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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1528-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSHUA A. TOLIVER,

Defendant-Appellant.

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Submitted September 14, 2023 – Decided October 20, 2023

Before Judges Vernoia and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Indictment No. 19-04-0291.

Sullivan Simon, LLC, attorney for appellant (David Simon, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Debra G. Simms, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Joshua A. Toliver appeals from the rejection of his application to Recovery Court,<sup>1</sup> motion to suppress evidence, and post-trial motion for a judgment of acquittal citing errors by the court. We affirm the denial of the motions to suppress evidence and for judgment of acquittal and reverse and remand for a determination of defendant's eligibility for Recovery Court.

On July 31, 2018, a Franklin Township Police Department Officer, Stephen Casamassima, observed defendant driving a cargo van while on his cell phone in Franklinville and initiated a stop. After discovering there was an outstanding warrant for defendant's arrest and defendant had expired insurance and a suspended license, Officer Casamassima arrested defendant and placed him in the back of the police cruiser. Officer Casamassima then requested a canine sniff of the van which was positive for the presence of controlled dangerous substances (CDS), and the subsequent warrantless search of the vehicle about forty minutes later revealed the presence of CDS and drug paraphernalia.

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<sup>1</sup> Effective January 1, 2022, the Drug Court Program was renamed the New Jersey Recovery Court Program to better reflect the primary goal of the program. For purposes of ease of reference and clarity, throughout this opinion we refer only to Recovery Court even though at the time defendant applied for admission and was rejected by the Gloucester County Prosecutor's Office and the court, it was referred to as Drug Court.

Indicted on charges including third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1) (count one), and second-degree possession with intent to distribute, N.J.S.A. 2C:35-5(b)(9)(a) (count two), defendant initially sought admittance to Recovery Court. According to the record, the State recommended the denial of his application, arguing he was a drug dealer for profit and thus legally ineligible.<sup>2</sup>

Defendant appealed from the State's recommendation and on August 7, 2019, the court issued a memorandum of decision denying his appeal. The court briefly addressed the CDS charges and defendant's statement that the drugs

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<sup>2</sup> This record is not clear why the prosecutor's recommendation to deny entry to Recovery Court is referenced as a decision, or why the subsequent submission before the motion court was styled as an appeal of the prosecutor's decision. "Under either track, the sentencing judge retains discretion to deny admission to a legally eligible defendant after considering the recommendations of the substance abuse evaluator and the prosecutor, the Drug Court Manual—which emphasizes the need to consider danger to the community—and the relevant aggravating and mitigating factors that must be applied and weighed in all sentencing proceedings." State v. Harris, 466 N.J. Super. 502, 547 (App. Div. 2021) (emphasis added); see also State v. Clarke, 203 N.J. 166, 177 (2010) ("Because the decision whether to admit the applicant into Drug Court is essentially a sentencing one, the 'trial judge is required to consider all of the aggravating and mitigating factors and to find those supported by the evidence.'") (quoting State v. Dalziel, 182 N.J. 494, 505 (2005)).

found were for his personal use.<sup>3</sup> The court concluded defendant was most likely both a drug addict and dealer while noting "[d]efendant's TASC<sup>4</sup> evaluation recommended a significant level of care and led the [c]ourt to believe that [d]efendant is addicted to both methamphetamine and cocaine." Despite this finding, the court concluded "[d]efendant's presence in the [Recovery] Court program would create a special danger to the Recovery Court community, which would vastly outweigh the benefits of treating [d]efendant's addiction." In its rejection of defendant's Recovery Court application, the court did not weigh the aggravating and mitigating sentencing factors set forth in N.J.S.A. 2C:44-1(a) and (b).

Following the court's determination that defendant was ineligible for Recovery Court, defendant filed a motion to suppress the CDS evidence seized from the van, arguing Officer Casamassima lacked probable cause to conduct a warrantless search of the vehicle.

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<sup>3</sup> At the time of the filing of the application for Recovery Court, the court was aware of the following suspected CDS found in the van operated by defendant: eighteen bags of crystal methamphetamine, one orange vial of cocaine, seven pills suspected to be oxycodone, one blue pill suspected to be oxycodone and a black digital scale.

