused and neglected L.V. While L.V. did not testify at trial, the other children who testified, J.D., I.D., and G.V., recounted defendant's actions against all of the children in great detail. Therefore, there was ample evidence in the record to enable the jury to conclude beyond a

reasonable doubt that defendant was guilty of the offense charged. D.A., 191 N.J. at 163.

Finally, defendant argues in Point Five that the trial judge abused her discretion in imposing a twenty-four-year aggregate sentence. We disagree.

Trial judges have broad sentencing discretion as long as the sentence is based on competent credible evidence and fits within the statutory framework. State v. Dalziel, 182 N.J. 494, 500 (2005). Judges must identify and consider "any relevant aggravating and mitigating factors" that "'are called to the court's attention[,]'" and "explain how they arrived at a particular sentence." State v. Case, 220 N.J. 49, 64-65 (2014) (quoting State v. Blackmon, 202 N.J. 283, 297 (2010)). "Appellate review of sentencing is deferential," and we therefore avoid substituting our judgment for the judgment of the trial court. Id. at 65; State v. O'Donnell, 117 N.J. 210, 215 (1989); State v. Roth, 95 N.J. 334, 365 (1984).

We are satisfied the judge made findings of fact concerning aggravating and mitigating factors that were based on competent and reasonably credible evidence in the record and applied the correct sentencing guidelines enunciated in the Code, including the imposition of consecutive sentences. Accordingly, there is no reason for us to second-guess the sentence the judge imposed.

Affirmed.