<sup>4</sup> "TASC" is a mnemonic for Treatment Assessment Services for the Courts.

At the suppression hearing before a different judge, defendant did not contest the reasonableness of the motor vehicle stop based on the cell phone violation. Instead, defendant argued it was the officer's actions following defendant's arrest—after the officer placed defendant in the patrol car—that violated defendant's constitutional rights to be free from unreasonable searches and seizures. Defendant maintains the warrantless search of the vehicle was unlawful because the officer did not have probable cause for a search or to call for the canine unit to conduct the sniff of the vehicle.

On January 10, 2020, at the conclusion of the suppression hearing, the court denied defendant's suppression motion and issued a written opinion. The court found that based on dashboard camera footage and Officer Casamassima's experience, the cell phone usage was sufficient to initiate a stop. As stated by the court, "[it] is uncontested that Officer Casamassima had the probable cause needed to make a custodial arrest after [d]efendant handed him an expired registration and was notified of [d]efendant's active warrant."

Furthermore, the court considered the totality of the circumstances, as testified to by the officer, finding the officer's request for an exterior canine sniff was supported by ample reasonable suspicion for "separate and apart from the initial reason of the stop," the thirty-five minute stop was not excessive, and the

officer had probable cause to conduct the subsequent vehicle search, noting orally:

The only issue in my mind, after I get through all this, that's a real issue is the issue of probable cause to search. And I find, after considering all the factors and looking at the totality of the circumstances, that's what officers do. . . . In this case, the [d]efendant did have the active warrant. He has a history of CDS-related charges even though he says he did not, a throw off, as it were, you know, trying to deflect the question. He had an expired registration. And given the other factors that aren't as serious, sweating, I get that it's hot out, but he's sweating. The officer, they are better able to determine whether the sweating was because it was really, really, really hot. Was he sweating too, or was it because he was nervous? The officers there were not. And the fact that he lit a cigarette and how he was acting surrounding that.

Thus, finding the initiation of the stop and the subsequent searches were lawful, the court denied the suppression motion.

Thereafter, the matter proceeded to trial before a third judge and, after both sides rested, defendant moved for a judgment of acquittal. The court rendered an oral decision denying defendant's motion, explaining the State's evidence, and the reasonable inferences drawn therefrom, supported a conviction on each of the crimes charged. On December 14, 2021, the court

sentenced defendant to a four-year custodial term but granted a stay of sentence pending this appeal.

On appeal, defendant presents the following arguments for our consideration:

POINT I

THE STATE AND LOWER COURT DREW AN IRRELEVANT DISTINCTION BETWEEN DRUG USERS AND DRUG DEALERS EN ROUTE TO DENYING DEFENDANT ADMISSION INTO DRUG COURT. IN DOING SO, THEY FRUSTRATED THE EFFICACY OF ONE OF THIS STATE'S MOST EFFECTIVE TOOLS TO COMBAT DRUG ADDICTION.

POINT II

OFFICER CASAMASSIMA COMPLETED THE TRAFFIC STOP AND PIVOTED TO A DRUG INVESTIGATION. AND THAT INVESTIGATION UNCOVERED CONTROLLED DANGEROUS SUBSTANCES. IT WAS NOT UNFORESEEN OR SPONTANEOUS FOR A DRUG INVESTIGATION TO FIND DRUGS. AS SUCH, THE OFFICER NEEDED A WARRANT TO SEARCH THE VEHICLE.

POINT III

THE STATE FAILED TO PROVE THAT DEFENDANT POSSESSED THE CONTRABAND, A NECESSARY ELEMENT FOR THE CHARGES. DEFENDANT WAS MERELY PRESENT IN A VAN THAT HE DID NOT OWN. AND THE NERVOUS

BEHAVIOR THE STATE RELIED ON WAS LITTLE  
MORE THAN A NORMAL RESPONSE TO THE  
SITUATION.

I.

We first address defendant's arguments pertaining to the denial of his application to Recovery Court. "The Recovery Court program, formerly referred to as Drug Court, is a nationally acclaimed program created and administered by the New Jersey judiciary to link qualified drug dependent defendants to court-supervised and state-funded treatment and aftercare services." State v. Harris, 466 N.J. Super. 502, 521 (App. Div. 2021). "The program was designed to 'address the seemingly intractable social problem presented by the scourge of drugs that has devastated countless families and is the source of so many collateral crimes.'" Id. at 530 (quoting State v. Meyer, 192 N.J. 421, 429 (2007)).

"[Recovery] Courts are a creature of the judiciary . . . and are subject to the constitutional purview of the Supreme Court of New Jersey." Id. at 521. The statutory framework set forth in N.J.S.A. 2C:35-14

equipped sentencing courts with a statutory tool [to address] the cycle of drug dependence . . . by authorizing a sentencing option that relies on treatment rather than on imprisonment. The farsighted goal expressed in N.J.S.A. 2C:35-14 remained unfulfilled, however, because there was at the outset no practical



way for judges to link drug dependent offenders—especially indigent defendants—with clinically appropriate treatment and monitoring services.

[Id. at 530.]

The Recovery Court program was created to bridge that gap.

We "review a sentencing court's decision to admit or deny admission to [Recovery] Court for an abuse of discretion." Id. at 553. "Legal eligibility is a threshold question that must be decided in all cases." Id. at 551. "Every candidate falls under one of two distinct and mutually exclusive tracks." Ibid. "To determine legal eligibility, the trial court must first determine whether the defendant is a Track One or Track Two candidate." Ibid. "A defendant is a Track One candidate if, and only if, [they are] presently subject to the presumption of imprisonment in N.J.S.A. 2C:44-1(d) or to a mandatory period of parole ineligibility." Id. at 523 (quoting State v. Figaro, 462 N.J. Super. 564, 566 (App. Div. 2020)). "Track Two is reserved for drug dependent defendants who are not subject to the statutory presumption of imprisonment or a mandatory term of parole ineligibility." Id. at 525 (emphasis added).

"A Track One candidate can be admitted to [Recovery] Court only if the court sentences the defendant to special probation, an alternative to imprisonment, pursuant to N.J.S.A. 2C:35-14(a)." Id. at 551. Track One

candidates must meet all nine eligibility criteria for special probation set forth in N.J.S.A. 2C:35-14(a). Id. at 551.

"Special probation is . . . [a] highly specialized form of probation . . . aimed specifically at prison-bound offenders, who would not be eligible for regular probation" due to a conviction for a crime which is subject to a presumption of incarceration. State v. Maurer, 438 N.J. Super. 402, 412 (App. Div. 2014).

"A Track Two candidate, in contrast, is not automatically disqualified from [Recovery] Court on the grounds that he or she does not satisfy all the statutory prerequisites for special probation, but the nine eligibility criteria may be considered as relevant factors bearing on the candidate's suitability for participation." Harris, 466 N.J. Super. at 510.

When the court determines a candidate is "legally eligible for [Recovery] Court via either track," then "the court must next decide whether to admit the candidate in the exercise of sentencing discretion." Id. at 524. "The court must consider the TASC evaluation, the recommendation of the substance abuse evaluator, and the non-binding recommendation of the prosecutor." Id. at 552. Furthermore, "because the decision whether to admit the applicant into [Recovery] Court is essentially a sentencing one, the 'trial judge is required to

consider all of the aggravating and mitigating factors and to find those supported by the evidence." Clarke, 203 N.J. at 176-177 (quoting Dalziel, 182 N.J. at 505). "As long as the sentence is within the statutory framework, we afford wide discretion to the judge's decision." Ibid.

On May 16, 2019, defendant was evaluated by a substance abuse evaluator who determined defendant was clinically eligible for admission to Recovery Court. On May 20, 2019, the State filed its recommendation that defendant was "ineligible for the [Recovery Court] program for being a drug dealer for profit." The trial court agreed, finding that "allowing a drug dealer into a program aimed at helping addicted persons recover" would present a "self-evident" danger to the Recovery Court community and "the community at large[.]"

The court issued an amplification of its order underscoring the basis for its decision, stating in part:

[h]aving made the determination that [d]efendant is both an addicted person and a drug dealer for profit, the [c]ourt must then consider if [d]efendant would be a danger to the community and to what extent that . . . danger would outweigh the benefits that [Recovery] Court would grant [d]efendant. The [c]ourt finds that [d]efendant's presence in the [Recovery] Court program would create a special danger to the [Recovery] Court community which would vastly outweigh the benefits of treating [d]efendant's addiction. The danger of allowing a drug dealer into a program aimed at helping addicted persons recover is

self-evident. Moreover, there would be a continued danger to the community at large, resulting from [d]efendant's ability to continue to deal drugs.

Defendant posits that in reaching its determination on his eligibility to Recovery Court, the court focused almost entirely on one aspect of the criteria: danger to the community. Defendant argues that pursuant to N.J.S.A. 2C:35-14, the court is required to consider all aggravating and mitigating factors in determining his eligibility for Recovery Court and the court's failure to consider those factors deprived him of the statutorily required analysis of his eligibility. We agree.

On this issue, neither party disputes that defendant is a Track One candidate because he was charged with a second-degree offense, which carries a presumption of incarceration. N.J.S.A. 2C:44-1(d). Nevertheless, the court's adoption of the State's ineligibility recommendation, without weighing all the requisite aggravating and mitigating factors—and misplaced emphasis on defendant's status as a purported dealer, which is not a wholesale bar to admission—constitutes an abuse of discretion. See United States v. Scurry, 193 N.J. 492, 504 (2008) (explaining a court abuses its discretion when its "decision [is] made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis").

For that reason alone, we reverse the court's order denying defendant's application for Recovery Court and remand for the court to consider the application anew, and make findings of fact supporting its determination, including findings as to the applicable aggravating and mitigating factors.

We also consider defendant's argument that the court erred by finding the evidence supports its (and the State's) determination he sold drugs for profit and by disqualifying him solely for that reason—his purported drug sales—alone. Citing language in Harris, defendant argues that Recovery Court was originally open to drug users and dealers who were also users and that an ineligibility finding based solely on the fact a defendant may have also sold drugs is inconsistent with the history of Recovery Court. 466 N.J. Super. at 526-32.

On this issue, we are equally convinced the court also erred by disqualifying defendant from Recovery Court solely based on its finding he sold drugs. The court focusing on danger to the community under N.J.S.A. 2C:35-14(a)(9), stating:

[h]aving made the determination that [d]efendant is both an addicted person and a drug dealer for profit, the [c]ourt must then consider if [d]efendant would be a danger to the community and . . . [t]he danger of allowing a drug dealer into a program aimed at helping addicted persons recover is self-evident. Moreover, there would be a continued danger to the community at

large, resulting from [d]efendant's ability to continue to deal drugs.

This singular approach directly contravenes our caselaw, as the "trial judge is required to consider all of the aggravating and mitigating factors and to find those supported by the evidence." Clarke, 203 N.J. at 176-177 (quoting Dalziel, 182 N.J. at 505). Although N.J.S.A. 2C:35-14(a)(9) may very well favor the State's position, it must be weighed holistically with the remaining factors, along with "the TASC evaluation, the recommendation of the substance abuse evaluator, and the non-binding recommendation of the prosecutor." Harris, 466 N.J. Super. at 552.

## II.

Next, defendant argues the court erred in denying the motion to suppress the CDS found in the van he was operating following a warrantless search of the vehicle. In connection with this argument, defendant and the State submitted supplemental briefs following the recent Supreme Court opinion in State v. Smart, in which the Court determined long-held information from a confidential informant did not constitute unforeseeable and spontaneous circumstances justifying a valid warrantless automobile search supported by probable cause. 253 N.J. 156, 171 (2023).

Smart involved police surveillance of a defendant who had been linked to narcotics trafficking by a confidential informant. Id. at 173. Police surveilled defendant for several hours at various locations, conducted an investigative stop and, when defendant did not consent to a search, police called in a canine unit to conduct a dog sniff to establish probable cause. Ibid. The canine performed an exterior sniff and detected the presence of drugs, and the officers immediately conducted a warrantless search. Id. at 172. The defendant argued that when the police conducted the investigative stop based on reasonable and articulable suspicion for drug activity and then called a canine to establish probable cause to search for drugs, the totality of the circumstances giving rise to probable cause were not "unforeseeable or spontaneous." Id. at 159-60.

Relying upon the Court's holding in Smart, defendant argues the warrantless search of the van was unlawful because the State failed to prove that Officer Casamassima had a "spontaneous and unforeseen" reason to search the van, and "the officer did not secure a warrant before searching." He posits that the officer had a suspicion drug were in the van, so the officer conducted a narcotics investigation, which confirmed his suspicion. As such, defendant further contends, "finding drugs at the end of a drug investigation is not spontaneous; . . . ."

At the hearing on the suppression motion, the State presented evidence that on July 31, 2018, Officer Casamassima stopped defendant's vehicle because he observed defendant driving "with his cell phone up near his steering wheel" and initiated a traffic stop based on the cell phone violation. During this initial exchange, Officer Casamassima observed that defendant was "noticeably nervous[,] especially when handing [over] his documents," gave "short" answers, and "didn't want to necessarily look at" the officer. He also noticed defendant "had a significant amount of sweat on him" while "fumbling through his documents" in the glove box.

When Officer Casamassima returned to his patrol vehicle to ask county dispatch to check "for any Title 35 issuance on narcotics history," any "active warrants," and information regarding whether "[defendant's] license was . . . valid on that day," the officer observed defendant light a cigarette and that he appeared to be nervous and shaking.

After dispatch confirmed the active warrant for defendant's arrest and his invalid license, Casamassima advised defendant he would be arrested pursuant to the warrant. According to Casamassima, he decided to continue his investigation after becoming aware of defendant's prior narcotics charges, and defendant's repeated denials that he had "any prior drug history."



Once defendant was placed under arrest, Casamassima requested a canine unit to conduct an exterior sniff of the van for potential narcotics. An officer from Washington Township responded with a canine and conducted an exterior sniff of the van. The canine alerted to the presence of CDS, and the officers then proceeded to search the interior of the van. The search revealed more than one-half ounce of methamphetamine, oxycodone, cocaine, a digital scale, several used and unused plastic baggies, and several orange paper packets in the rear passenger compartment of the van. At Officer Casamassima's direction, defendant's vehicle was subsequently towed from the scene.

This court's standard of review on a motion to suppress is deferential. A reviewing court must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record. State v. Nyema, 249 N.J. 509, 526 (2022) (internal quotations omitted). "A trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are reviewed de novo." Id. at 526-27 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

The motion court found Casamassima's testimony "extremely credible" regarding the reasons he arrested defendant. Specifically, the court reiterated defendant had an "active warrant" for his arrest, "a history of CDS-related

charges," and "an expired insurance card." Although finding the active warrant alone sufficient to support defendant's arrest, the court also found significant that defendant "lied to police stating he had [no] history" of CDS-related charges.

As to the search, the court emphasized that by the time the canine swept the van, defendant was already under arrest pursuant to an active municipal warrant. Moreover, the court concluded Officer Casamassima "had a reasonable suspicion to conduct the [dog] sniff" and did not wait "an unreasonable time" for the dog to arrive, considering defendant was already under arrest. See also State v. Dunbar, 229 N.J. 521, 540 (2017) (holding "that an officer does not need reasonable suspicion independent from the justification for a traffic stop in order to conduct a canine sniff.") (first citing Illinois v. Caballes, 543 U.S. 405, 408 (2005); then citing Rodriguez v. United States, 575 U.S. 348, 357 (2015)).

We reject defendant's argument that the Court's holding in Smart compels a different result. As stated, the Smart Court considered whether the automobile exception to the warrant requirement, as articulated in State v. Witt, 223 N.J. 400, 447-48 (2015), permitted the warrantless search of a vehicle after an investigative stop. 253 N.J. at 159. The Court affirmed the motion court's order suppressing the physical evidence—CDS—seized from the vehicle holding that

"[t]he canine sniff was just another step in a multi-step effort to gain access to the vehicle to search for the suspected drugs." Id. at 173. The Court further held that "[i]n the factual setting of this investigative stop, where the circumstances giving rise to probable cause were not 'unforeseeable or spontaneous,' a warrant was required before searching the GMC." Ibid.

Here, the circumstances giving rise to probable cause for the search were unforeseeable and spontaneous, and defendant's reliance on Smart is misplaced because the facts here are different than those before the Smart Court.

Notably, in this case, there was no prior police surveillance or contact with defendant that would have led to probable cause in advance of the canine search as the initial stop was for a motor vehicle offense. In reviewing Officer Casamassima 's testimony during the suppression hearing, the court noted the officer made observations and learned information following the stop that developed the probable cause for the search, including the active warrant, the history of CDS-related charges that defendant falsely denied, the vehicle's expired registration, and the perspiration. All that information—which supported the probable cause for the warrantless search—was first developed following the motor vehicle stop defendant concedes was lawful. There were no similar circumstances in Smart.

Moreover, the court found Officer Casamassima credible, and we will not disturb the court's credibility findings as deference is given to credibility findings. State v. Hubbard, 222 N.J. 249, 264 (2015). "Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)).

Based on Officer Casamassima's observations and testimony, and the factual distinctions between those established at the suppression hearing and those in Smart, where officers had surveilled the defendant for a lengthy period, the motion court correctly determined the canine sniff was proper and warrantless search of the van operated by defendant was valid once Officer Casamassima developed probable cause there were CDS in the vehicle. See Witt, 223 N.J. at 447, 449-50 (2015) (holding a warrantless search of an automobile may be conducted "when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous") (citing State v. Alston, 88 N.J. 211, 233 (1981)); accord Smart, 253 N.J. at 171 (holding a stop was not unforeseeable and spontaneous under Witt as it was

"deliberate, orchestrated, and wholly connected with the reason for the subsequent seizure . . . ").

We discern no error in the motion court's denial of the motion to suppress evidence.

### III.

Defendant argues the State failed to demonstrate that he possessed the CDS found in the van, which was a work vehicle allegedly belonging to his sister. The State notes the jury found defendant guilty of the CDS offenses after having been properly instructed regarding both actual and constructive possession. Defendant suggests the State relied upon his mere presence in the van to establish "possession" of CDS arguing, "[t]he State's most compelling evidence against [d]efendant was his presence in the van. But [d]efendant did not own the van." In contrast, the State asserts "[t]his case involves more than defendant's mere presence in a van where drugs and paraphernalia were found" and "the totality of the circumstances demonstrated it was more than mere happenstance that the items were found in the vehicle where defendant was the sole occupant and driver."

In support of its position, the State further highlights defendant's demeanor at the time of the encounter with Officer Casamassima, who testified

defendant was sweating profusely, failed to make eye contact, lit a cigarette, fumbled, appeared nervous when asked for credentials, and glanced over his shoulder towards the rear of the vehicle when asked if he had anything illegal in the vehicle, which coincidentally was where the bag containing the CDS was located. The evidence further established defendant misrepresented that he did not have any prior CDS arrests. The State argues that "[w]hile singly these factors may not have been of any moment . . . in the aggregate these manifestations were all factors from which a jury could infer defendant knew drugs were present in the vehicle." And, "it was also up to the jury to adjudicate the facts not only from the direct evidence presented, but also from the inferences that could be drawn from that evidence."<sup>5</sup>

The court considered these circumstances and the parties' arguments in its determination of defendant's motion for judgment of acquittal. Rule 3:18-1 provides that on defendant's motion or on the court's own initiative, a judgment of acquittal shall be entered at the close of the State's case "if the evidence is insufficient to warrant a conviction." Rule 3:18-1; State v. Lodzinski, 249 N.J.

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<sup>5</sup> Juries are routinely instructed that they may draw logical inferences from the evidence presented to them and that circumstantial evidence is of as equal weight as direct evidence. Model Jury Charge (Criminal), "Circumstantial Evidence" (rev. Jan 11, 1993).

116, 144 (2021); State v. Jones, 242 N.J. 156, 168 (2020). "In assessing the sufficiency of the evidence on an acquittal motion, we apply a de novo standard of review." Ibid. (quoting State v. Williams, 218 N.J. 576, 593-94 (2014)).

Our review is guided by well-delineated principles. We view "the State's evidence in its entirety"—direct or circumstantial—giving it "the benefit of all its favorable testimony and all the favorable inferences drawn from that testimony." Ibid. (alterations in original) (emphasis omitted) (citing State v. Perez, 177 N.J. 540, 549-50 (2003)). From there, "the applicable standard is whether such evidence would enable a reasonable jury to find that the accused is guilty beyond a reasonable doubt of the crime or crimes charged." Ibid.

The jury heard testimony from Officer Casamassima, who testified about his investigation, his observations of defendant's demeanor during the stop, the canine sniff, the search of defendant's van, and the eventual seizure of narcotics and narcotics paraphernalia found in a box and backpack. He testified that the backpack containing the eighteen glassine bags of suspected methamphetamine was found behind the passenger seat, which he testified was accessible to defendant as he drove the van.

After both sides rested, defendant moved for a judgment of acquittal. He argued the State presented insufficient evidence to convict because "the only

real evidence that connects [defendant] to this case is that he was driving someone else's van when . . . whatever was found, was found." Defendant highlighted: he "said [the van] wasn't his," he "denied possession of any" drugs found in the van, and "[t]here was nothing done in any forensic way to establish that anything was his . . . ."

The court denied defendant's motion and rendered its decision from the bench, finding "[d]efendant was the sole occupant of the vehicle" in which the police found CDS and concluded it "is a reasonable inference" "that he was in constructive possession and control over the items that were in the vehicle." We hold the evidence, viewed in its entirety, was sufficient to allow a reasonable jury to find defendant guilty of the CDS counts, from which he now appeals. Ownership of a vehicle is hardly dispositive in determining possession of CDS within it. As we stated in State v. Binns, "the fact that [defendant-driver] does not own the vehicle is not necessarily relevant to the issue of possession of the [CDS]." 222 N.J. Super. 583 (1998). There, the driver of a borrowed car

through possession of the trunk key and by having control of the car, was in actual possession; if he wanted to rebut the natural inference of knowing possession, he might either have testified or offered other proof to negate his knowledge of or connection with the cocaine or paraphernalia in the trunk.

[Id. at 591.]



In contrast to the defendant in Binns, defendant was the sole occupant of the borrowed vehicle and there is no need to parse between passengers and drivers to determine possession. Compare State v. Palacio, 111 N.J. 543, 552-53 (1988) (holding defendant-passenger was in constructive possession of large quantity of cocaine found in the hidden compartment behind the rear seat of a car and supported defendant's conviction for possession of cocaine and possession with intent to distribute), with State v. Shipp, 216 N.J. Super. 662, 666 (1987) (holding defendant-passenger's mere presence in the automobile did not "suffice to authorize an inference that he was sharing in the intentional control and dominion over the contraband material.").

Moreover, well-established legal principles compel us to grant the State the benefit of all its favorable testimony as well as favorable inferences—which reasonably could be drawn from the evidence. Reyes, 50 N.J. at 458-59. Accordingly, defendant's challenge to the jury's finding of possession of CDS found in the bag located in the van—where he was the sole occupant and driver—after having been properly instructed by the court, cannot be sustained.

To the extent we have not expressly addressed any arguments made on defendant's behalf, we find they are without sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(2).

We therefore affirm defendant's conviction and the denial of his motions to suppress evidence and for acquittal but reverse and remand for the court to reconsider defendant's application for an alternative sentence, including admittance to Recovery Court. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION